VOLUME ONE

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1965 REGULAR SESSION

REPORTS

January 4, 1965—June 18, 1965

HON JESSE M UNRUH
Speaker

HON CARLOS BEE
Speaker pro Tempore

HON JEROME R WALDIE
Majority Floor Leader

HON ROBERT MONAGAN
Minority Floor Leader

JAMES D DRISCOLL
Chief Clerk of the Assembly

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1963–1965
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REPORT OF THE

JOINT LEGISLATIVE RETIREMENT COMMITTEE

to the

1965 GENERAL SESSION OF THE
CALIFORNIA LEGISLATURE

AB 1672, Chapter 1417, 1963

MEMBERS OF THE COMMITTEE

ASSEMBLY	SENATE
E Richard Barnes	Randolph Collier
Harvey Johnson	Alvin C Weingand

Don A. Allen, Sr., *Chairman*
Alan Short, Vice Chairman
Loretta Schulz, *Committee Secretary*

INTERIM STUDIES

STATE EMPLOYEES' RETIREMENT

AB 208, 1964

AB 868, 1963

AB 1391, 1963

AB 1582, 1963

AB 1807, 1963

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HR 618, 1963

STATE TEACHERS' RETIREMENT

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INVESTMENT OF PUBLIC RETIREMENT FUNDS

AB 1203, 1963

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Report of the

JOINT LEGISLATIVE RETIREMENT COMMITTEE

To the

1965 GENERAL SESSION OF THE CALIFORNIA LEGISLATURE

DON A. ALLEN, SR., Chairman

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COMMITTEE LETTER OF TRANSMITTAL

Sacramento, California, January 4, 1965
STATE CAPITOL BUILDING

HON JESSE M. UNRUH
Speaker of the Assembly
HON GLENN M. ANDERSON
President of the Senate

Gentleman:

We are submitting herewith to you and to the Honorable Members of the California Legislature the first report of the Joint Legislative Retirement Committee.

This committee was established as a permanent committee of the Legislature by Assembly Bill No 1672, passed in the Regular Session of 1963. The committee is an outgrowth of the Joint Interim Committee on the Investment of Public Retirement and Pension Funds. The committee was established as a permanent committee of the Legislature to study all bill and proposals dealing with the various retirement systems of and in the State of California over which the Legislature has authority.

The members of the committee are Assemblyman Don A Allen, Sr., Chairman; Senator Alan Short, Vice Chairman; Senator Randolph Collier; Senator Alvin C Weingand, all veterans of the prior committee; and Assemblyman E. Richard Barnes and Assemblyman Harvey Johnson, appointed after the creation of this permanent committee.

Since the end of the 1963 General Session, this committee has held nine public hearings, for a total of twelve (12) days, on eleven (11) Assembly Bills and three (3) House Resolutions referred from the 1963 General Session and the 1964 Budget Session of the California Legislature.

The findings and recommendations contained in this report are the result of these public hearings conducted by the committee and considerable research by individual committee members and the committee secretary.

It was the unanimous recommendation of the committee that there be no committee legislation. The members felt that unfortunately in the past some committees had, after hearing, drafted their own bills and thus usurped legislation of other members. We recommend that, based on our findings, the original authors of these bills reintroduce similar legislation if they so desire

DON A ALLEN, SR, *Chairman*
ALAN SHORT, *Vice Chairman*

E. RICHARD BARNES
HARVEY JOHNSON
RANDOLPH COLLIER
ALVIN C. WEINGAND

STATE EMPLOYEES' RETIREMENT

NONINDUSTRIAL DISABILITY BENEFIT

Assembly Bill No 208 (Meyers, Belotti, Foran, Gaffney, and Marks—1964 First Extraordinary Session) was heard in San Francisco on September 21, 1964 The bill relates to the State Employees' Retirement System and will do the following:

1. It proposes to increase the nonindustrial disability retirement allowance minimum from one-fourth to a one-third of final compensation basis as to state members or local members whose employing agencies have so contracted.
2. It includes those employees already retired
3. It requires an additional state contribution to the Retirement Fund of one-tenth of 1 percent of the salaries of warden members and one-hundredth of 1 percent of the salaries of state miscellaneous members.

FINDINGS

1. The present nonindustrial disability allowance formula provides for one and one-half (1½) percent of the member's final compensation for each year of service. Therefore, if the member had 10 years of service his allowance under this formula would be 15 percent of his final salary.
2. The present nonindustrial disability retirement allowance provision includes a special formula to be used if the usual formula does not provide an allowance equal to one-fourth of final compensation for a member who has 10 or more years of service The maximum allowance that can be paid under the special formula is one-fourth of final compensation.
3. The nonindustrial disability benefit is the only disability benefit the great bulk of state employees have under the retirement system.
4. Under the present formula an employee would have to have 20 years of service to gain a 35 percent of his final salary allowance. Therefore this bill would affect the disability retirement income for all employees having between 10 and 19 years of service.
5. The annual cost to the State of California to finance the change in the special formula is estimated by the Legislative Analyst at $60,000, in his report to the committee dated September 11, 1964.
6. If this change in the special formula is adopted it will materially aid in retiring people who should be retired because of physical impairment. At the present time there is a tendency for disabled employees to try and hang on to their jobs because of the simple fact that they cannot exist on 25 percent of their final salary. Conversely, supervisors hesitate to force an old-time employee to retire for the same reason.

7. Physically impaired employees in some categories not only cannot perform their duties adequately, they place an undue burden on their fellow employees.
8. The physically impaired employee also exposes himself to undue risk of industrial injury which, if it occurs, materially adds to the cost of the state through compensation payments or industrial disability retirement.

RECOMMENDATION

The committee unanimously recommends that this legislation be adopted at the 1965 Regular (General) Session of the California Legislature.

Legislative Analyst
September 11, 1964

ANALYSIS OF ASSEMBLY BILL NO. 208 (Meyers)

1964 First Extraordinary Session

Cost:
$60,000 annually

Analysis:

Assembly Bill No 208 would increase the minimum guarantee for the allowance on retirement for nonindustrial disability from one-fourth of final compensation to one-third of final compensation for those members retiring from the State Employees' Retirement System

The disability retirement allowance provision includes a special formula to be applied if the usual formula does not provide an allowance equal to one-fourth of final compensation for a member who has 10 or more years of service, and imposes a maximum of one-fourth on the allowance that may be paid under the special formula. This bill would change the one-fourth to one-third in both instances The bill would also extend the benefit of its provisions to persons already retired for disability.

The bill further provides an additional state contribution to the Retirement Fund of one-tenth of 1 percent of the salaries of warden members and one one-hundredth of 1 percent of the salaries of state miscellaneous members

The State Employees' Retirement System estimates the annual cost of Assembly Bill No. 208 to be $60,000.

PENSION FORMULA OF STATE EMPLOYEES' RETIREMENT SYSTEM

Assembly Bill No 868 (Monagan—1963 Regular (General) Session) was heard in San Francisco on July 27, 1964. The bill would amend and add various sections to the Government Code as it relates to the State Employees' Retirement System and would do the following:

1 It proposes to change the formula for current service pensions from $\frac{1}{60}$ (as at present) to $\frac{1}{50}$ of final compensation on retirement at age 60 for each year of service subsequent to June 30, 1964 for state miscellaneous members.
2. It would also apply to certain school members and local members whose agencies contract to be subject to this change in formula.
3. It provides for an increase in both the member's and the state's rate of contribution.

4. It would change the miximum allowance formula for nonindustrial disability from the basis of 90 percent of $\frac{1}{60}$ to 90 percent of $\frac{1}{60}$ for service subsequent to June 30, 1964.
5 It would change the minimum nonindustrial disability retirement allowance from $\frac{1}{4}$ to $\frac{1}{3}$ of final compensation (Similar to AB 208 —Meyers et al., previously reported favorably by this committee).
6. It would increase the basic retirement allowance formula for state miscellaneous members and most school members by 20 percent for service subsequent to June 30, 1964. For those members currently also covered by Federal Social Security, the change would be limited to final compensation in excess of the compensation covered by social security.

FINDINGS

1 The changes in the basic retirement formula for state miscellaneous workers and others subject to these provisions would not materially enhance the retirement income of those members retiring in the near future The reason is that the provisions would be applicable only to service rendered after July 1, 1964
2 This bill would make far-reaching changes in the basic structure of the retirement system.
3 The Legislative Analyst's estimate of costs is in excess of $7,000,000 annually based on an actuarial evaluation.
4 It was pointed out that this would be the first major change in the basic formula since 1947 when the Legislature established the current "$\frac{1}{60}$ at age 60" formula.
5 This legislation is sponsored by the California State Employees' Association.

RECOMMENDATION

The committee unanimously recommends that this bill be held in committee for further study for the following reasons:

1. Before a change of this magnitude is made in any retirement system, the committee would like the opportunity of studying and analyzing its effect on all of our retirement systems.
2. The change in formula will not materially affect the retirement income of those retiring in the near future. This allows time to thoroughly study the proposal.
3 The California State Employees' Association has requested a delay in this matter to allow them time to revise their proposal

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 868 (Monagan)

1963 General Session

Cost: $4,570,400 General funds
2,529,200 Special funds
$7,099,600 Total Cost

Analysis:

AB 868 would amend and add various sections to the Government Code relating to the State Employees' Retirement System.

The bill changes the formula for current service pensions from $\frac{1}{60}$ to $\frac{1}{50}$ of final compensation on retirement at age 60 for each year of service subsequent to June 30, 1964 and provides for member contributions on the basis of accruing one-half of such allowance, the rate change to be effective July 1, 1964 and for an increase in the state's rate of contribution.

It changes the maximum allowance formula for nonservice connected disability from the basis of 90 percent of $\frac{1}{60}$ to 90 percent of $\frac{1}{50}$ with respect to the same service and the "minimum" provision for such allowance from $\frac{1}{4}$ to $\frac{1}{3}$ of final compensation

The bill applies to state miscellaneous members and those warden and forestry and other state members subject to provisions applicable to state miscellaneous members It applies to school members and to contracting agencies only if the agency so elects

The bill would increase the basic retirement allowance formula for state miscellaneous members and most school members by 20 percent for service on or after July 1, 1964, and increase member rates commensurately for such service For those members covered under social security the change is limited to final compensation in excess of the social security covered wages.

The total annual state cost established by actuarial valuation is $7,099,600 of which $4,570,400 is the cost to the General Fund

RETIREMENT FROM STATE EMPLOYEES' RETIREMENT SYSTEM

Assembly Bill No 1391 (Meyers—1963 Regular (General) Session) was heard in San Francisco on July 27, 1964. The bill would amend one section and add a new section to the Government Code as it relates to the State Employees' Retirement System and would do the following:

1. It proposes to permit a state miscellaneous member of the system to retire after thirty (30) years of service regardless of age.
2. It would permit such a member with thirty (30) years' service to elect to receive fifty (50) percent of his final compensation as a combined current and prior service pension.

FINDINGS

1. This proposal would drastically revise the present formula used by the State Employees' Retirement System The present formula provides that a member may retire at age 60 with 30 years of service at 50 percent of his final compensation. The member may retire at age 55 but at a reduced rate of compensation due to the fact that life expectancy is longer.
2. This proposal was suggested by a chapter of the California State Employees' Association. However, it does not have the backing of the association itself.
3. The committee is aware that from time to time improvements must be made in our various retirement programs in order to stay competitive with other governmental agencies and private industry.
4. The author of the bill requested and was granted permission to furnish further supporting statements to the committee.
5. It was brought out in testimony that the basic idea for this retirement formula came from the policies followed by the military services.

RECOMMENDATION

The committee unanimously recommends that AB 1391 be held over for further study for the following reasons.

1. The provisions of the bill would drastically change the existing retirement formula.
2. There is no estimate of the costs involved to the state if such a proposal were adopted.
3. The committee believes that if such an improved formula is considered for "state miscellaneous employees" that all other retirement programs should be studied to determine the total effect of such a formula.
4. In any event, an actuarial study of the possible costs involved to the state should be made before any basic change is made in the system.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 1391 (Meyers)

1963 General Session

Cost: Unknown, but would be in excess of several millions of dollars

Analysis:

AB No 1391 would amend the Government Code relating to the State Employees' Retirement System The amendment would permit a state miscellaneous member to retire after 30 years of service, regardless of age. Proposed Section 21252 7 of the Government Code would permit a member with 30 years of service who retires at any age to elect to receive 50 percent of his final compensation as a combined current and prior service pension.

In order to determine the cost of AB No 1391 an actuarial evaluation would have to be made of the State Employees' Retirement System taking into consideration the assumptions proposed in the bill. The system states it is unable to do this, however, it has stated that the cost of the bill would no doubt be in the millions of dollars since not only would many employees be able to retire that are not presently able to, but employees with 30 years of service who are between 55 and 60 years of age would be able to retire at 50 percent of salary, instead of at a reduced amount as they do now.

LOCAL SERVICE CREDIT

Assembly Bill No. 1582 (Meyers, Kennick, Z'berg, Belotti and coauthored by Senator Geddes—1963 Regular (General) Session) was heard in San Francisco on July 27, 1964. The bill would amend the Government Code as it relates to the State Employees' Retirement System

The bill would allow state employees to elect prior to October 1, 1964, to make contributions to the state retirement system and thereby receive retirement credit for service rendered in local government prior to October 1, 1954.

FINDINGS

1. "Local service credit" has been granted by the Legislature on two different occasions in the past:
   (a) It was originally granted in 1951 provided existing state employees applied for such credit within a specified period of time or, in the case of new employees, within one year after attaining membership in the State Employees' Retirement System. In 1953, the Legislature set a termination date of October 1, 1954
   (b) In 1957, the Legislature again granted the right to "local service credit" until October 1, 1958. However, such "local service" had to have been rendered prior to October 1, 1954.
2. State employees who availed themselves of the opportunities outlined above were required to contribute regular employee contributions for the period to be credited plus the contributions which the state would have made had the person been in state employment. The basis of these contributions was the state rate of contribution to the retirement system and the salary at the time the person became a member. The remainder of the cost of a retirement allowance based on such service is paid by the state.
3. It is estimated by the Legislative Analyst that the cost to the state of "local service" already credited is between five million and seven and one-half million dollars.
4. The Legislative Analyst also estimates that if "local service credit" is extended to members employed by the state since October 1958 the additional cost to the state could be between two and one-half and five million dollars.
5. Under the "local service" provision, credit for service to any city, county, district or other local authority or public body, may be obtained if such service is not credited under another retirement system.
6. It was also pointed out in testimony that the previous granting of such credit has proved to be extremely costly to the state because the amount of such credit allowed far exceeded that which was anticipated.

RECOMMENDATION

The committee unanimously recommends that this legislation be denied for the following reasons.

1. It was brought out in testimony that the state has been working with local subdivisions to obtain reciprocal arrangements regarding local employees within the state. This, in the committee's opinion, is the best method to follow.
2. "Local service credit" has been offered twice by the state. The Legislative Analyst testified that the cost to the state proved to be very costly because the amount of local service for which election was made greatly exceeded that which was anticipated. It was also pointed out that some of the employees now seeking this credit had refused to take advantage of this opportunity on previous occasions for one reason or another.

3. The State Employees' Retirement System is basically a sound system and this committee hesitates to look favorably upon any request of this sort without an actuarial study of the problem to determine the possible total cost to the state.
4. The Legislative Analyst is unable to give a report on the cost to the state because there is no such study. However, the Legislative Analyst reports that the State Employees' Retirement System has estimated the cost could be between two and one-half million and five million dollars.
5. The committee further recommends that, if the Legislature desires to grant such "local credit" once again, no action be taken until an actuarial study of the costs involved to the state has been made.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 1582 (Meyers)
1963 General Session

Cost: Indeterminate, however the State Employees' Retirement System has estimated the cost could be between $2.5 and $5 million.

Analysis:

Assembly Bill No. 1582 would amend Section 20931 of the Government Code relating to the State Employees' Retirement System.

This bill would grant the right to receive service credit under the "local service" provisions of the Retirement Law for service rendered to public agencies in the state prior to October 1, 1954. This right was first granted in 1951 to be exercised within a specified time following enactment of the law or, for new employees, within one year after entering membership. In 1953 a termination date of October 1, 1954 was provided. In 1957, the right was reopened until October 1, 1958, but was not extended to service after October 1, 1954.

Under the "local service" provision, credit for service to any city, county, district or other local authority or public body, may be obtained if it is not credited under another retirement system. The member electing the credit must contribute regular employee contributions for the period and also the contributions which the state would have made had he been in state employment using the state rate of contribution to the system and the salary at the time the person became a member. The remainder of the cost of a retirement allowance based on such service is paid by the state.

A cost to the state of between five million dollars and seven and one-half million dollars has been placed on the "local service" already credited. The cost of reopening the choice and extending it to members employed since October, 1958 will increase this cost materially, perhaps to 10 million dollars or more.

The "local service" provisions of the Retirement Law proved to be very costly, the amount of such service for which elections were made far exceeding that which was anticipated. The right was terminated and later reopened for a period of a year. This bill would have reopened it a second time and have the effect of giving persons who previously could have obtained the credit another opportunity. For some this would have constituted a third opportunity. It also would have given the right to persons who have become members since the October 1, 1958 termination date.

STATE POLICE RETIREMENT BENEFITS

Assembly Bill No. 1807 (Chapel—1963 Regular (General) Session) was heard in Los Angeles on August 19, 1964. The bill would amend various sections and add new sections to the Government Code as it relates to state police retirement benefits and would do the following:

1. It would apply only to those state police members who are designated by the Director of Finance as having peace officer powers and whose principal duties are law enforcement.
2. It provides that those state police members (defined in No. 1 above) will participate in the retirement system on substantially the same basis as patrol members in regard to benefits, members contributions and compulsory retirement age.

FINDINGS

1. It was clearly established to the satisfaction of the members of the committee that these state police members are in fact peace officers
2. It was also clearly established that contrary to what some people may think these state police officers are constantly exposed to the hazards and risks encountered by all other law enforcement officers.
3. The state police members of the retirement system are currently classified as "state miscellaneous members."
4. The job specifications for state police officers as set by the State Personnel Board are quite similar and for the most part identical to the job specifications for highway patrol officer.
5. This bill would place state police officers under the same retirement benefits now available to highway patrol officers

RECOMMENDATION

The committee unanimously recommends that this legislation be adopted by the Califorina Legislature during the 1965 Regular (General) Session It is the Committee's contention that all law enforcement officers should be treated equally regarding retirement benefits.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 1807 (Chapel)

As Amended in Assembly April 17, 1963

1963 General Session

Cost: There would be an increase to state cost, however an actuarial valuation would have to be conducted to determine the cost and the State Employees' Retirement System has not conducted such valuation study.

Analysis:

Assembly Bill No. 1807 as amended in Assembly April 17, 1963, would have added and amended various sections of the Government Code relating to the State Employees' Retirement System.

The bill would have created a new class of member, "state police member" and extend to members in this class the benefit and other provisions now applicable to patrol members, with a provision for offset against both contributions and benefits, contributions to and benefits received under Old-Age, Survivors and Disability Insurance.

Members of the state police employed under Section 13000, Government Code, designated by the Director of Finance as having power of peace officers and whose duties consist of active law enforcement, would have been classified as "state police members" These persons are now miscellaneous members The changes in benefits and obligations accomplished for persons in this group would be as follows:

1. From the 1/60 (one-half final compensation on retirement at age 60 with 30 years of service) formula for service retirement to one-half of final compensation at age 55 with 20 years of service, or upon later completion of 20 years of service. (Secs. 11, 12, 4, 5)

2 Minimum retirement age from 55 to 50 with a reduced allowance. (Secs. 8 and 13)

3 Addition of an allowance in an amount equal to one-half the member's allowance upon death after retirement, to his surviving spouse, children, or dependent parents Includes persons already retired (Sec 14)

4 Mandatory retirement age reduced from 70 to 65 (Sec 9)

5 Addition of industrial disability and death benefits consisting of an allowance equal to one-half of final compensation to the disabled member or his eligible survivors respectively, consisting of wife and children. (Sec. 10, 18)

6 Members to contribute on the basis of providing an annuity in the amount of one-half the allowance The effect will be generally by way of increase. Changes will be effective on and after October 1, 1963 For members under OASDI, the contributions will be reduced by the contribution to Old-Age, Survivors and Disability Insurance (Sec 2, 3, 4, 5)

Service retirement allowances, disability retirement allowances, the industrial benefits, and the allowance for survivors upon death after retirement will be reduced by the amounts which the person is entitled to receive from OASDI, This reduction applies only when entitlement begins, so that the allowance of a person retiring at age 55 would be unaffected until age 62 The amount offset in the case of retirement appears to be only the primary insurance amount, which does not include a wife's and children's benefit

There would be an increase in state cost No actuarial valuation has been made, thus the cost is not known.

SABBATICAL LEAVE CREDIT

Assembly Bill No 2394 (Meyers, Z'berg, Kennick and Belotti—1963 Regular (General) Session) was heard in San Francisco on July 27, 1964.

The bill would amend the Government Code as it relates to state employees' retirement to provide the following:

1. A member on sabbatical leave shall receive full credit towards retirement for that period provided the member contributes to the Retirement Fund a sum equivalent to what he would have contributed if he had not been absent or working only part time.
2. It would also apply to approved leaves for state employees when the member is on leave working for the federal government, foreign countries or any other type of loan to other political agencies.

FINDINGS

1. The University of California system presently has a provision whereby the person on sabbatical leave can receive credit for the full year by paying both his own contribution and the employer's contribution.
2. The bill contains no time limit on how long a member can be gone from the job.
3. The bill does not contain any safeguards for the state to guarantee that the employee will return to his job and not leave soon after finishing his sabbatical.

RECOMMENDATION

The committee unanimously recommends that this legislation be denied for the following reasons:

1. The lack of any safeguards or controls as the bill is now written.

2. The difference in ultimate retirement income is infinitesimal compared to the benefits which would normally accrue to the employee due to future salary increases or promotions due to study and advanced degrees obtained through sabbaticals.
3. By the committee's own knowledge, there have been numerous abuses of the original intent and purpose of sabbatical leaves.
4. The committee believes that before any such legislation is considered by the Legislature, adequate safeguards and controls should be devised to guarantee to the state that abuse of this privilege be minimized.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 2394 (Meyers)

1963 General Session

Cost: Indeterminate

Analysis:

AB 2394 would amend Section 20860 5 of the Government Code relating to the State Employees' Retirement System.

The bill provides for full-time retirement credit for periods of time on sabbatical leave granted a member, if he so elects and contributes amounts necessary to bring his accumulated contributions to a full contribution basis for the period of absence.

Under existing provisions, only part-time service credit is given in the proportion that compensation paid bears to full compensation earnable if the member were not absent, but retirement benefits are computed on *full-time compensation*, that is, the credit for time of service is reduced and the retirement benefits are based on full-time compensation for the reduced period of time

Presumably the intent is to provide a retirement allowance for such absence equal to that which would be received had the member not gone on leave.

The bill would increase benefit costs for the state and other employers under the system The State Employees' Retirement System has no information of record as to the amount of service involved and can prepare no estimate of the cost.

NARCOTIC ENFORCEMENT MEMBERS RETIREMENT

Assembly Bill No. 2484 (Meyers, Z'berg, Ryan, Knox, Belotti, Britschgi, Burton, Crown, Foran, Gaffney, Kennick, Marks, Petris, Thomas and Waldie—1963 Regular (General) Session) was heard in San Francisco on July 28, 1964.

The bill would amend and add various sections to the Government Code as it relates to narcotic enforcement members' retirement and would do the following.

1. It provides that narcotic enforcement members will participate in the retirement system on substantially the same basis as patrol members in regard to benefits, members' contributions and compulsory retirement age
2. It permits those who are members prior to the effective date of the act to elect to remain subject to the present provisions rather than the amended provisions which would be enacted by this measure
3. It sets the age limits for examination for the position of narcotic agent as 21 to 40.

FINDINGS

1. Narcotic enforcement members now have the same retirement benefits as state miscellaneous members. These benefits now cover

all state employees except members of the highway patrol, warden and forestry members

2. This bill would provide narcotic enforcement members the same benefits now applicable to Highway Patrol members by adding the following benefits
   (a) The "one-half pay at age 65" retirement allowance formula
   (b) Allow for retirement at ages 50 through 55 with a reduced allowance
   (c) The continuance of one-half the retired members' pension to his surviving spouse, children or dependent parents, upon death after retirement.
3. Provision is made for coordination with Old Age Security and Disability Insurance There would be an offset of the amount of the entitlement, under Old Age Security and Disability Insurance, of the member or his beneficiary against the amount otherwise payable by the retirement system.
4. The bill is specifically written to cover only narcotics agents, it would not cover those employees whose duties are clerical or outside the scope of active law enforcement
5. The 1963 Legislature adopted legislation to grant the employees of the Bureau of Criminal Identification and Investigation similar benefits
6. It was brought out in testimony that narcotics agents are exposed to the same risks and hazards as other law enforcement officers
7. It was also pointed out in testimony presented on behalf of the Chief of the Bureau of Narcotic Enforcement that this type of work demands young men because of the active nature of the work
8. It was further brought out in testimony that the bureau has a recruiting problem due mainly to the fact that qualified officers on metropolitan police forces now receive much better retirement benefits than state narcotics agents Therefore, the trained, qualified individual will not transfer for lesser retirement benefits.

RECOMMENDATION

The committee unanimously recommends that this legislation be adopted by the California Legislature during the 1965 Regular (General) Session for the following reasons:

1. There is no doubt that active narcotics agents should be classified as law enforcement officers for retirement purposes on the same basis as other law enforcement officers employed by the state The dangers involved in this work were clearly demonstrated to the satisfaction of the committee
2. There is a need for young men in this field because the nature of the work demands great physical activity on the part of the agent By allowing agents to retire at age 55 at one-half their final compensation after 30 years of service, the state will be able to replace

these dedicated public servants with younger, more active men. Because of the undercover nature of their work, it is imperative that the bureau have qualified young men in its ranks as well as seasoned active veterans

3 Although there is no cost estimate attached to this bill, the committee feels that there are overriding factors in this proposal as follows:

(a) The legislation will affect the future retirement program of only 89 agents at the present time

(b) All law enforcement officers employed by the state are and should be entitled to the same retirement benefits

(c) The bill specifically provides for coordination with Old Age Security and Disability Insurance benefits, thus offsetting partially the cost to be borne by the state.

(d) It will aid the Bureau in attracting qualified personnel.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 2484 (Meyers)

1963 General Session

Cost: The cost would be substantial, however, no actuarial evaluation has been conducted thus no precise estimate can be made.

Analysis:

AB 2484 adds and amends various sections of the Government Code relating to narcotic enforcement members of the State Employees' Retirement System (SERS)

The bill would provide for narcotic enforcement members all of the benefits now applicable to Highway Patrol members Present members of the system would be given an option whether to become subject to the proposed provisions of the bill

The following benefits for narcotic enforcement members would be added:

1. "One-half pay at age 55" retirement allowance formula.
2. Retirement at ages 50-55 with reduced allowance
3. Continuance of one-half the retired member's allowance to his surviving spouse, children or dependent parents, upon death after retirement

Narcotic enforcement members now have the same benefits as "state miscellaneous members" (all state employees except members of the highway patrol, warden and forestry members) and in addition the special death benefit for death resulting from employment and the industrial disability allowance of one-half of final compensation if disabled in the course of employment The bill provides for coordination with OASDI There would be an offset of the amount of the entitlement of the member or his beneficiary under OASDI against the amount otherwise payable by the retirement system

There is no way of accurately determining the cost of this bill until such time as an actuarial evaluation is made by the retirement system No such evaluation has been made. The system has stated that "a very substantial increase would be required."

MEMORIAL RESEARCH SECRETARIAT

Assembly Bill No 3119 (Meyers—1963 Regular (General) Session) was heard in San Francisco on July 27, 1964

The bill would amend the Government Code as it relates to the State Employees' Retirement System It would do the following:

1. Create the position, within the system, of Research Secretary to be known as the Edwin J. Callan Memorial Research Secretariat.

2. The position would be filled by appointment by the Governor of a person who actively participated in the founding of the State Employees' Retirement System
3. The person so designated would serve at the pleasure of the Board of Administration of the Retirement System and the salary would be fixed by the board.

FINDINGS

1 Mr. Edwin J Callan was one of the state employees who played a principal part in the founding of both the state retirement system and the California State Employees' Association

2 The committee believes that a history of the founding of state retirement system would be invaluable from a historical point of view.

RECOMMENDATION

The committee unanimously recommends that this specific legislation be denied.

1. The reason for this recommendation is that the California State Employees' Association is currently working on a similar project and it would serve no useful purpose for the state retirement system to duplicate this work.
2. The Legislative Analyst estimated the annual cost for the establishment of this position at $15,000 This cost would have come out of the State Employees' Retirement Fund. Inasmuch as the state employees are now paying for such a report, the committee sees no reason to create this additional position at the expense of the employees

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 3119 (Meyers)

As Amended in Assembly June 4, 1963
1963 General Session

Cost: Approximately $15,000 from the State Employees' Retirement Fund.

Analysis:

Assembly Bill No 3119, as amended in Assembly June 4, 1963, would have added Section 20108 to the Government Code relating to the State Employees' Retirement System

The bill would have provided for the establishment of a position in the State Employees' Retirement System that would be known as the Edwin J Callan Memorial Research Secretariat The position would have been filled by a person who actively participated in the founding of the State Employees' Retirement System and who would be appointed by the Governor.

The bill stated that the duties of the position would include research, study and compilation of the historical aspects of the State Employees' Retirement System

The estimated annual cost for the establishment of this position is $15,000 which would have come out of the employees' retirement fund.

STATEWIDE HEALTH CARE AND RETIREMENT PROGRAM

House Resolution No 618 (Zenovich—1963 Regular (General) Session) requested an interim study relative to extending statewide health care and retirement programs, to all state employees. HR 618 was referred to this committee by the Assembly Rules Committee Specifically, HR 618 requests a study of the advisability of extending coverage under the State Employees' Retirement Act and the Meyers-Geddes Medical and Hospital Care Act to all state employees. The resolution has particular reference to University of California employees.

FINDINGS

1. The State Employees' Retirement Act was amended and the Meyers-Geddes Act was adopted in the 1961 session of the Legislature to provide medical and hospital care coverage for all state employees.
2. The University of California has operated its own retirement system for academic personnel independent of the State Employees' Retirement System, for over 50 years
3. Until 1961, all nonacademic employees of the University were covered under the State Employees' Retirement Act In 1961, the Board of Regents of the University adopted regulations that made it mandatory that all future employees would be covered under the University retirement system Those employed prior to the adoption of that regulation were given the option of staying with the State Employees' Retirement System or transferring to the University system.
4. About 20,000 of the now academic employees of the University chose to remain in the state system Presently the University system has approximately 21,000 members This constitutes the largest group of state personnel outside of the state system.
5. Subsequent to the passage of the Meyers-Geddes Act, the Board of Regents established their own group life and health insurance programs (they now have five programs) and refused to come under the Meyers-Geddes Act

RECOMMENDATION

The committee unanimously recommends that legislation to return the University of California to the state retirement system and the state medical and hospital care program for the following reasons:

1. The committee believes that independently administered retirement systems should be held to an absolute minimum
2. At the present time, the State Employees' Retirement System administers the retirement programs for not only state miscellaneous employees but also many cities and counties, the highway patrol, forestry and warden members, the Legislature, and the judges. In our opinion, this system is more than qualified and capable of handling the University of California as well
3. The committee believes that when the Legislature passed the Meyers-Geddes Act in 1961, the intent was to have all state employees covered under that act. We do not believe it was the intent of the Legislature to merely pass enabling legislation so that various agen-

cies could go off on tangents and create their own medical and hospital care programs.

4. Under the Meyers-Geddes Act the state participates in the cost of the program on the basis of $6 per employee per year.
5. Although the University of California has established its own program, their budget, which requires the approval of the Legislature, contains an appropriation of $6 per employee (both academic and nonacademic) for their health care program
6. The Legislative Analyst's report states that bringing University employees under the Meyers-Geddes Act would not entail any increased cost to the state, but would result in slight administrative savings to the state The committee feels that any savings, no matter how slight, should be taken advantage of in these days of continually increasing budgets
7. The committee recommends that if the University continues on its own independent program then the General Fund appropriation should be reduced by an amount equal to $6 per employee.
8. The committee is well aware that many problems will be confronted in merging the University retirement system with the state system For one thing, the University now has the right and does invest in common stock, which this committee has consistently advocated for all retirement funds We are also aware that the University system antedates the state system However, we do recommend that serious studies be initiated to determine how the two systems can be merged.

ANALYSIS OF HOUSE RESOLUTION NO. 618 (Zenovich)

1963 General Session

COST: No increased state cost.

Analysis:

House Resolution No. 618 directed the Assembly Committee on Rules to assign to the appropriate committee for interim study the subject of extending coverage under the State Employees' Retirement System and the Meyers-Geddes Medical and Hospital Care Act to all state employees and to direct such committee to report to the Assembly no later than the fifth legislative day of the 1965 Regular Session of the Legislature.

The resolution whereas clauses point out that the University of California did not elect to participate in the Meyers-Geddes Hospital and Medical Care Act and established a health insurance program of its own It is pointed out that the employees of the University are the only large group of state employees not covered by the Meyers-Geddes Act

The University currently contributes six dollars a month toward the premium of an approved health insurance policy for those University employees who wish to have such coverage. The employee also contributes an amount toward the premium amount depending upon the number of dependents the employee may have

The six dollars per month contribution is the same amount that is contributed by the state through the Meyers-Geddes program

Should the University employees be included under the Meyers-Geddes Program, there might be some slight administrative savings to the University However, since the University has only five approved plans available to employees, the administrative staff is small and is currently handled within the personnel office There would be no increased cost or any savings in the state's contribution toward the premium payment with the transfer of the program under the Meyers-Geddes program.

OUT OF STATE TEACHING SERVICE CREDIT

Assembly Bill No. 1050 (Bee, Hinckley, Rumford, Garrigus, Belotti, Casey and Ryan—1963 Regular (General) Session) was heard at the following places:

February 20, 1964	Sacramento
March 4, 1964	Sacramento
March 10, 1964	Sacramento
July 27, 1964	San Francisco
August 18, 1964	Los Angeles
October 22, 1964	San Diego
November 16, 1964	Sacramento

The bill would amend various sections and add new sections to the Education Code as it relates to state teachers' retirement by adding credit for retirement purposes for out-of-state teaching experience.

Subsequent to the initial hearing on February 20, 1964, Mr. Bee, at the request of ARCOSS the sponsor of the bill, suggested certain modifications to AB 1050 as referred After due deliberation the committee unanimously accepted the modifications for purpose of study. Therefore, rather than studying a specific bill, we studied the entire question of the granting of out-of-state service credit and its effect on the California public school system.

The modifications to AB 1050 adopted by this committee are as follows:

1 An out-of-state teacher must teach in California for a minimum of five years before being allowed to qualify any out-of-state service.

2. After teaching in California for five years a teacher may, at his option, qualify five years of out-of-state experience.

3. Out-of-state experience may be qualified thereafter on a matching year-for-year basis. In other words, a teacher teaching in California for six years may qualify six years out-of-state credit and a teacher teaching seven years in California may qualify seven years out-of-state experience.

4 In all cases, the buy-in is to be at the option of the individual teacher. However, the teacher must notify the state during a period not longer than six (6) months after the first five (5) years of California service of his intention to exercise this option The teacher must be notified by the State Teachers' Retirement System during the fifth year of California service that he can qualify his out-of-state service for retirement credit.

5 BUY-IN:

(a) For those teachers entering teaching in California beginning September 1, 1944 through June 30, 1951, the buy-in shall be based on the age and sex of the teacher at the time of entering California service and the first full year's salary, plus the rate in effect for that age and sex during the year 1951-52.

(b) For teachers entering the California service during or after the 1951-52 year, a teacher qualifying out-of-state experience for retirement purposes would pay into the California Retirement System a sum of money determined by the teacher's age and sex and actual salary at the time of entering California service.

6. Payment to the Retirement System for out-of-state credit may be made in one of three ways at the option of the teacher, all carrying 5 percent interest from the date the option is exercised to the date payment in full is made to the Retirement System for the years being qualified for out-of-state service:
   (a) Lump sum cash payment.
   (b) Increasing existing payment into the retirement system and spread over the remaining years of active service.
   (c) For already retired teachers or for those too close to retirement to make (a) or (b) feasible:
   Have a certain sum deducted from their monthly retirement check until the payment is made in full, whereupon they receive full retirement payment. (Not to exceed three years for payment.)

BACKGROUND

1. AB 1050 was referred with the recommendation that if a new actuarial study of the costs involved in granting out-of-state service credit the costs of such study should be borne by the state
   The reason for this recommendation was that testimony given before the Assembly Ways and Means Committee on April 25, 1963, pointed out that ARCOSS members had paid in excess of $40,000 for a survey of costs in 1960, but this survey contained grievous errors and was therefore, worthless The old survey was conducted by contract with the State Teachers' Retirement System and an actuarial firm and the state charges in excess of $25,000 for its portion of the survey.
2. The committee determined that a new survey of costs was needed and to this end appointed an advisory committee to work out the details of the questionnaire and the scope of the survey The members of the advisory committee, working with the chairman of the full committee were:
   Mr. Leo Reynolds, Executive Director, State Teachers' Retirement System
   Mr Lloyd C. Graybill, State Employees' Retirement System, representing Executive Director William E. Payne
   Mr. Thomas J. Dooley, representing Mr. A. Alan Post, Legislative Analyst
   Mr. William E Barton, California Teachers Association
   Mr. Shirl Olympius, Public Relations Counsel, representing ARCOSS, INC.
3. The details of the survey were worked out and adopted by the committee on March 10, 1964 At the suggestion of Senator Collier, the committee also decided that in order to get the complete picture of the state's total obligation an actuarial study of the system itself should be made. The committee therefore, determined that two surveys be made and the date of each survey should be as of June 30, 1964.
4. The committee requested and the Legislature approved the necessary funds for these studies. The committee engaged the services of an actuarial firm and a data processing firm to make the study

of the costs of granting out-of-state service The State Teachers' Retirement System is conducting its own survey of the total obligation of the state to the teachers as of June 30, 1964 Questionnaires concerning out-of-state service were distributed through channels to all teachers in May 1964

5. Based on the modifications to AB 1050 outlined above, the committee ordered the actuarial study to reflect the costs involved if the state were to grant 5, 10, 15, or unlimited years credit for out-of-state teaching experience.
6. The completed actuarial report on the out-of-state service proposal was submitted to the committee on October 5, 1964 This report was accepted by the full committee at our San Diego hearing October 22, 1964.
7. The second phase of our overall study is still underway and will be reported by this committee as soon as we have received the results

FINDINGS

1. The committee held seven (7) public hearings on this subject in various sections of the state in order to get as broad a perspective of this subject as possible
2. Testimony and the actuarial report pointed out that this legislation would affect approximately 56,000 active public school teachers as of June 30, 1964.
3. Legislation adopted in 1944, blanketed in over 21,000 teachers with out-of-state service who were teaching in California as of June 30, 1944
4. It was pointed out that 27 other states have some provision in their retirement laws to allow out-of-state service credit and that 22 of these states allow 10 years or more credit
5. Studies made by the State Department of Education were submitted which show that it will be impossible to graduate sufficient California teachers for our needs until 1972 At least until that time we will be forced to recruit out-of-state teachers
6. Testimony was offered by several superintendents from various sections of the state regarding the difficulty in recruiting sufficient trained, experienced teachers to adequately staff our classrooms
7. It is estimated by the State Department of Education that at the current time the various school districts throughout the state are spending over $3 million per year to recruit out-of-state teachers It was also pointed out that it is becoming practically impossible to recruit teachers with experience and more and more, they have to accept recent college graduates with no teaching experience merely to staff our classrooms.
8. Further testimony by the Superintendent of the Fullerton Junior College and High School District showed the dire need for experienced teachers at the high school and junior college levels He testified that in an attempt to get experienced teachers his district was currently offering a salary incentive of two steps above what

would normally be paid and they intend to go even higher in the future He pointed out that, despite our somewhat better salaries, experienced teachers were extremely reluctant to give up retirement credits earned in other states merely to move to California and start all over.

9. The committee notes that despite legislative efforts to improve the educational system through the adoption of the Fisher Act (Credentialling), the Unruh Act (Consolidation), the Casey Act (Foreign Language), the McAteer Act (culturally handicapped children) and various other measures the State Board of Education actually found it necessary in 1964 to allow various school districts to hire uncredentialled teachers in order to provide sufficient teachers. Thus, instead of improving, we have added approximately 1,000 new uncredentialled teachers This was necessary because it was proven beyond a reasonable doubt that trained teachers were not available.
10. The actuarial report contained the following basic information.
    (a) Of the 56,000 active teachers with out-of-state service their average age is 43 3 years
    (b) The average years of out-of–state service is 5.48 years.
    (c) There were approximately 1,700 already retired teachers who would be affected by this legislation for a total of 57,484 active and already retired teachers

RECOMMENDATION

The committee unanimously recommends that the 1965 California Legislature adopt legislation to allow out-of-state teaching service credit for retirement purposes on the following basis:

1 That the bill reflects the modifications adopted by this committee and reflected in the actuarial report; and
2. That the maximum allowance of such credit be limited to ten (10) years provided the recipient has rendered ten years of full-time service in the California Educational System
3 That a satisfactory formula be worked out to prevent an individual from receiving a retirement allowance for identical service from any other state or public agency.

The committee makes this recommendation for the following reasons·

1. The adoption of this legislation will materially aid the recruitment of trained, qualified teachers, we vitally need to assure the parents and children in California of a continued excellent educational system
2 This legislation will assure our dedicated career public school teachers of an adequate retirement income after devoting their lives to the education of the youth of the United States
3 The committee is cognizant of the fact that according to the 1960 census report over 60 percent of our California citizens were born in other states. Thus it is logical to assume that our need for out-of-state teachers is directly attributable to the migration of others to this state.

4. If legislation is adopted as outlined above the maximum possible costs to the state will be $1,022,000 for the first year and an estimated average cost over the next 10 years of $6,793,700. These costs are maximum and are predicated upon all teachers availing themselves of this opportunity. From information we have received there will be many teachers who will not do so for one reason or another. This will materially reduce the cost to the state.
5. In order to obtain this maximum benefit, the teachers will be required to contribute a net of $100,904,000 into the State Teachers' Retirement System.
6. The committee has received testimony from various superintendents throughout the state, that the adoption of this legislation will result in a savings in recruitment costs to the various districts. We feel that this plus enabling the districts to hire within the normal salary ranges will do much to offset the costs to the state involved in granting out-of-state service credit. Although this affects different budgets, the committee points out that we are talking about the same taxpayers throughout the state

SUGGESTED MODIFICATIONS TO AB 1050

1. An out-of-state teacher must teach in California for a minimum of five years before being allowed to qualify any out-of-state service
2. After teaching in California for five years a teacher may, at his option, qualify five years of out-of-state experience.
3. Out-of-state experience may be qualified for a maximum of 10 years on a year-for-year basis In other words, a teacher teaching in California for six years may qualify six years out-of-state credit and a teacher teaching seven years in California may qualify seven years out-of-state experience, up to a maximum of 10 years.
4. In all cases, the buy-in is to be at the option of the individual teacher. However, the teacher must notify the state during a period not longer than six (6) months after the first five (5) years of California service of his intention to exercise this option. The teacher must be notified by the State Teachers' Retirement System during the fifth year of California service that he can qualify his out-of-state service for retirement credit
5. BUY-IN·
   (a) For those teachers entering teaching in California beginning September 1, 1944 through June 30, 1951, the buy-in shall be based on the age and sex of the teacher at the time of entering California service, plus the rate in effect for that age and sex during the year 1951–52 This will be based on the actual beginning salary earned by the teacher in California

   In other words, if a female teacher, age 30, started teaching in California in the 1945–46 school year at a salary of $2,800, then her contribution for out-of-state credit would be 6 75 percent (the rate in effect for a female, age 30, in the year 1951–52) × $2,800

   Another example . . a male teacher, age 35, started teaching in California in 1947–48 at a salary of $3,100 To qualify for out-of-state credit this teacher would pay into the Retirement System 6 26 percent (which was the rate in effect for a 35-year-old male in the year 1951–52) × $3,100.

   In other words, in all cases where the teacher entered the California service prior to 1951–52 we would use the actual salary first earned by the teacher, the teacher's actual age and sex at the time of entering California service, but the percentage would be that percentage paid by a person of that age and that sex in the year 1951–52

   (b) For teachers entering the California service during or after the 1951–52 year, a teacher qualifying out-of-state experience for retirement purposes would pay into the California Retirement System a sum of money determined by the teacher's age and sex and actual salary at the time of entering California service.

In other words, if a male teacher first taught in California in 1955 he could qualify his out-of-state teaching experience by paying into the Retirement System a sum of money based on his actual age and sex and actual salary earned during his first year of California teaching for all qualifying years of out-of-state service up to the 10-year maximum

6 Payment to the Retirement System for out-of-state credit may be made in one of three ways at the option of the teacher, all carrying 5 percent interest from the date the option is exercised to the date payment in full is made to the Retirement System for the years being qualified for out-of-state service:

(a) Lump sum cash payment

(b) Increasing existing payment into the retirement system and spread over the remaining years of active service.

(c) For already retired teachers or for those too close to retirement to make (a) or (b) feasible.

Have a certain sum deducted from their monthly retirement check until the payment is made in full, whereupon they receive full retirement payment (Not to exceed three years for payment)

7. In all cases the years to be qualified must run in reverse order from the date the teacher started teaching in California

For example, if a teacher first started teaching in California in 1956 and had taught in another state from 1936 to 1955 then the years credited for out-of-state service would be 1955, 1954, 1953, 1952, 1951, 1950, 1949, 1948, 1947 and 1946.

Five percent interest does not begin until the teacher has exercised his option.

8. Study the costs involved to the state if they granted 5 years, 10 years, 15 years, or unlimited credit. This information can be gathered at the time the new actuarial survey is made.

STATE TEACHERS' RETIREMENT

STATE TEACHERS' RETIREMENT SYSTEM

Assembly Bill No 2692 (Meyers—1963 Regular (General) Session) was heard in San Francisco July 28, 1964.

The bill would amend the Education Code as it relates to the State Teachers' Retirement System, and would authorize school district governing boards to pay the members' (teachers') Permanent Fund Contributions.

FINDINGS

1. It was brought out in the testimony of the proponents that this permissive legislation, if adopted, would have the effect of raising teachers' salaries in those districts where the school board decided to pay the entire Permanent Fund contribution of the member.
2. The districts are now required by law to contribute $6 per year per teacher plus 3 percent of their total gross payroll for teacher retirement. This amounted to $39,000,000 in the past year and is used annually to pay for teacher retirement

RECOMMENDATION

The committee unanimously recommends that this legislation be denied for the following reasons.

1 Because it would be merely permissive legislation, it would be extremely difficult to administer the funds accumulated by the State Teachers' Retirement System
2. The committee believes that if individual school districts desire to raise teacher salaries, they already have the authority to do so without resorting to paying all or part of a teacher's contribution to the Permanent Fund.

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 2692 (Meyers)
1963 General Session

Cost: Potential total cost of approximately $12,000,000 to local school districts

Analysis:

Assembly Bill No 2692 (Meyers), 1963 General Session, would have amended Section 14201 of the Education Code relating to the State Teachers' Retirement System

The bill would have authorized all local school district governing boards to pay the members' contributions to the Permanent Fund of the State Teachers' Retirement System

Section 14101 of the Education Code provides that each member of the system shall deposit $60 annually into the Permanent Fund Should all districts decide to pay the employees' share of the retirement contribution, the total cost would be approximately $12,000,000.

STATE TEACHERS' RETIREMENT SYSTEM

House Resolution No. 195 (Veysey and Casey—1963 Regular (General) Session) was heard in Los Angeles on August 18, 1964. The resolution cited several problems that have occurred and are occurring in the administration of the State Teachers' Retirement System and requested an interim committee study to determine whether or not a full-scale management survey of the system was needed.

FINDINGS

1. The Auditor General submitted two reports on the financial statements of the State Teachers' Retirement System The first report dealt with an examination of these records for the year ended June 30, 1958 The second report dealt with the year ended June 30, 1962 The Auditor General states, "On each occasion we were unable to complete our examination because the accounting records were not up to date"
2. The Auditor General also reported the following
   (a) At June 30, 1956, the active membership was 173,000 As of June 30, 1964, the active membership was 295,000—an increase of 122,000 in the past eight (8) years.
   (b) During this same period, the number of retired teachers has increased from 17,000 to 27,700 or 10,700 additional already retired members
   (c) In this same period, annual benefits paid by the system have increased from $41 million to almost $90 million, thus more than doubling the amount of benefits paid out each year.
   (d) The annual reports required by the system can and should be simplified
   (e) An extensive study should be made into the method used in computing service credit
   (f) It is fundamental to improve administration of the system; that improvement be made in the timeliness of the annual reports Testimony brought out the fact that no work is done on updating the records of the system until the annual reports from all counties are in the hands of the system.
   (g) The incidence of error of calculations in the retirement roll is unacceptably high and that these errors are concentrated in retirement allowances calculated during the period 1955 through 1959.
   (h) A number of instances were discovered whereby the allowances paid are different than those which would be paid if the benefits were to be recalculated under current policy.
   (i) It was recommended that the Teachers' Retirement Board review the policy decisions and determine the need for recalculation of benefits and also that a complete review be made of all such calculations during the 1955–1959 period when the workload was extremely heavy due to the extensive revisions to the benefit structure that became effective in 1956.

(j) There is a drastic need for better management controls in the system. One example placed before the committee is that there is no semblance of order in the manner that pertinent documents and information is placed in a member's individual file folder. In many cases the Auditor General was unable to find pertinent documents This results in a considerable expenditure of time when a member retires because at that time all of the information has to be collected and verified

(k) The system makes no effort to record and report their outstanding liabilities Therefore, it is impossible to determine the outstanding liability of the state except when an actuarial study of the system is made every six (6) years

(*l*) Because the books of the system are not closed on a timely basis and because the accounting records of the system are not maintained on a current basis the accounts of the State Controller and the system do not balance.

(m) It was pointed out that there is a "very critical shortage of supervisory personnel"

(n) The present organizational plan as well as the operation of the system should be subjected to a comprehensive survey. This should be a management survey and systems analysis which currently does not come under the responsibilities of the Auditor General.

3 In the words of the Auditor General, "An organization of this size requires an active, informed stewardship"

4. The Legislative Analyst recommends that the 1965 General Session of the Legislature enact legislation to change the method of financing the administration of the system At the present time 100 percent of these costs come from the General Fund The recommendation was that part of these costs should be borne by the teachers and the employing school districts This would place the administration of the teachers' system on much the same basis as the state employees' system, where the administrative costs are paid out of interest income.

5. The Legislative Analyst recommended that the share that the teachers and school districts would pay be taken out of interest earned on the funded portion of the Retirement Fund However, from a cursory analysis of state budgets for the past 10 years it appears that the districts' funds (3 percent of the payroll plus $12 per teacher) are expended yearly. Therefore, the only funds invested would be the teacher contributions It was pointed out that if some method of sharing costs is devised it could produce a savings of up to $400,000 annually to the General Fund.

6. There is some problem created by local retirement plans. These members are also by law members of the state teachers' system Testimony was offered that 90 percent of these teachers, upon retirement, will withdraw from the local system, pay their money into the state and retire on state benefits which are somewhat higher than local

benefits What the actual cost would be to the state was not stated. However, the 1964–65 State Budget carried an appropriation of $2,-055,660 labeled Subventions to Local Systems.

7. Many instances were cited to committee members by fellow legislators and others, of cases in which members were unable to obtain information regarding their status in any reasonable length of time. There are also instances where members had to engage the services of an attorney to determine their status. Numerous cases have been reported to the committee of overpayments and underpayments both into the system and also to retired members.
8. This committee and other members of the Legislature have reported at various times that it was rather difficult to obtain information and answers to questions from the administrative staff of the system.

RECOMMENDATION

The committee unanimously recommends that the 1965 General Session of the Legislature authorize a complete management survey of the State Teachers' Retirement System as requested by HR 195. We further recommend that said survey be made under the supervision and control of this committee and that the committee be authorized to contract with a private organization to make said survey. We make these recommendations for the following reasons:

1. The Auditor General's report pointed up the great need for better financial controls, better and more efficient reporting, and a comprehensive study of the organizational structure of the system.
2. The committee is well aware that three pieces of legislation authored by Mr. Veysey were adopted by the 1963 Legislature. This legislation was aimed at increasing the efficiency of the system by authorizing advance payment of retirement allowances for new retirees based on preliminary information, by creating a new Teachers' Retirement Board and by requiring counties to report not later than Decembr 31st, following the close of the school year.
3. However, the committee believes that, based on testimony heard during 1964, a management survey is needed of the entire system to assess the success of the 1963 legislation in eliminating some problems and to attempt to eliminate other problems mentioned in the findings.
4. The committee believes an outside organization should make this survey because to our knowledge no state agency has the time and personnel to conduct a survey of this magnitude without disrupting the services our state agencies rendered to the entire structure of state government.
5. It was brought out in testimony that the State Employees' System has much better controls, more efficient reporting, makes up-to-date information available to its members, gets retirement payments to new retirees within one month after they retire. The committee is at a loss to understand many of the administrative deficiences in the Teachers' Retirement System.

6 The system has now moved into new, larger quarters and this committee believes it is time that the Legislature took a long, hard, cold look at the administrative operation of the State Teachers' Retirement System

Legislative Analyst
August 18, 1964

Mr. Chairman, and members of the committee

We have been asked by the chairman of your committee and by the author of House Resolution 195, the Honorable Victor Veysey, to appear before you today and comment upon the resolution

HR 195 was introduced by Mr Veysey on April 3, 1963 On that same date and also on April 5 and April 11, 1963, Mr Veysey introduced three bills that pertained directly to much of the subject matter of HR 195 All three bills were subsequently enacted by the legislature and signed into law We shall comment on the legislation as we discuss each "Whereas" clause of the resolution

In addition to legislation enacted during the 1963 General Session, the legislature in 1964 increased the budget of the State Teachers' Retirement System by 28 4 percent This was the largest percentage increase of any of the larger agencies in state government Much of the increase was proposed to correct the deficiencies outlined in House Resolution 195 The final amount appropriated from the General Fund for support of the system for the 1964–65 fiscal year was $784,502.

House Resolution 195

The first "Whereas" clause of HR 195 indicates the magnitude in the number of accounts of both active and retired members of the State Teachers' Retirement System. Currently the active membership of the system is approximately 265,000 and the retired membership is approximately 30,000

The second "Whereas" clause, which states "The system has three different funds to keep track of" is still true and as far as we know is not a controversial matter The three funds are the Teachers' Permanent Fund, the Retirement Annuity Fund, and the Annuity Deposit Fund The last of the three funds, the Annuity Deposit Fund, consists of solely member contributions from July 1, 1935 to July 1, 1944 and the interest thereon The first two funds consist of member, school district and state contributions

The third "Whereas" clause states, "The system is over two years behind in posting to members' accounts, and audits indicate a high percentage of errors in computing benefits."

A large percentage of the errors resulted from a legislative change in 1956 in the method of computation of a retired member's benefit allowance A thorough review of the records have uncovered the errors and corrections have been made. The two-year delay in posting to members' accounts was due primarily to the delay of the counties in forwarding the appropriate information to the state Chapter 1981, Statutes of 1963 (AB 2360, Veysey), now provides that the annual reports of county superintendents are due on July 31st following the close of a school year, and shall be delinquent if not filed on or before the following December 31st In the event that a report is delinquent, the State Controller, upon order of the board, shall withhold subsequent allocations to the County School Service Fund. We believe that if the system can stay on top of the problem, there is now adequate statutory support to force the counties to submit their reports on time It is our hope that the system will continually pressure the counties to submit their reports on time.

"Whereas" clause number four states, "Retiring teachers have been required to wait as long as six months after applying for retirement to commence receiving benefits."

Chapter 2134, Statutes of 1963 (AB 2241, Veysey), provided that the system could make advance payments to persons who have filed applications for retirement, but who have not made their final elections with respect to options Two positions were added to the system's 1964–65 budget to implement that provision. Retiring teachers should now receive their first benefit check between 30–45 days after retiring The advance payments may differ by a few dollars from the final allowance, however such overpayment or underpayment is quickly adjusted.

"Whereas" clause number five states, "The Teachers' Retirement Board is composed of the members of the State Board of Education and the appointive members of the Retirement Investment Board, and the members of the Retirement Investment Board and the members of the State Board of Education lack sufficient time to devote to the retirement system."

Chapter 2135, Statutes of 1963, (AB 2286, Veysey), reconstituted the board. The reconstituted board is composed of three members of the system, a member of a local board of education, an official of a bank, and an official of an insurance company. The Director of the Department of Finance and the Superintendent of Public Instruction are also ex-officio members.

Clause number six states, "Counties are slow in reporting to the system the required information on members and the accounts of the State Controller do not balance with the accounts of the State Teachers' Retirement System."

As stated above concerning clause number three, Chapter 1981 was enacted to remedy that particular situation. A representative of the Auditor General's office may wish to comment on this particular problem.

The final clause states the following: "The system's problems are complicated by the fact that it is not a funded system, and by the fact that different provisions applying to members who are also members of a local teachers' retirement system make computation of benefits and administration of the state system more complicated."

It is not essential that the system be funded and there is a very practical problem in attempting to fund close to two billion dollars over the next 25 to 30 years as has been recommended by others.

We have one major recommendation we would like to make at this time for consideration by the 1965 General Session of the Legislature:

We recommend that legislation be enacted at the 1965 General Session of the Legislature that would change the financing of the administration of the State Teachers' Retirement System from 100 percent support by the state to some form of sharing of costs by the state, the teachers and the employing school districts.

Currently Section 13907 of the Education Code, enacted in 1944, provides the following:

> "The cost of the administration of the Retirement System (State Teachers' Retirement System), including the employment of necessary expert and clerical assistance, the purchase of necessary supplies and equipment, and any other expenses necessary in the administration, shall be paid by the state, but the total of the costs of administration during any fiscal period shall not exceed the amount made available by law for such costs during the fiscal period."

The Legislature in 1959 also adopted a policy statement that is included in Section 14215 which states that "The costs of administration of the Retirement System shall be met from contributions by the state."

Our recommendation would basically follow the pattern of financing the administration of the State Employees' Retirement System. In 1959 the Legislature added Chapter 2066 to the Government Code wherein "Costs of administration of the system shall be paid from interest income from the Retirement Fund beginning with the fiscal year 1959–60; provided that the amount of income so applied in any fiscal year may not exceed ten hundreds (0.10) of 1 percent of the investments of the Retirement Fund at book value as of the close of the preceding fiscal year."

There is a very basic difference between the State Employees' Retirement System (SERS) and the State Teachers' Retirement System (STRS). The employees' system is a full reserve system, or funded system, where the state contributions and the employee contributions are both set upon an actuarial basis, thus assessing the cost of the retirement program, and paying for it at the time that the employees' service is rendered. Thus, since the obligation is created pursuant to expenditures authorized by the Legislature and under a retirement law controllable by the Legislature, the Legislature sees that revenues are sufficient in that same year to support the obligations created.

The teachers' system cannot be said to be on a full reserve basis, as the state's contributions to the system are made as liability matures and not as it accrues. The sum requested from the General Fund to meet the state's liability for the 1964–65 fiscal year amounts to $52,500,000. Since 1944 the member contributions

have been on a full reserve basis. In addition to the state and member contributions, the employing school districts contribute three percent of the certificated payroll to the fund plus $12 per year for each employed teacher.

We are recommending that the state, the teachers, and the employing school district all share in the cost of the administration of the teachers' system. We recommend that the share that the teachers and school district would pay would come from interest income from the Teachers' Retirement Fund, which would be comparable in principle to the State Employees' Retirement System. Since the state's share of the benefit cost is paid as the liability matures and not as it accrues, the state money that is transferred into the Teachers' Retirement Fund is encumbered and not available for investment. It would be necessary to appropriate the state's share of administering the teachers' system directly from the General Fund. Depending upon the type of sharing program adopted, the adoption of our recommendation could produce savings to the General Fund in the order of $400,000 annually.

INVESTMENT OF PUBLIC AGENCY RETIREMENT FUNDS

This committee has held numerous public hearings on two measures relating to the investment of public agency retirement funds These measures are as follows:

1. Assembly Bill No 1203 (Allen, Lanterman and Casey—1963 Regular (General) Session) This bill would add and amend various sections of the Government Code relating to the County Retirement Law of 1937 It was introduced as a vehicle to implement Proposition 7 on the 1964 ballot It would have allowed counties to create a fund to invest a portion of their retirement funds in common stock and it further provided that each member of the retirement system could elect to have one-half or all of his contributions placed in such a fund
2 House Resolution No 489 (Williamson and Casey—1963 Regular (General) Session) This resolution requested an interim committee study on the subject of investing in common stocks by public agency retirement funds It further stipulated that the interim committee report sugggested legislation to the 1965 session of the Legislature

Public hearings were held by this committee on AB 1203 and HR 489 on the following dates:

July 28, 1964 ..... San Francisco
August 19, 1964 ..... Los Angeles
September 21, 1964 ..... San Francisco
October 20, 1964 ..... Los Angeles
October 21, 1964 ..... San Diego

FINDINGS

1. The intent of both of these measures was to provide the 1965 session of the Legislature with proposed legislation to implement Proposition 7, provided it passed in the 1964 General Election.
2 Proposition 7 was the outgrowth of ACA 13 (Allen) passed at the 1963 session of the Legislature
3 Proposition 7 was an enabling act which would have amended the constitution to allow the state and its political subdivisions to invest public retirement funds in common stocks under rules and regulations adopted by the Legislature
4 The prohibition against investing in common stocks was written into the State Constitution in 1879 prior to the time that any controls had been established by government regulating the stock market
5 This matter has been subjected to extensive research and public hearings in 1961 and 1962 by the Joint Interim Committee on the Investment of Public Retirement and Pension Funds the fore-

runner to the present permanent Joint Legislative Retirement Committee. The previous committee has filed two reports with the Legislature.

6 Proposition 7 failed to gain voter approval in the 1964 general election Therefore, the constitutional prohibition still stands

RECOMMENDATION

The committee unanimously recommends that the subject matter be kept alive and further studies be authorized on this subject for the following reasons.

1. Many California chartered cities and independent retirement systems are now investing retirement funds in common stocks They can do so because they have been held to be exempt from the constitutional prohibition Their experience has been good and their earnings are considerably higher than those retirement funds which by necessity invest only in bonds
2. The committee feels that Proposition 7 failed to gain approval because of the lack of an organized voter education campaign in 1964
3 A new opinion on the investment of the employee portions of retirement funds is being requested from the Legislative Counsel
4 There is a possible test suit developing to test the validity of the prohibition
5. The main argument used by newspaper editors in opposing Proposition 7 was the lack of a specific proposal for implementing this enabling act

Therefore, the committee believes that we should continue our study of this matter Although no legislation can be adopted at this time, we believe that specific legislation should be worked out so that we will have the guidelines drafted in the event the voters authorize such investment policy in the future

Legislative Analyst

ANALYSIS OF ASSEMBLY BILL NO. 1203 (Allen)

As Amended in Assembly April 18, 1963
1963 General Session

Cost: No state cost. Administrative cost to counties unknown

Analysis:

Assembly Bill No 1203 would have added and amended various sections of the Government Code relating to the County Retirement Law of 1937

The bill would have provided that all counties that have retirement systems under the provisions of the Retirement Law of 1937 would be allowed to establish a division in the retirement fund of the county system for the investment in common stocks

The bill would allow the member within the retirement system to elect to have one-half or all of his contributions placed in such division

The bill would have taken effect upon the effective date of a constitutional amendment permitting the Legislature to authorize investment of funds of a retirement system in such stock

There would be no state cost with the passage of AB 1203, however there would be an administrative cost to many of the counties that is not known

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Final Report of the

ASSEMBLY INTERIM COMMITTEE ON INDUSTRIAL RELATIONS

House Resolution No. 500 (k)

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OF THE STATE OF CALIFORNIA

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Speaker pro Tempore

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Majority Floor Leader

Hon Robert Monagan
Minority Floor Leader

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Chief Clerk

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LETTER OF TRANSMITTAL

Assembly Chamber, State Capitol
Sacramento, January 4, 1965

HON JESSE M UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento

Dear Mr Speaker and Members

Your Interim Committee on Industrial Relations, created by House Resolution No 500(k), 1963 Regular Session, herewith respectfully submits the final report of its activities

The report contains the committee's findings and recommendations on the subjects referred to it for interim study by the Assembly Rules Committee

Respectfully submitted,

EDWARD E ELLIOTT, *Chairman*
MERVYN M DYMALLY, *Vice Chairman*

ROBERT E BADHAM
CLAIR W BURGENER
LOU CUSANOVICH
JOHN FRANCIS FORAN
EDWARD M GAFFNEY
WALTER W POWERS
ALFRED H SONG
VICTOR V. VEYSEY

AREAS OF INVESTIGATION AND SUBJECTS REFERRED TO COMMITTEE

The general scope of the areas of investigation authorized by H R 500(k) was as follows. "The Labor Code, uncodified laws relating to labor and industrial relations, and other matters relating to industrial relations."

The following subjects were referred to the committee by the Assembly Rules Committee of the 1963 Regular Session: H R 160 (Foran) strengthening apprenticeship programs, A B 604 (Dymally) regulation of apprenticeships with contractors, A B 1202 (Lanterman) regulation of heaters in school facilities and classrooms; A B 2783 (Gaffney) standards of safety for employees working near high voltage wires; H R 525 (Gaffney) standards of safety for employees working near high voltage wires, A B 2896 (Foran) safety regulations for operation of boilers: A B 2364 (Alquist) safety regulations for operation of boilers, and A B 1710 (Burton) extension of Fair Employment Practices Act to include discrimination in employment because of age

In November of 1964 a Special Subcommittee on Economic Opportunity was appointed with the consent of the Assembly Rules Committee to examine the provisions of H R 197 (Dymally), 1964 First Extraordinary Session Assemblyman Mervyn M Dymally was appointed chairman of the subcommittee Others appointed to the subcommittee were Assemblymen Clair W Burgener, John Francis Foran, Walter W. Powers, and Alfred H Song The subcommittee held five hearings in November and December of 1964 It will file a supplemental report

The Subcommittee on Apprenticeship Training will also file a supplemental report

The committee very much appreciates the excellent assistance and cooperation received from the chairmen of the subcommittees, Assemblymen Mervyn M Dymally, John Francis Foran, Edward M Gaffney, and Alfred H Song Their administrative assistants were also most helpful, namely Gonzalo Molina, assistant to Assemblyman Edward E Elliott, chairman of the Committee on Industrial Relations, Louise Ridgle, assistant to Assemblyman Dymally, Gary Analla, and Phil Ryan, assistants to Assemblyman Foran, James L O'Dea, assistant to Assemblyman Gaffney; and Robert Daugherty, assistant to Assemblyman Song They all assisted in the preparation and conduct of the hearings and in the interim work in general Harry Compton, assistant to Assemblyman Burgener, gave very substantial help in preparing the committee's hearing in San Diego on January 17, 1964

The committee also wishes to thank the staff of the Assembly Legislative Reference Service, who were most generous in their assistance.

CHAPTER 1

A.B. 1710; AGE FACTORS IN THE EMPLOYMENT OF OLDER PERSONS; ADMINISTRATION OF THE LAW RELATIVE TO DISCRIMINATION BECAUSE OF AGE

Section 1

Assembly Bill 1710 by Assemblyman Phillip Burton was referred to the committee for interim study by the Assembly Rules Committee of the 1963 Regular Session Briefly, this bill proposed to extend the provisions of the California Fair Employment Practices Act to include discrimination in employment on account of age

In its study of this bill, the committee extended its inquiry to include the general subjects of age factors in the employment of older persons; the administration of the law relative to discrimination in employment because of age (Chapter 9 5, Sections 2070–2078, Unemployment Insurance Code), vocational training and youth employment opportunities.

Hearings on these subjects were held in Los Angeles on September 19 and 20, 1963; in San Francisco on October 24, 1963; in Sacramento on December 2, 1963, and in San Diego on January 17, 1964

In connection with the employment problems of older persons and discrimination because of age, some background to the present inquiry may be helpful in evaluating the testimony of witnesses who testified on this subject.

During the interim of 1959–1960, the Committee on Industrial Relations conducted hearings on this subject, and as a result of its findings, and of the findings of a special committee appointed by the Governor in 1959, it was recommended that legislation in this area be enacted.

A bill to this effect (A B 1976) was introduced by the now Speaker of the Assembly, the Honorable Jesse M. Unruh, and was passed at the 1961 Regular Session This bill amended the Unemployment Insurance Code by adding Chapter 9 5, Sections 2070 through 2078, to read in part as follows

> "It is the public policy of the State of California that manpower should be used to its fullest extent This statement of policy compels the further conclusion that human beings seeking employment, or retention thereof, should be judged fairly and without resort to rigid and unsound rules that operate to disqualify significant portions of the population from gainful and useful employment. Accordingly, use by employers, employment agencies, and labor organizations of arbitrary and unreasonable rules which bar or terminate employment on the ground of age offend the public policy of this State."

This act, however, contains no provision specifically imposing a liability or creating rights, either criminal or civil, upon the occurrence of the specified acts, although Section 2112 of the Unemployment Insurance Code does make a violation of the chapter a misdemeanor, thereby providing a basis upon which the injured individual may bring a civil action to redress that injury

This, then, is the background of the present inquiry, which was aimed in part at determining to what degree this legislation has been effective in alleviating the employment problems of older persons

FINDINGS

Although it is now generally recognized that discrimination in employment because of age exists, and is even increasing with the steady introduction of new industrial techniques, statistical information on its incidence is difficult to come by and difficult to compile

Sixteen states, including California, have recognized the existence of the problem to the extent of enacting antidiscriminatory laws ranging from general statements of policy to detailed acts prescribing specific penalties for noncompliance and enforcement procedures by agencies similar to California's Fair Employment Practice Commission

Even in these latter states, complaints filed under the age category have been relatively few as compared to those having to do with discrimination because of race, color, religion or national origin, and the penalty section seldom comes into action One of the reasons, perhaps, is that discrimination because of age is less easy to identify than in the other categories.

In many instances it is relatively easy to mask a reluctance to hire older workers or continue them in employment behind the allegation of a decline in the capacity to perform, and in many instances, of course, such a claim may have a perfectly sound basis in fact The difficulty lies in the means of distinguishing between the two

Another difficulty occasionally encountered is that of clearly defining what is meant by "age" For example, the New York law specifies coverage as applying to ages between 40 and 65, but the State Commission Against Discrimination has ruled that discrimination is not limited to the ages specified, but "shall mean discrimination based on *overage*" Thus an employer may not discriminate against a person solely because that person is over the age the employer desires to employ, and it would be unlawful for an employer to specify that he wanted a bookkeeper under the age of 35

Group insurance rates and the cost of private pension programs are also frequently adduced as a reason for the reluctance to hire older persons, although this is coming to be less of a barrier than it was formerly thought to be

Where older workers appear to run into the greatest difficulty is in finding reemployment after layoffs owing to plant conversion, the elimination of certain skills by automation, and other related factors.

Under California's present law the Older Worker Program in the State Department of Employment reports encouraging progress in finding employment for workers in this category through its special placement service and educational techniques directed at breaking down prejudice against the hiring of these persons.

This also appears to be the limit of the effectiveness of our present law, there being no evidence of its being brought into action beyond this point.

Many private organizations such as the Fraternal Order of Eagles, Forty-Plus in Los Angeles, and Careers Unlimited for Women in San Francisco are doing energetic and effective work in special areas of this general field, as are labor unions through retraining programs and employer contract agreements.

It is expected that much of the information not now available on this subject will be forthcoming in the final report on the joint study by the Department of Employment and the Citizens' Advisory Committee on Aging, which was initiated in accordance with HR 77, introduced in the 1963 session by Assemblymen Joseph M. Kennick and Frank P. Belotti.

RECOMMENDATIONS

(1) That any enforcement or penalty procedures related to the hiring of older workers, which may be considered by the Legislature, be kept separate from the Older Worker Program in the Department of Employment and delegated to the Department of Industrial Relations.

(2) That the Legislature give serious consideration to the possibilities of constructive legislation that may be suggested by the joint report on employment of older workers to be submitted to the 1965 session by the Department of Employment and the Citizens' Advisory Committee on Aging in accordance with HR 77, 1963 Regular Session.

The following are pertinent excerpts from testimony given on this subject:

HONORABLE PHILLIP BURTON, *Member of Congress and Former Member of the Assembly:*

One of the great disadvantages of the current law as it affects older workers is this: That it forces the older person to, in effect, file a criminal complaint against the employer. This does little or nothing in the way of improving that employer's attitude toward this problem and it does nothing at all in terms of the employer community generally, except generate a great deal of hostility toward this idea. Now I've always felt the conservatives had missed the boat when it came to the manner of enforcing a stated civil right by not preferring commission enforcement. Commission enforcement permits informal discussions with the employer. If the history of this state and all the rest of the states that have FEP is any yardstick, the bulk of all complaints are resolved at the informal level, one way or another. In the event this informal discussion is unsuccessful, there is another step taken where there is an investigation made by the staff of the commission, and there is another opportunity for the employer to ascertain, in collaboration with his associates as well as his counsel, whether or not he has violated

the law. All of this discussion and negotiation takes place privately. There is a law prohibiting any public disclosure as to the complaint and the overwhelming majority of any would-be employees' complaints are resolved amicably and without publicity In the process, the employers are given an opportunity to state the problems as they view them, affecting the hiring of older workers, and may have many of their misgivings dispelled in these conferences, which really serve a very great educational purpose. I think that the method by which we now deal with the problem of discrimination against older workers is the least desirable. We bring into a criminal action context and conflict, the grievances the older worker has against the employer, and I submit that is the worst of all ways to remedy this problem.

So I think it is important that we adopt the commission enforcement concept because it is much fairer to the employer than the present law It guarantees him a chance to view afresh his practices before he runs the risk of public opprobrium because a criminal action has been brought against him, and I think it would be a much more salutary way to deal with this very serious problem So in sum, I believe this legislation is needed. I think it is a more equitable way for both the employee and the employer. It is a more equitable form, a more reasonable form to resolve these differences and I would hope that this committee will recommend the adoption of this legislation at the 1965 session.

WILLIAM BECHILL, *Executive Secretary, Citizens' Advisory Committee on Aging of the State of California:*

Although the members of the Citizens' Advisory Committee on Aging have not taken an official position regarding A B 1710, the committee is on record in support of enforcement procedures being a definite part of any legislation which prohibits age discrimination in employment We believe that the individual should have recourse through an administrative agency which has clear authority to act in his behalf.

Under the present provisions of Chapter 9 5, Section 2070 of the Unemployment Insurance Code, enacted in 1961, no enforcement procedures are included The only recourse now provided to the individual is to refer his complaint to local law enforcement agencies, although the department makes it a practice to directly contact the employer, employment agency, or labor union, in an effort to interpret the provisions and the policies of the law

We, of course, support this emphasis on education and interpretation These are primary tools by which better understanding of the abilities of older workers and removal of current obstacles to their employment can be achieved in many instances on a voluntary basis. Yet, when such efforts fail, the lack of effective enforcement procedures, in my opinion, weakens and is a serious gap in an otherwise constructive program and law

The question of what administrative agency should be given the responsibility of enforcement has, admittedly, been a perplexing one. It has been the subject of previous study by the Legislature, as mentioned, and others Personally, I would favor the designation of this responsibility to the Fair Employment Practice Commission as pro-

vided for in A B 1710. We feel that their experience and present organizational structure lend themselves far more to the assumption of this responsibility than the Department of Employment, whose primary statutory mission in this field should be, as it is now, focused upon a program of information, education, research and community organization designed to promote better community understanding of the problems of older workers by those most directly concerned.

We anticipate that this endorsement of A B. 1710 may raise some questions as to the possible duplication which might occur if the Fair Employment Practice Commission were to have this responsibility. Personally, I do not feel that this would happen and conceive of the entrance of the commission into this role in ways that would augment and supplement the present work of the Department of Employment which would continue to have the primary responsibility and skill involved in the placement, training, and development of job opportunities. The aspects which FEPC would be concerned with would be those more related to bonafide instances of discrimination, where the need for conciliation service and enforcement is essential.

The importance of equal opportunities for older people as a public policy of the State of California has been established previously. Any major restrictions on the securement or retention of employment by older people in this period of rapid technological change is not to the best interests of the economic and social climate of California Moreover, we cannot accept the view which has been expressed in some quarters that California, or this nation, does not have a sufficient level of employment, does not have the type of economy rather, which can provide a sufficient level of employment for all people in our population, regardless of age, who want to, and in many instances, need to work In our response to current pressures, I hope that neither business, government, or labor does not respond to the suggestion that a general reduction of the age of retirement is the answer. This would be a very expedient and costly solution, both in the short and the long run, and be a setback to some of the current efforts of industry, labor, and government, to adopt flexible retirement practices which recognize the abilities of individual persons, and also to develop sound benefits to assure adequate retirement income.

I would like to conclude with four recommendations of possible subjects that I hope the committee will concern itself with during the course of the interim.

One. We would like to recommend the strengthening of the present program of the Department of Employment in carrying out the provisions of Section 9 5 of the Unemployment Insurance Code. The department has made great progress in increasing its placement and counseling services to older workers during the last four years Nevertheless, it could do an even more effective job if it had the staff to carry out the continuing program of education, information, study, and community organization authorized when A B 1976 was enacted two years ago. I would remind the members of the committee that no additional funds were appropriated to the department when that bill was enacted. Community organization, public education, and research are tasks which

require both thoughtful planning and time, and I would urge your serious consideration of this recommendation

Two We hope that you would be concerned with any efforts that could be made to increase the educational and retraining opportunities that are now available to older people in California There is already some progress being made here as a result of recent federal legislation and state legislation

Nevertheless, I hope that this committee will concern itself with what can be done to insure that there is adequate attention given to the retraining and education of older workers as a major part of the manpower program This is a very complicated problem as you know, and right now there is a tendency to concentrate present retraining and educational efforts on displaced younger workers, or young people just entering the labor market I firmly believe that more balanced emphasis is needed, and that the needs of the displaced older worker deserve greater attention.

Three We believe that there should be greater attention given to the development of employment opportunities particularly for those persons 65 and over who need and are interested in employment This is an area we hope to give special attention to during the study which we will conduct under House Resolution 77 I would also like to call to your attention that there is federal legislation pending before the congress at the present time that would provide federal grants to public and nonprofit organizations for the stimulation of employment for older people Our committee is on record and supports this legislation, feeling that these grants could be an important resource in promoting new avenues of employment for both middle-aged and aged people

Four We would encourage any efforts to focus greater attention by both public and private employers and labor on the importance of adequate retirement planning and the further development of flexible retirement policies

There has been increased interest in retirement preparation in recent years Such interest will inevitably concern itself with retirement policies and the extent to which they affect the employment of older people. The Citizens' Advisory Committee on Aging believes it has a real responsibility in this area, and we are currently considering a number of recommendations which we hope to present to the Governor at an early date

JOHN ANSON FORD, *Past Chairman, California Fair Employment Practice Commission:*

One reason that the Fair Employment Practice Commission did not take a position, as I have indicated, is that we do not think it would be proper and it would be up to other agencies to select the most appropriate vehicle if the Legislature decides to put on the statute books a restriction with respect to age of employees We have plenty to do as a commission as we are now, I should say frankly It would, of course, involve an additional appropriation before we could hope to effectively serve in this area

And then there is this consideration also, and that would be perhaps the only additional point I have to mention The administration of a law with respect to age is in a somewhat different area or social cate-

gory from the one in which we have been operating for the last four years Ours has been primarily an area of racial differences and racial discrimination This age discrimination brings in a somewhat different category That is not to say that we can't function in this area also, but it would be, you might say, a departure from the traditional area in which this nondiscriminatory legislation was first initiated

MISS ELEANOR FAIT, *State Supervisor of the Older Worker Program, California State Employment Service:*

One-half of the population of California over 25 years of age is over 45 years of age. This older work force constitutes almost 40 percent of the total work force The age group 18 to 25 today constitutes *9 percent* of our population The population over 60 years of age constitutes *12 percent* of our population The median age of all male craftsmen in California was 42 years of age in 1960

California has changed into a manufacturing economy in less than 10 years and has caught up the older work force in these changes, making their role as workers difficult and, oftentimes, precarious The services of the California State Employment Service are devoted increasingly, to the able, active man caught in the dislocation of plant mergers and relocations as well as in automation and technological change This worker finds the greatest barriers to employment at an age when he has the greatest need for employment in order to house, support and educate his children and to accumulate assets for his retirement years A prolonged period of unemployment at this stage of his working life can mean reduced social security pension benefits upon retirement, thus creating additional future problems, not only for the worker himself but for the economy of society in general

The barriers to employment for older workers are formidable even during high employment periods—based on stereotypes and prejudices concerning older worker performance on the job; and sometimes, on the fears of greater costs of hiring older workers among those employers with inadequately structured insurance plans But without full utilization of the older worker segment of the labor force, California's economic growth cannot proceed at a satisfactory rate The meshing of a large number of mature, experienced workers into the new industrial machine emerging in our state poses a serious problem at the present time, the dimensions of which are just now beginning to become apparent to us

The California Legislature passed a law outlawing age discrimination in employment which became effective on September 15, 1961. The administration of this law was assigned to the Department of Employment There were no provisions for enforcement of this law contained in the legislation Since ours is not an enforcement agency the task of enforcement was assigned to the duly constituted local law enforcement agencies—the police and sheriff's departments Employers with less than six employees are not subject to the law, workers under 40 and 65 years of age and over are not included, apprentice programs are exempt from the provisions of the law as are employers who have established recruiting programs with high schools, colleges, universities and trade schools.

The California State Employment Service offers special services to older workers in all of our more than 100 local offices. These services include job counseling, testing, job development and placement. The California law on age discrimination has provided us with the moral foundation for a strong policy For example, our order taking procedures apply to *all* employers and to *all* upper age limits except for the exceptions mentioned in our report

If the employer accepts our policy of referring solely on the basis of qualifications for the job, we refer applicants qualified to meet the performance standards of the order, disregarding age. If an employer does not accept our policy of referral, and does not come within the exceptions in the law, his order is canceled on the grounds of age discrimination.

Furthermore, a direct personal contact is made by the manager of the local office, the older worker specialist or a member of the area staff with this employer to discuss the details of his order in relations to the law and department policy We feel we have had marked success in this conference method in clarifying misunderstandings and making certain that the employer understands his obligation This procedure is in effect throughout the state at the present time and has been for a year and a half.

Statistics are not available on the number of misdemeanor charges filed under the law This is not to say that none have been filed, but records on misdemeanors in law enforcement agencies are seldom handled so that they are available for statistical purposes later.

In the four years from 1959 through 1962, placements of older workers in business and industry in California increased by 90 percent. For calendar 1962, the placements of workers 45 years of age and over increased 38 5 percent over 1961 These figures reflect the population increases, of course, but they also reflect the impact of the age discrimination law and the intensive efforts of the Employment Service to place these workers.

Although considerable progress has been made in reducing the age barriers to employment, the problem is still substantial. Much more must be done before age discrimination is eliminated from hiring practices, and it will require continuing and increasing effective efforts on the part of the Employment Service, employers and the community to achieve this objective.

I would call to your attention an omission in the present law on age discrimination; namely, enforcement machinery When an individual comes to us and says he wishes to file a complaint on age discrimination, the only action we can take is to refer him to the police or sheriff We feel that if there are to be sanctions, the Fair Employment Practice Commission is better equipped by training and experience and is properly qualified to follow through with enforcement action, if this is necessary. However, we pointed out in our 1962 report that the experience of other states with a conciliation service indicates that a discussion disposes of most complaints without a public hearing. The whole emphasis is remedial, not punitive I want to repeat—the Department of Employment is not interested in handling such a conciliation service ourselves.

With the very complex problem which age discrimination represents, it is logical and practical that more than one state agency, each with a different function, handle different aspects of the same problem, and thereby be more effective in the long run. The placement of enforcement authority with the Fair Employment Practice Commission will not change the present direction of our program or activities but will relieve us of a responsibility we are inadequately prepared to carry out.

A law on age discrimination in employment which provides for enforcement of the law creates no special privilege, but it does establish a legal bulwark now lacking, for the rights of California workers to obtain employment based on their ability without regard to the factor of age

DON VIAL, *Director of Research and Education, California Labor Federation, AFL-CIO:*

In 1959 the federation submitted a statement to this committee that we favor the addition of age discrimination to the FEP law. I don't think it is necessary to go into that statement because I think it is valid today. Perhaps the figures need updating. The legislation that was enacted in 1961 is consistent with the recommendations of the Governor's commission, and so is the legislation that is now being proposed, because I think that the legislation that was enacted in 1961 goes to the necessary positive program that must be a part of any effort to alleviate the problem of the aging, and the two must be complementary This, of course, is the major burden of the sections of the report of the Governor's commission That is, the enforcement cannot work without the positive program.

I have reviewed in some detail the report of the Department of Employment that was submitted to the Governor and the Legislature on the activities since the enactment of 1961 law and it is quite clear that the enforcement aspect is a matter of immediate action

ERNEST B. WEBB, *Director, State Department of Industrial Relations:* (Statement presented to committee by Everett Corten, counsel for the Department of Industrial Relations)

I received the letter from the chairman of the committee, dated October 4, 1963, inviting me to appear today to express my views on the subject matter of A B 1710, which is before your committee for study. I am pleased to appear and to assist the committee in any way that I can in its deliberations on the subject matter of that bill, namely, discrimination in employment on account of age.

As a result of the duties imposed upon our department by the various laws dealing with the relationship between employee and employer, we are aware of the problems not only of the young worker and the middle-aged worker, but of the growing plight of the older workers in California

As long ago as 1930, the Department of Industrial Relations made an extensive study of the middle-aged and the older workers in California This study was embodied in Special Bulletin No. 1, entitled "Middle Aged and Older Workers," dated January 1930, and Special Bulletin No 2, entitled "Middle Aged and Older Workers in California," dated

August 1930. Bulletin No 1 was general in character. Bulletin No 2 was based upon confidential reports from 2,808 California employers regarding age limitation policies While many reports and studies have been made since that time, by interested private individuals and groups and governmental agencies, those bulletins at a very early date clearly and graphically pointed out the gravity and magnitude of the problem in California and outlined its salient problems and causes.

Those reports showed that prior to 1920 there was practically no problem with respect to discrimination against older workers Until 1920 the employment of older workers kept pace with the expansion of industry Since 1920, the reports point out, the machine process has expanded at an unprecedented rate As the machines and technological processes expanded the rate of production, the number of unemployed persons began to increase And, as the number of unemployed persons increased it became evident that older workers constituted a larger and larger portion of the unemployed group

In 1961, the Legislature, specifically recognizing the problem of discrimination in employment because of age, adopted A B 1976 adding Chapter 9 5 entitled "Employment for Older Workers" (Section 2070, and following) to the Unemployment Insurance Code The Legislature, in adopting A B 1976 in 1961, had before it the problem of determining whether to place the administration of the specific legislation against discrimination in employment on account of age in the Department of Employment or elsewhere The Legislature chose the Department of Employment

In 1963, A B 1710 (Burton) was introduced. This bill, by adding the word "age" to appropriate sections of the Labor Code, would have made the Fair Employment Practice Act (which is administered by the Division of Fair Employment Practices and the Fair Employment Practice Commission in the Department of Industrial Relations) applicable to discrimination on account of age A B 1710 is one of the subjects being studied by this committee

This brings us directly to the problem posed by your letter. In your letter, you state that at your Los Angeles hearing a discussion developed as to alternative means of enforcing the proposed measures (A B 1710) and of the present law (Ch 9 5, Section 2070, Unemployment Insurance Code) You then mention several alternatives within the Department of Industrial Relations as having been discussed at such hearing

I shall address myself first to the possible alternatives within the Department of Industrial Relations You have indicated that you have given some consideration to delegation of enforcement powers and conciliation services to these alternatives within our department (1) to an existing agency; (2) to a new agency, (3) to the Fair Employment Practice Commission

Since receipt of your letter, I have given consideration to the possible alternatives within the Department of Industrial Relations If the Legislature in its wisdom sees fit to place the administration of a law such as A B 1710 in the Department of Industrial Relations, it is my view that it should be placed under the Division of Fair

Employment Practices and the Fair Employment Practice Commission I do not believe the creation of a new agency is warranted I also believe that no other existing agency is as close to the picture of discrimination in employment as the Fair Employment Practice Commission

If such a law as A B 1710 were given to our department to administer, procedures generally similar to those used in carrying out the Fair Employment Practice Act could be adopted and used to implement and carry out such a new law relating to discrimination because of age It is our policy under present laws and procedures to stress conference, conciliation, education and persuasion and it is only after these steps fail that hearings and court enforcement are resorted to

A B 1710 also poses further questions as to whether the entire subject of discrimination in employment on account of age should be placed in one department or the other Thus, if more conciliation and enforcement services and duties than exist today under Chapter 9 5 of the Unemployment Insurance Code are contemplated, should the Unemployment Insurance Code be amended so as to give the Department of Employment additional authority and power in these areas or should the entire subject matter be given to the Department of Industrial Relations?

We see no major inconsistencies between the functions and activities of the Department of Employment in attempting to eliminate discrimination on account of age while servicing employers' orders for employees and those of the Department of Industrial Relations if such a law as A B 1710 were assigned to us for administration

At the First Extraordinary Session of the Legislature in 1963, the Assembly adopted House Resolution No 77 requesting the Department of Employment and the Citizens' Advisory Committee on Aging to undertake jointly a study of how and where employment opportunities for older persons may be improved and expanded throughout the state I am informed that this study is under way at the present time and I am looking forward to seeing the results of such a study Without seeing the results of such a study, however, it seems to me that it would be somewhat premature to attempt to make a final determination of all phases of this problem or to make a final assignment of the duties and responsibilities for the entire program

It was not until 1961 that the Legislature passed A B 1976, giving to the Department of Employment administration over discrimination in employment on account of age The span of time from 1961 is, of course, a rather short time in which to amass a body of facts relating to the administration of such a law

Also, while I have indicated that the Fair Employment Practice Commission and Division would be my choice of agencies in our department to administer this problem if the Legislature chose our department as the vehicle for administration, I have done so with some

reservations The Fair Employment Practice Commission and Division have been in existence only since 1959 and have barely gotten through their shakedown cruise in the administration of the Fair Employment Practice Act.

Furthermore, the administration of a new function of such large proportions as the one contemplated under A B 1710 necessarily involves budgetary considerations In this connection, it would be an unfortunate thing if a new function were imposed upon the Fair Employment Practice Commission without adequate staffing and financing An omission in this regard would not only be unfair to the new program but could seriously impair the efficiency of existing programs which the commission has the responsibility for administering

Thus, and I say this with all due respect and certainly with no intent to delay any plans of this committee, it seems to me that both departments will have more accurate and up to date facts and more experience in this field if final policy determinations on the problem are not made until after the report requested by House Resolution No. 77 is made.

GERALD PARRISH, *Regional Director, U S Employment Service of the United States Department of Labor:*

We are in agreement with what Miss Fait gave to you in terms of the description of the problem and most specifically the recommendations that the Department of Employment has made about A B 1710 We would endorse their position There may be some other suggestions regarding legislation on discrimination because of age which you may wish to consider One is the matter of applying it specifically to certain ages I believe the proposal is to refer specifically to age discrimination in the age range between 40 and 64 years

I wonder whether you might want to consider eliminating that kind of an age range and have it directed to discrimination at any age level, because there are occasions when discrimination in employment based on age may occur at an earlier level There are, of course, many people over 65 who are fully qualified to work, who are capable of working productively and who need to work to support their families, and there should be some legislation for them as well Secondly, your law at the present does exempt employers who have less than six employees This may be a practical administrative measure but you may wish to consider whether it should apply to all employment regardless of the size of the establishment. Also, we notice that your law does not refer to newspaper advertising Classified advertising which includes upper age restrictions is not considered a violation of the law We do know that a number of the states have anti-age-discrimination statutes and prohibit the age discrimination limitation in classified advertising for employment. These are matters which you may wish to consider I am not making an official U S Department of Labor recommendation on these matters but merely bringing them up as a point of information

I would also like to express agreement with the suggestion by the Department of Employment that the enforcement and conciliation

machinery for this should be vested in some agency other than the State Department of Employment The State Employment Service is not an enforcement agency It is a service agency, as you know, affiliated with the United States Employment Service, and it does not have the machinery for this type of enforcement and conciliation service Its administrative funds come entirely from federal grants for employment security administration There is some question whether they can appropriately engage in an enforcement activity in any situation of this kind I would certainly endorse the position given you by the Department of Employment delegating this conciliation and enforcement to some other agency in the state government

WILLIAM SMITH, *California Conference of Employer Associations:*

No statewide body of the public was set up under A B 1976 but these functions are being met by two other organizations One is a statewide interdepartmental committee on problems of the aging and by local advisory committees The latter are doing a tremendous job. They are composed of representatives of organizations and individuals interested in helping to meet these problems The former is composed of representatives of ten state agencies directly involved in the problems of the aging and a good description of the activities of this committee is contained in its Annual Report to the Governor for 1962. Chairman of the committee is Mr. Stanley Sworder, Chief of the Bureau of Adult Education.

Now A B 1976 provides also for "such local advisory agencies as in its judgment," that is, the judgment of the Department of Employment, "will aid in effectuating the purposes of this section," and may empower them to study the problems of discrimination on account of age and all problems relating to employment programs for older workers, and to foster through community effort cooperation among the various groups and elements of the population of the state, and to make recommendation to the department for the development of policies and procedures to carry out the procedures of this section

Under the leadership of older worker specialists in the Department of Employment many of these local bodies have been organized to work with other local groups interested in this problem

Perhaps the most interesting new development in the Older Worker Program is the group session approach According to a report by Eleanor Fait, state supervisor of the Older Worker Program, this is proving to be a psychologically sound method of helping the older worker to help himself and others Throughout the state local CSES offices are experimenting with group sessions and finding them effective for counseling and placement Here is one example The downtown Los Angeles Job Clinic was planned by the area coordinator and staff of the Department of Employment, was cosponsored by the California Federation of Business and Professional Women, the mid-city YWCA, and the adult division of the Los Angeles City Schools This was not a one-shot affair This was six sessions, with leaders of industry, busi-

ness and education telling older women who needed jobs how to get them and at the same time it was telling these leaders of industry, business and education that this is the kind of person who is available for the kind of jobs that they have This communication worked both ways These group sessions are called by various names in the different communities They may be job clinic, job preparation clinic, new employment horizons, how to get and hold a job after 40, etc. There are many different names but they have this fine function Altogether such group sessions sponsored by the local Department of Employment offices have now involved over 2,500 older workers in sessions leading to training, counseling and jobs Best of all, many of these community bodies are becoming permanent local organizations working on the problem of getting jobs for older persons The older worker specialist of the Department of Employment works closely with these and other such groups in the community That is part of the job of education that is so important and must be carried on.

The Legislature, in passing A B 1976, did so without adopting a method of enforcement and upon advice from the Attorney General, the task of legal enforcement was assigned to local law enforcement agencies

Apparently the Legislature was persuaded that the essential task was one of improving the acceptance of the older person in the job market This was done by fixing a sound policy and then organizing public support behind that policy. It is done also by a realistic recognition that the older person is competing in the job market with younger workers, which we have been reminded of at least four times today, and that the older worker has a better chance, just as does the younger worker, if he improves his ability, appearance and job performance. After all, there is no absolute assurance that anyone is going to get a job He is going to get it only in competition with his fellow job applicants

Apparently also the Legislature believed that the key to specific instances of age discrimination is conciliation and persuasion that comes with counseling both the applicant and the employer or the union or the employment agency In this connection I strongly recommend that the Department of Employment be given funds to be used in developing more adequate counseling staff and that this staff be charged specifically with the function of investigating and conciliating any instances of apparent age discrimination. As Miss Eleanor Fait told this committee in its Los Angeles hearing, the problems are different from FEPC problems and competent counselors do require special knowledge and qualifications

The department's staff is already doing the job of conciliation through its counseling of employers and applicants. As Miss Fait stated also, the Department of Employment is 99 percent successful in talking to employers and convincing them that age should not be the sole factor for employment I am sure that this comment related

to specific instances which came to the department's attention There appears to be some reluctance by the department to expanding the duties of its counselors to include more consultation and more counseling with persons who may be engaging in employment discrimination because of age.

YOUTH EMPLOYMENT OPPORTUNITIES

FINDINGS

It appears that a constructive and forward-looking approach to the problem of increased youth employment opportunities is being developed in recent federal legislation and complementary actions on the part of the State of California These include S 2642, 88th Congress, Second Session, the Economic Act of 1964, commonly known as the Antipoverty Bill; the Manpower Development and Training Act, HR 8720, Public Law No. 88-214, passed December 19, 1963; and the Federal Vocational Education Act of 1963, Public Law No. 88-210, passed December 18, 1963 The coordination of these programs plus the cooperation of state agencies will aid in the development of these programs

Excerpts From Testimony Given on Subject of Vocational Training and Youth Employment Opportunities

LORENZO TRAYLOR, *Assistant Program Development Director, Youth Opportunities Board of Greater Los Angeles:*

The planning money that we have for this 18 months planning period comes from the President's Committee on Juvenile Delinquency and Youth Crime Now meanwhile, we have received a grant for a Youth Training and Employability Project for the East Side This is separate and apart from the planning fund and it represents an action program This program is going to include eight areas that we have identified as being critical to youth needs

First, a training and job development program for school dropouts, potential dropouts, and terminal high school youth And this program will be designed to get at these young people who have already dropped out of school and who are not going back to school; who are not college material and have a need for training, remedial education and some form of employment We recognize that, in addition to providing the training and the education, we must also provide some jobs We have the job development phase in this program too

The second phase is more a compensatory type program and is similar to the approach of the McAteer Act at the state level The cultural enrichment type program to help young people stay in school, to reach a higher potential and perhaps not come into the job market at such an early age This is designed for youngsters who are potential dropouts, who are not motivated and who may be predelinquents In addition to that, we recognize that a part of the problem is that many of these

kids have a tremendous amount of leisure time and that there is a need, especially in the deprived areas, to do something about helping them to learn how to be creative in their leisure time; to be able to do more than stand around on the corner or to participate in delinquent activity So we have some supported recreation and culture enrichment leisure time programs.

A fourth area is what we're calling a supportive health and mental health services program, and the demonstration area in which we are going to be working is out in South Los Angeles with young people who have problems, emotional problems, and are unable to get any kind of help In many cases, they wait for several months or even a year and a half to get the help they need at the moment, and so we would want to build as a part of our program some mental health services and health services that could help as the crisis develops and at the same time help the agencies and organizations dealing with these young people, help them by providing consultation services Another part of the program will be family centered welfare services designed to provide protective services for children, and parent education These programs are designed primarily to decrease dependency and delinquency The area in which we will be working is high in welfare families, ANC families. We believe that many of these people can be rehabilitated, that they can be trained and that these mothers can be retrained and eventually can go into jobs There is no need for a continuing lifetime of dependency if at this state in their lives they are given some help, training and perhaps remedial education to get them through this particular period

We are also concerned with aspects of law enforcement, probation, court, and correction services designed to improve law enforcement and community relations We have a tremendous problem here in Los Angeles in the relations between the community and law enforcement And there is also a need for our services to help the youthful offender who comes back into the community Many times he comes back into the same environment which he left and has little possibility for being rehabilitated after having spent some time in an institution

Of course, basic to all of this is what we're calling a community improvement program designed to upgrade the environment that these people live in, to involve citizens in participating in activities in which they help themselves to improve the community, cleaning up deliquency breeding spots, making better use of the services they have, becoming involved in activities that would be of assistance to their particular community. And, of course, the eighth program goes through all of this and ties right in with the personnel who are working with these young people We want to be sure that they are given the training and in-service training to be able to understand how to work with the deprived communities and the disadvantaged youngster.

Now in the interest of saving time, I just want briefly to say something about the job training and job development program. This program includes an intensive vocational guidance and job placement service as I said before We know that these young people have a need for psychological services and remedial education before they can even

get ready to go into a training class Once you get them to this point then some special classes will have to be developed, so this will be included Then these classes will have to be flexible enough to meet the needs of the youngster who can't write as well as other youngsters who will have a language difficulty, the youngster who maybe has come from a southern background where he is handicapped because of education The training program must be flexible enough so that it meets the need of that particular youngster, so that he will know how to look for a job, know how to be interviewed for a job, to fill out an application and this kind of thing We also want to provide an information center for occupational training, and materials these kids can have, and youth opportunity centers throughout the area We are going to develop an intensive job development program with people out in the community beating the bushes to get the local business people who work in the community but live elsewhere to become concerned and see if we can develop jobs by this means Tied into all of this is the need for a communitywide advisory committee This way, we will involve the total community in this thrust

DR EDWARD GOLDMAN, *Assistant Superintendent of Adult Education, San Francisco Unified School District:*

I'm very pleased to be here and to be able to tell you a little bit about what is being done in at least one school system as far as problems of the older worker, youth opportunities and vocational training are concerned

We have several items that I've selected that will illustrate these. One, we have a Day Vocational High School and Technical Institute Two, we have an Evening Vocational and Technical Institute Three, we have day and evening adult schools Four, we have the City College of San Francisco, our junior college Five, we have the Manpower Development and Training Act program in San Francisco And, six, we have a recently established Youth Opportunity Center Taking those somewhat in order, first, the Day Vocational High School and Technical Institute is really for those who wish to obtain a high school diploma and at the same time establish a preapprentice craft In other words, if they wish to go into the crafts and they are going to take a lot of work which requires three hours of manipulative and related training in the craft that they have selected And the other three hours of their school day will be in the academic work which is required by the State of California and the local school district to get a high school diploma These take in what we call preapprentice programs and usually they are in such areas as auto mechanics, mill and cabinet machine shops, sheet metal and so forth The other phase of the program is for preemployment Remember now, this is during the day Preemployment is usually classes for adults and they're classes in such areas as shoe repair, watch repair, radio and TV repair, television station maintenance, cooking and baking and so on These are six hour programs and they lead directly to employment. These usually do not have an age limitation The program that I mentioned first usually is for the adult, for the high school student and for the adult who wants to go back and get a high school diploma.

The evening program, the Vocational Technical Institute, encompasses those programs that involve the apprentice training program, the journeyman training program and occupational preparation These are important to the committee I think because the indentured apprentice program is the program which works in cooperation with labor management, Division of Apprenticeship Standards, in which we have indentured apprentices working on the job for 40 hours a week, going to school four hours a week, usually 144 hours a year, and the number of years would depend on the kind of craft that it is and what the contract calls for. We in San Francisco work with approximately 40 to 60 of the crafts, giving the indentured apprentice related training work The age limitation, as you know, for indentured apprentices may range between about 16 and 25 Usually there is a bottom limitation, most of them are high school graduates, not all of them, and in most cases, the contract calls for an age limitation which usually doesn't exceed 24 or 25.

The day evening adult schools are primarily for, really, four purposes, but I am going to try to pick out the part that would be important to us here I would say in passing that we have a great many of our adults coming back for elementary education, high school education and English for the foreign born, what we call Americanization The other important part of our program is occupational preparation We don't call these vocational classes because the terminology that we get from the United States Congress through the old Smith Hughes Act says that a vocational program is one that's reimbursed We know that there are other programs that aren't reimbursed, but they're vocational I'm talking now particularly about the programs in business education — typing, shorthand, bookkeeping, office machines, filing clerks and so on These are a great part of the occupational preparation programs In these we have adults coming back to school ranging in the ages between 18 and 60 I really shouldn't use the word "sixty," I guess, because we don't have any limitation, but we found those that come back usually are between the ages of 18 and 60

In this program we have some very special kinds of occupational assistance Working with the Department of Employment, working with the local newspapers two or three years ago, we were wondering how we could do some additional training for the older person. We came up with the first class in training retired men who wished to do some work in gardening As a result these men became home gardeners and I think there are several other programs that have started, with the result that we offer the program now periodically about two or three times a year All of these retired men went to work as independent contractors in home gardening.

We had a program last year, and we're repeating it this year, working with the Department of Employment and the department stores so that women could come back into the labor force and be trained as gift wrappers This is usually during the holiday season; and we specified in this case that we wanted this available to the older woman so that she would be able to get some employment The school department did a short intensive training program and the department stores hired these people to go to work

In addition to that one, we work with the Department of Employment and the local Department of Public Welfare in trying to do something for the women who are on aid to needy children In this case we said, how can we train these women so that they can become citizens who earn their own way instead of getting money from the taxpayers through ANC? We opened such short unit programs as hospital and hotel maid training; housekeeper training and we found that we were able to train these people for a period of from six to eight weeks and in each instance they were able to obtain employment. At least 90 percent of them were employed from each of these classes. These are special programs that can be done and have been done in a school department

I should also tell the committee that in a city such as San Francisco we are doing classroom training for the Manpower Development and Training Act of 1962. This, as you recall, is primarily a retraining of the worker who is out of work because of automation and mechanization. The training period is limited to one year. If it is an adult who has been in the labor field for at least three years and is head of the household, he may, through the Department of Employment and the Department of Labor and Congress, receive a training subsistence of approximately $41 to $43 a week. If he's between the ages of 19 and 21, he may get $20 a week. If he's between 16 and 19 years of age he gets no subsistence at all. But the important part of this is that the Department of Employment determines the training needs, the areas in which there is a shortage of trained personnel. They work with these people to find out if they're eligible for the program, if they can do the program Then they come to the school department or a private agency in some cases and say, would you do the training? And we have been very happy to work with them. This program is 100 percent reimbursed, as far as the direct cost of teaching is concerned. There are other costs to the school district that we absorb. But to show you what can be and has been done, we have offered such courses for periods of 30 to 40 hours a week for anywhere from 12 weeks up to a full year in such courses as mail order training, clerk-typist, nurses aid, camera salesman, and stenographers. At the present time we're doing clerk-typists, stenos, office machine repair, and other skills We found that the insurance people need girls who know more about the insurance field and know more about the terminologies, trained insurance girls. Courses are projected and tentatively approved by the Department of Employment for training or clerk-typist for the high school dropout Here again, down to the younger person who is a high school dropout, by providing some training in the clerk-typist field and also giving them some academic work, we hope to be able to get them their high school diploma. The drycleaning self-service division now needs some trainees so these people may operate the drycleaning self-service stores The vending machine repairman will be starting The housekeeping program will be starting A program for interior painters who are journeymen but who have to learn some phases of the work that they didn't learn when they first became journeymen, and also a vocational nursing program, will be started. We think MDTA is doing an excellent job. It's a limited job and there may be more questions about it later.

Now the last one I would talk about here is the Youth Opportunity Center, because it's quite unique. This is a combination of many agencies in San Francisco, working together to try to do something for a culturally deprived area specifically in San Francisco, the Bay View-Hunters Point district. In this district we have thousands of young people between the ages of 16 and 22 that we know are not working. Many of them have dropped out of school and the question is, can we do something for them? Working with the mayor's committee originally trying to find out what we could do, the Ford Foundation came into the program. They are giving approximately $650,000 over a three-year period to help in this program. The Department of Health, Education and Welfare is coming in with some research money and the Manpower Development and Training Act group is saying to us, you do what you can. We will see if we can give you money for some of these programs The local divisions are working, such as the department of public welfare, police department, the boys' clubs, the citizens' committee, United Community Fund, Hunters Point-Bay View Center and, of course, the schools.

Now, what are we trying to do in this Youth Opportunity Center? We're trying first to find employment for the youth between the ages of 16 and 21 Secondly, if they can't find employment, we're trying to encourage the younger ones to go back to school. Third, we're saying to the youths, who will not go back to school, you may need some education. We'll set up some special adult vocational classes for you so you can get the basic education in order to get to be trained to go to an occupation. Henceforth, we're going to do some direct occupational training. We're going to do that on our own. We're going to do it with the Manpower Development and Training Act program They have already worked on it. There are six projects, I think it's six, that are now being contemplated. We're sure we'll start with them in the next couple of months. We'll be trying to train in that area general clerks, clerk-typists, office boys, stenos, insurance rate clerks, gardeners, and telephone operators for the PBX part of it Now those are all specific things that will be done for this special Youth Opportunity Center program

GERALD PARRISH, *Regional Director, U.S. Employment Service, United States Department of Labor:*

I'd like to discuss, with your permission, the serious problems of youth employment opportunities which we are very much concerned with. We know, for example, and I am sure these figures have been given to you, that the unemployment rates for people under 25 are about double the unemployment rates for the labor force as a whole. We know, further, that this heavy burden of unemployment falls with ever greater severity on many of the youth of minority races in the major metropolitan areas of this state. In such areas as east Los Angeles and south central Los Angeles, and Hunters Point, Fillmore Districts here in San Francisco, Richmond, and other sections of Alameda County, where there is a sizable residence of Negro and Mexican Americans, the unemployment rate among their youth now is running 50 to 70 percent.

There are, we believe, several major causes of unemployment among the youth and certain actions must be taken to alleviate this One of the major causes, of course, is our overall unemployment problem, the fact that our economy is not growing at the rate sufficient to provide employment opportunities to all additions to the labor force You are well aware of the postwar baby boom, and just by counting the years, you know that many of these youngsters are now becoming of working age.

Another problem, however, in regard to the youths, is that many of our unemployed youths do not possess the education and training to enable them to qualify for the jobs that are available now

A third significant problem of unemployment among youth here is that many are handicapped by racial discrimination As I mentioned here earlier, the unemployment rates among the minority youth are drastically higher than for white youth, while, in turn, the unemployment rate for all youth is higher than the labor force as a whole So we have a problem here where discrimination is contributing drastically to the unemployment problems of youth

This, of course, brings me to the matter of the vocational education programs in the State of California I think that in some respects, the State of California can well be proud of its vocational education programs In some respects, we do lead the nation California vocational education cannot be criticized to the same degree as these general accusations are made nationally about vocational education being concerned only with agriculture and home economics, because in California considerably more has been done in the areas of trade and industrial education, in distributive education and in technical training Furthermore, in California, there has been a development, I think, that really places California in a leading role in the nation with respect to post-high-school education We have many more youth proportionately engaged in post-high-school and adult education vocational training than the rest of the nation But still, having said all that, we have to face up to the fact that of all of the youth of high school age in California, only about 8 percent of them are enrolled in some form of vocational training in these categories that are supported by the federal government, distributive education, trade and industrial education, technical training, home economics, and agricultural education Many more have the opportunity for training in office occupations which is an area of vocational training that does not receive federal government support But when we look at the fact that 8 out of 10 of our youth in school today are not completing college, that 80 percent of them are in some form of occupational training or preparation other than professional or college level training, we have to recognize that vocational education in this state must be expanded and strengthened and made available to more young people of the state.

DR. WESLEY P SMITH, *Director of Vocational Education, State Department of Education:*

Mr. Elliott, and members of the committee, one of the developments that has taken place since last I had the opportunity to talk with this

committee on vocational education two years ago, has been the almost explosive increase of interest in vocational education

Regardless of all other recent accomplishments in the area of vocational education, this awakening of interest and this widespread public anxiety must be cited as the most notable achievement It is this attitude of concern that is the stimulant for development of vocational education that will serve the need of California in the difficult years ahead

During the last year we have recorded the largest enrollments in our history In every aspect of vocational preparation—in the business occupations, in the agricultural occupations, in the industrial occupations, and in the universal occupation of homemaking—the high school and junior college enrollments of full-time students are at an all-time high

Without question, one of the easiest measurable accomplishments in the total program of vocational education, and some think the most significant, must be credited to that part of the program that is designed to help adults adjust to the ever changing requirements of their existing jobs or to retrain themselves for new jobs. And it is here in California where these achievements are the envy of the nation

The combination of the widespread system of tuition-free public educational facilities—adult, junior college, and otherwise—the existence of essential vocational education physical facilities throughout the state, the enlightened attitude of organized labor, the progressive attitude of employers, and the existence of a large reservoir of talented teachers of adults, has made possible the attainments unmatched anywhere at any time

In recent months, this ongoing program of part-time occupational preparation, which enrolls at least 250,000 right at this moment, has been further augmented by specialized programs of retraining sponsored by the federal government, and the most prominent of these, of course, is the Manpower Training and Development Act Of all the states and territories involved in this program over the nation, California ranks first. Some 267 different training projects have been approved, involving more than 9,000 trainees Of those who have already completed training, over 75 percent have secured gainful employment. These were unemployable people before This high rate of employment for persons previously unemployed is a credit to the Department of Employment personnel who selected them for training and to the public and private schools that offered the training

I want to now very quickly move to some of the promises for the immediate future As is the case with so many of our societal needs, we will be very hard pressed to provide occupational preparation programs, either preemployment or retraining, that will be sufficiently extensive, sufficiently available, or sufficiently effective to meet all the job training requirements in California in the days ahead The upward spiral of requirements for all occupations, coupled with the flood of population converging upon our state, poses a problem impossible of immediate or complete solution

Now, finally, a few comments regarding the long-term needs and some personal reflections that we have in the area of vocational education. We should all recognize that California's program of vocational educational education has always been influenced significantly by the economic and social environment in which it functions There is no reason to expect any change in this situation because, as we peer again into the long-term future, it seems a certainty that some of the following influences will guide the stream of change in vocational education, and it must be a stream of change, and these are the influences as we see them

First, the postwar baby boom is producing a wave of youth that will create unprecedented problems of absorption into the labor force and long after 1963 Just one measurement of this avalanche is possible even now, because we know that of the age group 14 to 17, there are now 1,000,000 young people in California at this moment. Ten years ago, there were only 500,000 These are rough figures In other words, there are twice as many 14- to 17-year-old people in California today as there were 10 years ago This is one measurement of this avalanche

Second, more than two million women are now in California's labor force. This number will increase to three million by 1970 Not only are there more and more women in the labor force, but there is a trend for women workers to become involved more and more in occupations previously assigned almost exclusively to men.

Third, more than 4,000,000 persons now 25 years of age and older in California have not achieved high school graduation This number is almost 30 percent more than the non high school graduates in 1950. Even more significant is the fact that of persons 25 years or older in California, 1,300,000 lack even an eighth-grade educational achievement, and this is an increase of 16 percent in the last 10 years Nowhere has automated technology advanced faster than in California, and nowhere will its effects be more in evidence. This modern manifestation of the centuries-old shift from men to machines is producing dislocations that reverberate through society and it has its implications for all workers—present and future.

Regardless of the virtues of vocational education programs of the past or present, and in spite of the attainments made to date, the sober fact remains that there is more yet to be done than has been accomplished. A few of the needs are easily discernible. Among these are as follows, and they are not too many:

1. Vocational education needs to be strengthened at the high school level. The comprehensive high school has given disproportionate attention to the college-bound student The equally important needs of employment-bound youth have been too long overlooked or slighted. The existence of thousands of unemployable youths—out of school and out of work—attests to the need to bring more balance to the high school curriculums.

2. Large numbers of youth with special needs are not now being well served by existing vocational education programs. Such youth have academic, socioeconomic, or other handicaps that prevent them from profiting from the more traditional pattern of vocational education.

3 Greater use must be made of community resources in the preparation of youth for work Every community abounds in unused resources —and the extent to which these resources go unused is the extent to which vocational preparation needs of many youths go unfilled

There is a need for more and more attention upon cooperative effort in occupational preparation. The spiraling complexities of job competencies, the increasing number of job classifications, the enormous number of persons in California's work force, together comprise almost a mandate that all agencies and all organizations involved in occupational preparation must work together efficiently and harmoniously. There is a real need to develop lines of communication and cooperative procedures that will insure maximum efficiency in sharing the total work load involved

LEONARD HARDIE, *Field Director, Office of Manpower Development and Training, U.S. Department of Labor:*

I have been asked to say a few words about the Manpower Development and Training Act and how it has been applied in the State of California. I will try to make some reference by way of comparison to the national scene and see just about how we have been doing here in California.

Reference was made this morning to the statement in yesterday's newspaper that in the State of California good jobs are going begging This is one of the paradoxes which has faced us from the beginning and, of course, is one of the reasons why we're in business But we note here in this article of yesterday's date that there are still at this day 336,000 persons unemployed in the State of California. I remind you that MDTA was intended at its best to train somewhere in the neighborhood of 440,000 persons, which you see is just a little bit higher nationwide than the total number of unemployed in the State of California at the present time. Under MDTA there are three phases to the training program per se. The first phase, or the one most commonly alluded to in press and elsewhere is the institutional training which by virtue of its name takes place in institutions already extant. So in the several states we go in and we use the existing facilities which may be vocational education programs in high schools, which may be vocational education programs in junior colleges, or which may in fact be vocational education programs for your colleges. Wherever they may be, we ought to use them. And secondly, if there are no appropriate public facilities available and private facilities are available, then we can move over into the private sector and provide training there Put all of these together and we then refer to "institutional training" They take place in existing institutions and under existing supervision.

Next we have the phase 2 of our training program known as "on-the-job training." The extent of on-the-job training was to provide for either fresh training or retraining to people already employed and we would again use existing facilities. In this case we would use the plant facilities of employers or unions, or both, or whatever, but neither the federal government nor the local school district nor otherwise,

would be required to set up new facilities With certain restrictions this was intended to provide a pretty fair sector of training and retraining for the public.

And lastly, where neither on-the-job training nor institutional training can be effective, for better or for worse, then some other method might be found whereby these people could be drawn into the fold and given what some people have termed "one last chance" This might be literacy training; this might be preentry training Whatever it is it comes under the heading, under the MDTA program of experimental or demonstration, the idea here being that you take the people who are otherwise passed over from all the standard, conventional opportunities and you single them out for a specific pilot program, a specific demonstration program. or a specific experimental program, not knowing what your result will be but hoping that whatever the result is it will afford you the guidelines for spending your money in the future in as wise a way as possible in order to get the greatest amount of coverage

Now, let's take a look at what has happened in each of these three phases of the program in the State of California from the time the program got off to a running start in late August of last year In institutional training programs, by the end of June 1963, which is the end of the first fiscal year of this three-year act, California had placed 112 institutional programs into effect California had placed five on-the-job programs into effect, and California had placed three experimental and demonstration projects into effect In the institutional phase we had a total of 1,505 persons committed for institutional training, we had on-the-job training for 117 persons, and we had experimental and demonstration projects going for 21 persons with a total of 1,643 by the end of June

Now, from 1963 to date, which is November 14th, so far as my figures are concerned, we've converted the institutional training from a total of 112 to a total of 177. Now these are separate and distinct projects and separate and distinct schools or institutions, but many of them repeated in some places a second time around On-the-job training, we now have a total of 16 projects for a total of 311 trainees. In any event, California is taking a very prominent place, as Mr. Smith testified this morning, in the total program However, most of the strength of the program in terms of numbers of projects, in terms of numbers of trainees, is carried in the institutional phase of the program, and while this is very pleasing to my national headquarters, we would still like to see even more institutional programs developed during this year and certainly we'd like to see more on-the-job training programs And lastly, we would like to see more experimental and demonstration programs because we feel that we have the evidence that there is need for getting at some of the hardcore people who are not being reached, shall we say, by any, by either of the other two types, the institutional or on-the-job training.

ROBERT HILL, *Supervisor of Youth Employment, State Department of Employment:*

I would like to talk just a little bit about the programs that the Department of Employment has now in effect to help young people find employment and find their way to permanent full-time jobs The California State Employment Service, in providing employment services in its youth population, has for the last 12 years given special program emphasis to youth employment services These employment services are provided in an environment of community action and cooperation coupled with government action and cooperation

First, we have what is referred to as the terminal student program. This is a program not indicating that the young person is through studying by any means, but it does mean that at the high school level, where we first come in contact with him, he is planning on entering the full-time labor market Basically, this statement means that we take the Department of Employment and its services through special youth employment counselors directly to the high school and work with school people in the high school and their school counselors and with these young people who plan to leave school and enter the labor market We help them do vocational planning, we help them find permanent, full-time jobs in line with this planning

The other phase of the department's overall youth employment program we refer to as our preemployment youth program The preemployment youth program is designed to help the teenagers still in school find part-time jobs after school, on weekends and during vacation periods This phase of our total youth employment program helps the young person meet his financial obligations and assists him in the transition between school and the time when he will compete in the open labor market as an adult worker

And another area that the Department of Employment has been working very hard in is in the area of what we call youth opportunities boards There is one in Los Angeles County There's also one now being formed in Alameda County The real purpose of the youth opportunities boards, now being financed in some measure by foundation grants is to provide a board of people who are in top-level citizen and executive and government positions to give real close attention to across-the-board problems of youths and youth employment Currently we have full-time coordinators assigned to these projects, one in Los Angeles and one in Alameda County, and the board is now working on arrangements to provide employment counseling and job placement to all graduates and school dropouts who are entering the labor market and interested in full-time career employment

LEE RALSTON, *Director, Division of Practical Arts, Office of the Los Angeles County Superintendent of Schools:*

Interest in vocational education is increasing at the local level, and this interest has been stimulated by recent legislation at our national Congress This legislation is officially known as the Vocational Education Act of 1963 It is also referred to as the Morse-Perkins Bill The basis for this legislation was a report made by a panel of consultants

appointed by the late President Kennedy The report came out under the title of "Education for the Changing World of Work" The report contained the conditions as they had existed since the original Smith-Hughes Act was passed in 1917 and the conditions as they exist at present, along with specific recommendations for the future

The new legislation made minor changes in the Smith-Hughes and George-Barden Acts These have been the main sources of federal vocational education funds for the last several years In total they amount to about $57 million to all states for all fields of vocational education

This new legislation has as its purpose to maintain, extend and improve existing programs of vocational education, and to develop new programs as they are needed

The new act provides only for authorization for appropriations on a continuing basis Of course, this means that until Congress makes appropriations, no money will be distributed to the several states

The authorization has the following amounts for the fiscal years ending

June 30, 1964, $60 million, June 30, 1965, $118 million; June 30, 1966, $117 million, June 30, 1967, $225 million, and for each fiscal year thereafter

The allotment to the states is on another basis, and it will be 90 percent of the above funds on the basis of a formula that has two basic factors the population of the age groups 15 to 19 inclusive, 20 to 24 inclusive; and 25 to 65 inclusive, also, the per capita income for each state

The other 10 percent of the funds are reserved by the U S Commissioner of Education for experimental and research programs to meet the vocational education needs of youth with special handicaps

Although it is difficult to predict with any degree of precision, California will be eligible for slightly less than 7 percent of the appropriated funds in 1964 During this fiscal year the funds will not require matching money However, after this year each federal dollar will have to be matched by state and local dollars

MISS ALTHEA T L SIMMONS, *Field Secretary, West Coast Region N.A.A.C.P.:*

In California, which has experienced a tremendous population explosion, with the influx of in-migrants, both white and Negro, during the past two decades, the Negro population of the state increased sevenfold between 1940 and 1960, from 124,306 to 883,861 A recent publication by the Department of Industrial Relations, "Negro Californians," noted that white males, 14 years and over, represented 5.5 percent of the unemployed civilian labor force Youngsters 14 through 17 years of age, nonwhites represented 22 0 percent, nonwhite females 18 9 percent Of the youngsters 18 through 19 years of age, nonwhite males represented 22 3 percent and nonwhite females 19 7 percent

Reports from both private and governmental agencies point to the fact that one-fifth of all nonwhite youth in the national labor force were unemployed, and that this was three-fourths higher than the rate which was obtained for white youth.

At the next age group, 18- and 19-year-olds, where about two-thirds of the nonwhite youth have left school, the situation was even more serious These are general averages for the nation as a whole, but the situation is even more critical in some communities and cities On a statewide basis, Negroes make up some 6 percent of the California population In Los Angeles, for example, Negroes comprise 14 percent of the population, Pasadena, 12 percent, San Diego, 6 percent, and San Bernardino, 9 percent Thousands of Negro youth under the age of 21 are included in these figures and thousands of Negro youth in our fair state are ill prepared to earn a livelihood.

The problem, we feel, of job opportunities for youth is one requiring the cooperation of school, state and local government and private industry.

School boards should set up crash programs to bring inadequately trained out-of-school youngsters up to minimum standards of employability Distributive education and other work experience courses should be made available on a broader basis as a means of holding the interest of youth who are potential dropouts

We feel that there is a need for more vocational education centers Existing programs should be reevaluated to ascertain whether or not they are adequately meeting the needs of young people who plan to leave school and go to work without benefit of a college education

Employers should reexamine their hiring, training and promotion policies to better accommodate youth into industry. This would require setting up more on-the-job training programs, the reduction of education and skill requirements where possible for beginning level jobs

Unions and management should revise such rules, contract provisions and practices which restrict, in the main, the entry of youth into beginning jobs The minimization of Negro participation in apprenticeship programs, traditionally and currently, results in both the misdirection and malpreparation of Negroes for skilled craft occupations Negroes, as a rule, must seek skilled training opportunities outside of formal apprenticeship programs These, in turn, do not usually provide the recipients with the qualitative preparation requisites for truly skilled standing in today's economy.

DR REX GORTON, *President, San Diego City College:*

Since 1937, the vocational training program at San Diego City College has supplied trained and highly skilled employees to the business and industrial community of San Diego For example, at the time of the second World War, 250,000 persons were trained and placed in defense industries

In addition to the vocational function, the transfer program at the college has been operating since 1914, and provides highly diversified and effective curriculums leading to preparation for further training in four-year institutions

Currently there are 5,000 day students and 6,500 evening students Half of the day students and two-thirds of the evening students are enrolled in vocational education courses. Some are preparing for initial entry into the labor market, others are retraining in particular programs, and some are retraining for a second career.

The training programs are initated and kept up to date by the use and advice of some 75 advisory committees made up of both management and labor in the respective fields of training

Continuing evaluation of the quality of education by the community and students receiving vocational training testify to its high quality. For example, as a result of a recently completed survey of 370 graduates of the class of 1962, results showed that of the 140 graduates who transferred to colleges, 96 percent of them indicated that their preparation for further college education was good All of the 230 vocational terminal graduates who replied indicated that the college did an adequate job of preparing them for immediate entrance into business and industry, and three-fourths of them were actually working in the specific fields for which they had received their training

Because of the pressure of financing the regular programs of compulsory elementary and secondary education, it is increasingly difficult to obtain local tax funds required to maintain or expand vocational education This is especially true because of the expensive facilities and equipment required for effective vocational education. A regular school classroom serving 30 to 35 pupils requires a thousand or less square feet and a few hundred dollars in equipment A vocational shop serving 20 to 25 pupils will require from 2,000 to 5,000 square feet, and from $10,000 to $100,000 in equipment. San Diego has invested within the past eight years about $10,000,000 of local funds in junior college facilities, including the second complete junior college plant which will open next month.

The total annual budget for junior college operations in San Diego amounts to about $3,000,000. The cost of the vocational courses amounts to more than $1,500,000 The federal vocational funds received this year will total about $110,000, or about 7 percent of the actual cost

The recent federal legislation, HR 4955, for the improvement of vocational education, authorized (but as was mentioned this morning, no funds have been appropriated yet) a quadrupling of the federal aid for vocational education. But this aid will be granted only if the state and local expenditures are maintained and in some cases increased.

It is therefore essential that the level of state support for junior colleges, and in particular for vocational classes and courses in the junior colleges be drastically increased.

WILLIAM STEINBERG, *Specialist in Practical Arts and Vocational Education, San Diego City Schools:*

In the San Diego city schools, we have found that about 55 to 60 percent of our graduating high school seniors go on to some type of post-high-school education Most of these students attend our junior colleges that you have heard about, our liberal arts colleges and universities This means that from 40 to 45 percent of our graduates are not college bound Some of the noncollege group will go into the armed forces, and some of the girls will become housewives The remaining group will seek some kind of employment. It is our hope that we will be able to provide them with a salable skill

Our goal is to provide skills and knowledges needed to enable students to obtain initial employment in a broad range of entry jobs We hope that every student, not continuing his education, will be enrolled before he leaves high school in our vocational curriculum This curriculum includes general education courses such as English, social studies, physical education, mathematics and science In addition, it will include specific preparation for one of the many occupations available in the community.

At the present time selected students desiring to prepare for skilled technical trades travel to our junior college shops for part of the school day. Dr. Gorton mentioned the junior college has a good technical program The remaining part of the day they attend the high school in their neighborhood where they take their regular academic subjects In this way, these youths do not have to sever their high school loyalties and may continue to participate in school activities that are important to all teenagers The shop program in the junior college has status and prestige The shop facilities are outstanding High school youth attending the shop classes at the junior college must be fully qualified and are not accepted for disciplinary reasons Parents do not seem too reluctant to permit their children to enroll in trade classes under these circumstances The junior college also uses the shops for high school graduates and selected adults who are preparing for employment in the skilled trades This joint use assures maximum utilization of expensive shops and equipment

At the present time, we have an outstanding work experience program that allows students to attend school four hours per day and work in business and industry for four hours a day This program is closely supervised by work counselors and is an excellent opportunity for students to obtain practical experience On-the-job training is one of the finest educational programs and when jobs are available, and this is the hard part, when jobs are available every effort is made to encourage students to participate in this program

The school cannot assume the total responsibility for preparation for work. Every community resource, including business and industry, is needed to provide occupational information, vocational guidance, and job opportunities By all of us working together, we should be able to avoid the human tragedy of unskilled and unemployed youth.

Section 2

Ventilation of Heaters—A.B. 1202 (Lanterman)

A B 1202 was heard by the 1963 Assembly Standing Committee on Education and put over for interim study at the request of its author, Assemblyman Frank Lanterman It was subsequently assigned to the Interim Committee on Industrial Relations Prior to its introduction, the Monrovia Unified School District had initiated a rather extensive conversion from unvented to vented type heating units in its school facilities and classrooms, and there was some thought that specific

legislation might be desirable to clarify the authority of governing boards of local school districts in this area

A hearing on this bill was held in Los Angeles on September 20, 1963.

FINDINGS

The committee is not aware of any restrictions on the authority of governing boards of local school districts to convert from unvented combusted fuel heaters to vented heaters in the school facilities within their jurisdiction

Such unvented heaters as presently exist appear to be in use only in older school construction, and even here the trend is to convert to vented heating systems as rapidly as local school financing permits

In Los Angeles city schools, no unvented heaters have been installed since 1951, and an informal survey of 16 northern counties where many of the rural school facilities have been in long use revealed no problem with converted heaters Six counties—El Dorado, Glenn, Lassen, Plumas, Shasta and Sierra—reported that there were no facilities using unvented combusted fuel heaters in any of their schools

RECOMMENDATIONS

(1) That Title 19, Health and Safety Regulations of the California Administrative Code, be revised to include class "C" occupancies in the building occupancies covered by present venting regulations, with provisions permitting local school districts to program the replacement of their existing heaters

(2) That legislation be considered amending the Health and Safety Code to prohibit all use of unvented combusted fuel heaters in school facilities after July 1, 1969

The following are pertinent excerpts from testimony given at this hearing:

WILLIAM TORRES, *Assistant Business Manager, Monrovia Unified School District:*

I am here to represent Dr Harold A Beall, superintendent of the Monrovia Unified School District I think historically Monrovia is the second oldest incorporated city in Los Angeles County, so it follows that the school district is quite old too As a result, the buildings were constructed some time ago, so that we have these types of heating facilities in many of our school plants and scattered throughout many of our classrooms

We have found nothing in the Education Code that prevents the district, on its own initiative, from correcting these types of heating units We have found only this, that we have been limited in the extent to which we may make value judgments, what we are going to do in these kinds of buildings and what steps, by priority, we can take first

Well, this past year we established a priority and attempted to work up a three- to five-year schedule in replacing the types of unvented, unhealthful gas heaters We have replaced approximately 125 units this immediate past year, we have on order another 80 units, and possibly we will go into some more We are financially limited in making the complete transition in one fiscal period

Something else I think Dr Beall wanted me to present to the committee was that we are a bit reserved about the mandatory type of legislation and the wording "shall" As I indicated, we found nothing that prevented the districts, on their own initiative, from doing this I think possibly it might be the intent of the committee to encourage, rather than make mandatory

By way of recapping, I think I pointed out that we ascertained in our research that we were in violation of no statutes in regard to health, safety and welfare We also went further in our study and ascertained by professional report that none of the installations, even taking into account their age, which is 20 years or more, were unsafe And let me repeat—they were not unsafe However, we didn't need outside consultants to tell us that they were unhealthful and that they produced an unsatisfactory educational environment, and it is for these two reasons that the Monrovia Unified School District is moving ahead on its own to make these replacements This is what we are doing even though this past year the State Legislature gave somewhat limited funds to school districts for these kinds of things So whatever the committee might do, we are moving ahead I would like to mention also that in San Diego County I worked with some architects who are pretty well known and I know personally of no new construction that is going on now in schoolhouse building that provides for these types of heating units

There may be one other area that the committee might want to consider and that is the tax override section that was provided in the school financing picture here I believe it was about two years ago It dealt primarily with fire hazard I am not sure of the section, but it provides for an override to take care of receiving funds to correct things Maybe this would not come under the problem that you are reviewing here, because primarily you are talking about safety and health and welfare, rather than fire hazard.

FRANK MCCARTHY, *Senior Deputy, Office of the State Fire Marshal, Los Angeles District:*

At the present time, and until such time as this bill was introduced, we were unaware of any problems existing with unvented heaters in school classrooms If there have been any problems that were brought to the attention of the local authorities, they were not forwarded to our office Under the Health and Safety Code the State Fire Marshal is authorized and required to adopt regulations in relation to the assemblage, instructional and educational occupancies We have established under the educational occupancies that we would provide heating devices in schools in conformance with the nationally recognized standards At the present time these standards would be the American Gas

Association of the National Board of Fire Underwriters Their requirements are that in places where people sleep—hotels, residences and hospital occupancies—the heaters should be vented This is not required in classrooms.

We feel that if there is a problem existing with venting heaters in classrooms, we can take care of it in the California Administrative Code, which now requires approval of all school plans and all school construction from the health and safety standpoint If it is felt desirable that such legislation should be proposed, we will be very happy to write it into our regulations and make this requirement. If it goes into Title 19, it could be made retroactive so that each school district would be allowed to program the replacement of their existing heaters

We would propose a change in the proposed legislation We would suggest that A B 1202 be amended, if necessary, to include the following: (1) all heating equipment be installed and vented in accordance with the regulations of the State Fire Marshal; and (2) this section be made to apply to all school buildings, not just classrooms We feel that if there is a hazard, it exists in the assembly areas as much as in the classrooms

CLAIR L EATOUGH, *Senior Architect, Bureau of School Planning, State Department of Education:*

The Bureau of School Planning has little evidence that the use of unvented combusted fuel heaters is common We have submitted a form questionnaire to the county superintendents of schools in 16 northern counties because of an assumption that if there were such heaters in use, they would most likely occur in remote rural areas From the replies we have received to date, the evidence suggests that this is not a common problem It is possible that the Monrovia School District and the Los Angeles City School System, during a period of extreme economy, unwisely invested in heaters of this type Most school planners have long recognized that an unvented combused fuel heater could present safety problems Also, as a means of heating a classroom, such heaters are insufficient. Without a blower, the air distribution in a space the size of a classroom is short-circuited Usually the area around the heater is too warm, while other areas of the classroom remain cold. I don't believe that even Los Angeles has installed such units in the past 10 years.

The new Title 19, Health and Safety Regulations, which is now in current use, has excellent restrictions on the use of unvented combusted heaters However, class "C" occupancies (schools) are made an exception to these regulations I believe that this should be corrected If Title 19 were revised to the extent that class "C" occupancies were included in the building occupancies which are covered by present venting regulations, there may not be need for further legislation

The Department of Education was requested to make a recommendation on this bill, and we have no recommendation to make as to whether more stringent laws are needed or not We would suggest, however, that it *not* be placed in the Education Code, for the reason that the Education Code does not have the wide jurisdiction that Title 19 would have,

nor would there be any way to enforce or administer such a law Also because the great duplication that you would suddenly get into if you decided to put various safety laws in the Education Code would make it even more clumsy than it is at present

RICHARD LAWRENCE, *Legislative Representative, Los Angeles City Board of Education:*

When Assemblyman Lanterman offered this bill in the 1963 session, we immediately contacted him because of our concern in this area We wanted him to know that in Los Angeles our main concern was not with the problem itself, because we had been working on it, but that we *were* concerned with the mandatory provisions of the bill, because of the financial impact this would have on the district This was known to us because of a very complete survey that the district conducted in 1957 in the area of unvented heaters At that time, to replace and vent these heaters would have cost $3 9 million in the Los Angeles city schools So the Board of Education decided that, because of the extreme cost involved, they would have to do this on a gradual basis as we had demolition or complete rehabilitation of buildings, and that along with other buildings and construction projects they would also take care of the unvented heater problem in those individual construction areas

Since then we have proceeded with that type of planning and with considerable results Anyhow, our concern was how to cope with this problem and still not take away funds that should go into the educational program or that are already earmarked for the relieving of half-day sessions, et cetera So we do have a recommendation In view of this thinking by our district, and our knowledge of what the need is in Los Angeles schools, we would recommend, if the committee considers there is a need for this provision in the Education Code, or another code, that a district be given time to accomplish this, at least a three-year period—possibly a measure similar to the one covering fire safety facilities, a measure that was passed in 1961, I believe

I also have a letter from the California School Administrators Association, which supported this previous bill in 1961 and could support a bill relating to unvented heaters that would allow for a period of time They also recommend, as an association recommendation, that there be provisions possibly for an override tax which that measure covered, and I believe in a period of time the problem would be resolved and the provision would no longer be necessary

JOHN W. SCHAEFFER, *Maintenance and Operation Manager, Los Angeles City Schools:*

We have installed no unvented heaters since 1951 The ones that have been installed were prior to that time and many of those are in transportable buildings Our feeling is that none of our classrooms or offices are unsafe. If there is proper maintenance and inspection—and we do require that a detailed instruction card be attached and posted in every classroom in the district — with the combination of proper maintenance and proper inspection and supervision of these instruc-

tions, we feel that along with the procedures we are following in replacements we are insuring the health and safety of our pupils and our staff.

I would like to start by telling you what we had in 1957 and then tell you what we have done about it We really are working very seriously to eliminate these We made a report to the Board of Education in August of 1957 in which we indicated that there was a total of 11,787 unvented gas heaters in classrooms, in bungalows, in permanent building classrooms, in offices, workrooms, cafeterias, assembly rooms, faculty rooms, and child care center rooms Now since that time we have eliminated, through various means, some demolition of old buildings, some complete rehabilitation, we have eliminated over 1,000 of these heaters As to the number of classrooms, I have no accurate figure, but it would be considerably less than the total of 4,300 shown here Most of the heaters removed have been from classrooms

I would like to tell you that we have updated our figures on the cost of replacing these heaters It would be $4,900,000 If we were given three years in which to do this, it would then, of course, increase slightly more, because as you know, wages never stay put very long They keep moving up, so that by the end of the three-year period we would be over the $5 million mark It would cost us more in the long run because we would run into higher wage levels in the latter years

CHAPTER 2

BOILER SAFETY

A.B. 2896 and A.B. 2364

A B 2896 was introduced in the 1963 Regular Session by Assemblyman John Foran subsequent to a boiler explosion in the basement of a downtown department store in the City of San Jose on March 22, 1963, in which a number of people were seriously injured The object of the bill was to bring a greater degree of control over certain types of boilers not presently under State control or regulation Upon the recommendation of the Assembly Standing Committee on Industrial Relations, the bill was referred to the Interim Committee for further study

A second bill on the same subject, A B 2364, was also introduced in the 1963 Regular Session by Assemblyman Alfred E Alquist This bill was heard by the Assembly Standing Committee on Governmental Efficiency and Economy during the session and was put over for interim study by the same committee Subsequently, it was re-referred to the Industrial Relations Committee in August of 1964, for which reason an interim hearing could not be scheduled until late in the present interim period.

Two hearings were held on the subject matter of A B 2896, one in San Francisco on October 25, 1963, and one in Los Angeles on August 13, 1964 One hearing on AB 2364 was held in Sacramento on October 19, 1964.

FINDINGS

Catastrophic boiler explosions, such as the one in San Jose on March 22, 1963, which resulted in 7 deaths, 60 injuries, and considerable destruction, and the New York Telephone Company disaster of October 3, 1962, causing the death of 21 persons, have fortunately not been frequent, but the terrible toll of life, limb, and property they have taken make it imperative that all precautions need to be taken to insure that boilers are properly constructed, safely installed, provided with adequate safety devices, regularly inspected by certified experts, and maintained and attended by conscientious and competent hands

Upon the subject matter of Assembly Bill 2896 (1963 Regular Session) the committee makes the following findings

The provisions of Section 7621 of the Labor Code relating to "boilers" are not sufficiently comprehensive

It appears that some boiler manufacturing plants have developed types of boilers that greatly minimize the danger of steam explosion, particularly the coil type of boiler which contains pipes within the pressure vessels which conduct the stream Consideration should be given to requiring school districts and other public agencies to install

these safer types of boilers as boiler replacements become necessary. Information in respect to this matter needs to be provided by the Division of Industrial Safety of the State Department of Industrial Relations

A representative of the Los Angeles City School Districts gave the committee useful information on its method of insuring boiler safety The committee believes that this organization has displayed diligence, efficiency and competence, although the situation is probably not quite as roseate as depicted This representative based his opposition to A B 2896 on the concern that an extension of the penalty provisions of Section 7770 of the Labor Code would create a personnel and cost problem, and thereby inflict an unnecessary burden on the department No other school districts expressed such concern to the committee The committee finds these fears to be unfounded and that these arguments are of dubious validity

Upon the subject matter of Assembly Bill 2364 (1963 Regular Session) the committee makes the following findings

1 The bill contains many defects and shortcomings The sponsors of the legislation have been quick to recognize this themselves and have proposed remedies Most of these, however, have been couched in general terms, and in drafting a bill precise language must be devised

2 The definitions contained in Sections 9902 and 9903 regarding "a stationary powerplant" and "major mechanical and electrical equipment" are much too comprehensive In any serious consideration of legislation of this nature, there should be more exact definitions of a "stationary powerplant" and "major mechanical and electrical equipment" and its relationship to a stationary powerplant which would narrow the scope of the coverage of the act to that which needs to be covered in the interest of greater public safety

3 Public safety must be given paramount consideration in the study of such a legislative proposal At the same time care needs to be taken that those areas are covered that genuinely need to be covered in the interest of public safety Business, industry, the homeowner, and public agencies should not be saddled with additional regulations and restrictions unless there has been a reasonable demonstration of a need

4 Some of the concerns of business, industry, and public agencies in respect to the establishment of a uniform system of state licensing of "stationary steam engineers" and "boiler operators" adduces two reactions on the part of the committee: (a) that there would be genuine concern and strong opposition to A B 2364 in the form in which the subject matter of it was referred for study can be readily understood and met with sympathetic understanding; (b) that there would also be concern over the basic idea of the establishment of a uniform state system of licensing of "stationary steam engineers" and "boiler operators" for those operations involving public safety, is not reacted to by the committee in the same manner, particularly in view of the experience of the City of Los Angeles, which presently has a limited system of licensing

5 The committee finds some merit to the general principle of a uniform system of state licensing for the operation of boilers where the

public safety is involved Study needs to be made of the feasibility of establishing a state agency or state system to qualify and license types of "stationary steam engineers" and "boiler operators" in order that there will be a method of qualifying and certifying such individuals but without compulsory or penal provisions in regard to their use If this were done, there is a possibility that this service would be welcomed by business, industry, and public agencies and at the same time their voluntary use would make unnecessary a stricter licensing system

6 In any system of licensing it might be desirable to clarify in certain types of licenses that the licensee be permitted to integrate his responsibility as a licensee with other on-the-job employment duties and responsibilities

7 A system of licensing needs to give careful consideration and make clear delineations of the duties and responsibilities of the Department of Professional and Vocational Standards and the Division of Industrial Safety of the Department of Industrial Relations

8 A B 2364 was not referred to the Assembly Interim Committee on Industrial Relations until August of 1964 Therefore, the committee was unable to make as thorough a study of this subject matter as it would have liked

RECOMMENDATIONS

Upon the subject of boiler safety, the committee makes the following recommendations

The committee recommends that the subject matter of Assembly Bill 2364 (1963 Regular Session) be referred for further study during the 1965–66 interim period

The committee recommends the enactment of legislation embracing the provisions of Assembly Bill 2896 (1963 Regular Session) with revisions as follows

(Deletions of wording of present law in strikeout type, additions to present law in italicized type)

An act to amend Sections 7621, 7625, 7770, 7771, and the heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of the Labor Code, relating to tanks and boilers

SECTION 1 Section 7621 of the Labor Code is amended to read·

7621 "Boiler" as used in this part means ~~any fired or unfired pressure vessel used to generate steam pressure by the application of heat subject to this part~~

(a) Any fired or unfired pressure vessel used to generate steam pressure by the application of heat (~~power~~ steam boiler)

(b) Any fired or unfired pressure vessel used to heat water at pressures exceeding 160 psi and/or temperatures exceeding 350 degrees Fahrenheit (high-temperature water boilers)

(c) Any fired or unfired pressure vessel ~~operating at steam pressure or steam safety valve setting of 15 psi or less, or at~~

~~250 degrees Fahrenheit or less, or at water pressure less than 160 psi (low pressure boilers).~~ *used to heat water under pressure, for use external to the vessel, at pressures less than 160 psi and/or at temperatures less than 250 degrees Fahrenheit (low-pressure water boilers)*

This subdivision is not intended to include domestic-type water heaters of 120 gallons capacity or less used exclusively to heat potable water

SEC 2 Section 7625 of said code is amended to read

7625 The following steam boilers are not subject to this part

(a) Boilers under the jurisdiction or inspection of the United States government, and all other boilers operated by employers not subject to Division 4 of this code

~~(b) Boilers on which the pressure does not exceed 15 pounds per square inch~~

~~(c)~~ (b) Automobile boilers and boilers on road motor vehicles

SEC 3 The heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of said code is amended to read

CHAPTER 6 ~~MISMANAGEMENT~~ *MANAGEMENT* OF ~~STEAM~~ BOILERS

SEC 4 Section 7770 of said code is amended to read.

7770 Every engineer or other person having charge of any ~~steam~~ boiler, steam engine, or other apparatus for generating or employing steam, used in any ~~manufactory,~~ *school buildings or buildings of public assembly or in any manufactory*, railway, or other mechanical works, who willfully, or from ignorance or from gross neglect, creates, or allows to be created, such an undue ~~quantity of steam~~ *internal pressure* as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby human life is endangered, is guilty of a felony.

SEC. 5 Section 7771 of said code is amended to read

7771 Every person having charge of any ~~steam~~ boiler, steam engine, or ~~other~~ apparatus for generating or employing steam, used in any *school buildings or buildings of public assembly or in any* manufactory, railroad, vessel, or other mechanical works, who willfully, or from ignorance or *gross* neglect, creates, or allows to be created, such an undue ~~quantity of steam~~ *internal pressure* as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is caused, is punishable by imprisonment in the state prison for not less than 1 nor more than 10 years

In connection with the San Jose boiler explosion of March 22, 1963, the committee requested information from J C. Penney's department

store of San Jose regarding what steps had been taken to avoid such explosions in the future. The following is the reply written by Mr Austen D Warburton, counsel for the concern, prepared in the concern's behalf:

CAMPBELL, CUSTER, WARBURTON & BRITTON
ATTORNEYS AT LAW
San Jose, November 19, 1964

HON. EDW. E. ELLIOTT, *Chairman*
Industrial Relations Committee
California State Assembly
3404½ Whittier Boulevard, Rm. 4,
Los Angeles, California

Dear Mr Elliott:

We acknowledge your recent telephonic inquiry regarding what has been done with the boilers and the heating situation at our downtown J C Penney Co store in San Jose We appreciate the courtesy of your inquiry for as you know, our client, J C Penney Co, is and always has been very interested in the safety and well-being of its customers

The unfortunate explosion of March 22, 1963, resulted in a number of injuries and deaths, which are regretted by all It should be kept in mind, however, that the store building and the boilers and heating equipment involved were not owned by the J C Penney Co The J C. Penney Co at all times was a tenant, renting the premises from MacDonald Products Co, a copartnership This copartnership constructed the building in the late 1940's and installed the heating system, including the boilers in question The heating system was inspected by the Hartford Steam Boiler Inspection and Insurance Co, a competent inspecting service Inspections were made not once but many times by that organization The contract for such inspection was between the MacDonalds (the lessors) and Hartford Steam Boiler Inspection and Insurance Co Any problems noted in the course of such inspections were reported to the lessors, who undertook promptly to have the same rectified

There was apparently a relief valve situation which was inadequate. The inadequacy, however, did not come to light until the explosion The system, however, had been approved not only by the Hartford Steam Boiler people in their inspections, and by the lessors who were competent property managers, but also by all governmental inspections which had been performed from time to time through the years I am sure that you would agree that the J C. Penney Co should have been entitled to rely upon these experts in their fields in the performance of such inspections

The lessors had engaged the Vann Engineering Co to perform further work upon the boilers shortly prior to the explosion One of the boilers in fact was in the course of repairs under this contract between Vann Engineering Co and lessors when the other boiler exploded

Following the explosion, the older boilers were replaced with new, efficient Bryan boilers with Worthington units installed by the lessors These contain modern safety features which are even better than those

that had been recommended by experts These, of course, were installed by the J C. Penney Co. lessors and my clients are pleased with this improvement In addition, J C Penney Co has itself engaged the services of the Vann Engineering Co. for relatively frequent and periodic inspections of the equipment in order to insure itself that this equipment is continuing to function properly as designed The modernization of this equipment and the ongoing inspection service of the Vann Engineering Co , coupled with the lessors' own inspection and diligent attention to the matter, should prove effective to prevent any reoccurrence of the unfortunate incident of March 22, 1963

For your further information, you should be aware of the fact that the boilers, both prior to March 22, 1963 and now, service not only the J C Penney Co store but also the 'next door' store of the Thrifty Drug Co The Thrifty Drug Co leases those premises under separate lease directly from MacDonald Products Co

If there is any further information which you or your Committee might desire from us, please let me know Again may I express to you my appreciation for the opportunity to outline these facts to you through this letter.

Very truly yours,

AUSTEN D WARBURTON

The following are pertinent excerpts from testimony given at the two hearings on AB 2896:

DANIEL MOLLES, *International Representative, International Union of Operating Engineers:*

The California State Conference of Operating Engineers, already in the process of obtaining complete statistical and factual information relative to the installation, attendance, maintenance and inspection of boilers in the State of California, were moved by the explosion at Penney's in San Jose, killing or injuring 69 persons on March 22, 1963, to shortly thereafter, form an emergency statewide committee to accelerate the fact gathering process

Catastrophic boiler explosions, like San Jose, and like the New York Telephone Company disaster on October 3, 1962, killing 21 persons cannot be avoided unless boilers are properly constructed, installed, provided with adequate safety devices, attended by competent humans and regularly inspected by certified experts

A B 2896 provides that certain boilers now exempt from safety regulations be covered by such regulations Many of these exempt boilers contain far more potential destructive power than some of the boilers that are covered by the present safety codes

For instance, present California codes did not require the San Jose boiler and an unknown number of similar boilers to be inspected or to have permits to operate

The gathering of factual material, reflecting the number of such boilers and the degree of surveillance needed over boilers in California, to stop avoidable accidents, is difficult because of the wide gaps in responsibility, created by piecemeal application of present safety laws, codes, and ordinances For instance, the Division of Industrial Safety,

because of industrial expansion in the last few years, does not even know *how many* boilers there are in the State of California—guessing at about 600,000—which they indicate may be 100 percent in error Even the record of deaths and injuries from boiler explosions, available from the state and other sources, is incomplete and limited in value Up until 1954, certain boiler accidents were not considered boiler accidents for the purposes of record keeping

I want to say here, gentlemen, that so far as is within their power, through the preparation of this data and a study of the problems involved, we have had excellent cooperation from the Division of Industrial Safety. The reference to their not knowing how many boilers there are in California shouldn't reflect on their attentiveness or their abilities; it is simply built into the codes that we think need to be amended

During the past 10 years there have been 238 reported accidents with 253 injuries or deaths In all the years prior to that (to the best of our knowledge the recordkeeping goes back to about 1918) there were 134 accidents with 150 casualties The casualty process, of course, is accelerating because of the number of boilers that are being added to the state

Of the 238 recent boiler accidents in California, all were *preventable:* all resulted from one or more of the essentials above being absent That is, proper construction, proper installation, proper surveillance and inspection Some of these demonstrate graphically and shockingly how destructive to human life and property boiler accidents are, and how close to real catastrophe some of them have come, with the only variable factor a few minutes in time The California school explosion, to which Assemblyman Foran referred, one of four in two years, in which the state official reporting on the explosion said (it was a man from Industrial Safety) "A school's heating system had been shut down for the Easter vacation About 9 o'clock, the morning after the vacation, the custodian lighted the boiler so that the system would be ready to supply heat if the temperature dropped, as it was threatening rain About 10 30 a m the boiler exploded Fortunately, there were no injuries other than slight cuts from flying glass and plaster *However*, if the accident had occurred while the children were out in the schoolyard for recess, it would probably have been a catastrophe The boiler room walls and parts of the boiler were strewn over a large portion of the schoolyard "

The same shocking pattern was apparent in San Jose at the J C Penney store on March 22, 1963, at 4 41 p m , when the area disintegrated just a few short minutes before the normal evening influx of customers were due to arrive Again, only a few minutes in time made the difference

This seems to be the pattern in all of the statistics that we can gather throughout the country Where there are only a few deaths and major property damage, it is usually because the explosion happened at an opportune time, that is, when there were fewer than normal people in the area of the explosion

Assembly Bill 2896 also provides for necessary amendments to Chapter 6 in order that presently exempted boilers be subject to provision

of this chapter It is interesting to note that the type of boiler involved in the San Jose explosion is not covered by the present Chapter 6 And the type of boiler involved in the specific explosion in the school is of the so-called low-pressure type that is exempt, in most instances, from inspection under the present codes

ROBERT H FOX, *Assistant Business Manager, International Union of Operating Engineers, Local 501, Los Angeles:*

Presently, in Section 7621 of the Labor Code, a boiler is defined as used in this part as meaning "any fired or unfired pressure vessel used to generate steam pressure by the application of heat" subject to this part Now, this includes, then, steam boilers only There are many, many boilers which are hot water boilers, hot water heating boilers that are exempted from this code by reason of the fact that they do not generate steam With recent technological developments, we now have boilers which are extremely large boilers with high degree of heat and static pressure which do not have any steam space They are known as high-temperature hot water boilers These boilers are completely exempted from the present code regardless of size

In the division's orders, boiler and fired pressure vessel safety orders, certain boilers are exempted from the code They are low-pressure boilers, and I am now referring to Article 5, Section 7771, low-pressure boilers, miniature boilers, and boilers including force circulation Without going into detail, it would list a number of boilers which are exempted by size Under ASME standards, a high-pressure boiler is a boiler which is in excess of 15 pounds of pressure As an example, the San Jose boiler did not exceed 15 pounds in pressure, and it was a hot water circulating type boiler, therefore, it was exempt under the present code

The bill itself is designed to change the description of what a boiler is, the definition of a boiler So that we do have listed in the bill, A B 2896, "any fired or unfired pressure vessel used to generate steam pressure by the application of heat" Now, there has been some discussion and there may be some possible better language in this area, but generally that would refer specifically to the high-pressure boiler which was a steam boiler and exceeded 15 pounds of pressure And in subsection (b) it would bring under inspection, boilers which are in excess of 160 psi or temperatures exceeding 250 degrees Fahrenheit Now these are the large boilers I was referring to, the hot water boilers in which, although there is no steam space, some of them in temperature, approach 700 degrees and a static pump pressure approaches 700 pounds And the potential hazard in a boiler such as this is almost beyond belief We have water under pressure and under temperature held in a contained vessel, any failure of which would cause a rupture, the tremendous expansion of the water as it suddenly went from water into steam I believe the factors are in the neighborhood of 1,500 times Of course, this is what creates the tremendous power It is a little hard to visualize, but you can see in the pictures and many, many other pictures like them that are available that it is worse than a bomb

The third subsection (c) would bring under inspection the steam and water boilers, both, which were under 15 pounds pressure and under the 250 degrees Fahrenheit and under the 160 psi. That, in effect, is what the bill would try to do. Presently, as Mr. Molles stated, there are literally hundreds of thousands of boilers that are exempt from the code and we believe that it is necessary to do something about inspection How, is another problem

Under Chapter 6, Section 7770, we would suggest an additional change This section was designed to pinpoint the responsibility and make it a criminal act to willfully or from neglect or from ignorance allow an undue quantity of steam to be created. Under today's situation, a boiler could explode disastrously with an undue internal pressure of water without any steam and, therefore, these boilers that we are talking about, literally hundreds of thousands of them, are presently exempt from this chapter Section 7770, of course, makes it a felony where life is endangered, and Section 7771 has to do with loss of life

The amendment would delete the words "engine, or other" inasmuch as we felt that "engine" is quite broad We all have gasoline engines and diesel engines and the word "engine" is entirely too broad, so we suggested it be changed to "steam engine" in the amended bill

There was the amendment at the hearings in Sacramento to cover specifically school buildings or buildings of public assembly. You will note that "quantity of steam" was deleted and in its place substituted "internal pressure " It may be that "engine" on line 15 should be deleted also and substituted in its place "steam engine."

Section 7771, in effect, is a duplication of 7770, however, it refers, as I said, to a situation where life is taken. The original bill deleted the word "steam" in front of "boiler" and it deleted "steam" in front of "engine," which apparently is in error. "Steam engine" should probably remain. We would suggest that on line 20 following the words "steam, used" that 7771 be amended as 7770 was with the addition of "school buildings or buildings of public assembly," that was left out of 7771 It was added to 7770 and we suggest that it also be added to 7771 On line 10 in 7770, the amended bill reads, "school buildings or buildings of public assembly " And we would suggest that it be inserted on line 20 right after the word "used " We are also concerned about the use of the words "or apparatus for generating or employing steam" and we would suggest that during the course of your consideration, some language should be added to cover the situation where there is strictly a water situation, where a high temperature is in question, where there is an absence of steam space and to bring all of these potential bombs under the same code, so that if someone did willfully do anything or from neglect create a damage they would come under the same law

I think at this time it might be good to briefly comment on how boilers are inspected in California That is, the Division of Industrial Safety is responsible for the inspection of the boilers and the issuance of the permits to operate. The division employs inspectors to perform this while the insurance companies who insure these boilers also employ certified boiler inspectors who can certify to the state that they have

made the inspection They make their reports and submit them to the state This is common throughout the United States and my understanding is there is no state that attempts to inspect all of its boilers

As an organization, we have the feeling that this practice occasionally has its faults We see no way around it because having the state inspect all of the boilers would be prohibitive It is my understanding that the ratio of state inspectors, and Mr Snyder certainly has the figures, is about five or six to one That is about five or six insurance company inspectors to one state inspector

There are areas in the state where there is inspection of low-pressure boilers The City of Los Angeles and, if there is a hearing held in Los Angeles, the Los Angeles city inspectors can certainly give you the details Briefly, it is this, the City of Los Angeles requires inspection of low-pressure boilers The inspection may be done by an insurance company and certified back to the City of Los Angeles and they have a number of inspectors on their payroll to perform this operation In the city school system in Los Angeles, the city schools are not inspected by the City of Los Angeles, Department of Industrial Safety boiler inspectors There is a fee charged in the City of Los Angeles for inspecting boilers annually, and the board of education doesn't care to pay the fee, so they inspect their boilers with their own insurance company boiler inspectors They have had some problems down there which will probably be taken up at the time of the Los Angeles hearing I don't want to comment on that inspection without them being present

The high-pressure boilers, which are those steam boilers over 15 pounds pressure, are inspected; they are required to have permits to operate. They must be constructed according to code and they do require the permits to operate, which involves an inspection before they can be started and an annual inspection The permit to operate is reissued for each succeeding year Now, this does not cover the low-pressure boilers below 15 pounds. It does not cover the hot water boilers, it does not cover the high-temperature, high-pressure hot water boilers

In that regard, I would like to say that presently, in the State of California, we are quite concerned about other pressure vessels We have unfired pressure vessels safety orders for air tanks, and low-pressure gas tanks, such as butane, do require permits to operate, do require that they be constructed according to code, and there is a periodic inspection required by the laws of the State of California I don't want to indicate that air pressure tanks are not dangerous They certainly are and an explosion could be disastrous with low-pressure gas These things should be inspected and required to be I believe that the potential hazard of boilers which are not now required to be inspected is as great or certainly greater in many cases than an air tank or low-pressure air

JOHN EDSON, *Boiler Inspector, City and County of San Francisco:*

We are proud of our code here; however, the inspection of all boilers can be improved, which we are doing from time to time We issue permits that they have to have; all contractors that install boilers have to

have permits to install, so we make sure that these boilers in our code are installed according to state and local building codes

We report all high-pressure systems to them and we require all insurance companies on low-pressure boilers to report to us This is on the annual inspection I understand that Los Angeles inspects every year. San Francisco inspects every other year.

We have two boiler inspectors We have approximately 1,900 low-pressure boilers which we inspect every two years High-pressure boilers, we have approximately 700 Part of those are reported to the state, and air tanks which we inspect, we have approximately 1,500 We inspect them and we have the insurance companies There are some other boilers that are inspected and they report to us We never see them except on the installation to make sure they are installed according to code

ROBERT J. OWENS, *Safety Engineer, Pacific Gas & Electric Company:*

As to the background, it is our opinion an adequate framework for the control of hazards from any fired or unfired pressure vessel used to generate steam pressure by the application of heat (power boiler) already exists and is adequately covered by state orders promulgated by the State of California, Department of Industrial Relations, Division of Industrial Safety, pertaining to this subject This is as it should be, as such orders are flexible and can be revised from time to time to fit changing conditions and applications as technicial developments may require.

From our observations, there have been very few serious accidents which have occurred that were directly attributable to violations of these orders, particularly so, when we consider the large number of boilers in operation every day throughout the years in California And it is our feeling, very definitely, that the Division of Industrial Safety, Boiler Inspection Department, has done a very, very splendid job in surveying, advising and carrying out their responsibilities in this regard.

Now, it is our opinion that these matters should not be regulated by statutory enactment, but rather, that they be handled in the manner which presently prevails Handling of such matters by statute is most cumbersome as compared with the procedure followed by the Division of Industrial Safety I am sure that all of you gentlemen are in accord with our thinking and basic principle, which is, that we should not legislate in this regard just to legislate We believe that the aims intended by the authors of AB 2896 can best be accomplished under the existing framework and authority vested in the Division of Industrial Safety without further legislation in this regard.

ARTHUR I SNYDER, *Supervising Engineer, Pressure Vessels, Division of Industrial Safety, Department of Industrial Relations:*

I think there is no question but what this statute on boilers and pressure vessels needs a critical review at this time and I think it is very well that your committee is taking the time to do this This law was first enacted back in 1916 or '17 when boilers were not constructed

to any known standard and they set up standards that were suitable for that time which I think were very adequate However, in the ensuing 45 years or so, we have had some very rapid changes and drastic changes in technology that involved entirely new uses of this equipment, and new materials are being used to take care of the situation It is certainly possible that the standards that we have in our law are not adequate for today's technology and I believe it certainly does need a critical review at this time

If the boiler is fitted, even high-pressure boilers, if they are fitted with certain controls, we recognize that the boiler can be left for short periods of time and the operator could have other duties With low-pressure boilers, we do not have this degree of attendance spelled out that closely, so that I don't know that I could answer the question I do know that in some of these installations, particularly low-pressure boilers, the operator has other duties that take up probably more time than the boilers.

That is why, in our recommended minimum controls we developed in 1954 and 1955 for low-pressure boilers, one of the key controls that we required for these operations of low-pressure boilers was a high limit control that would operate if the operating control failed and would require manual resetting This would shut the boiler down and it would stay shut down until the operator came back and then he would know that something was malfunctioning Prior to that time, this high limit control did not require the manual resetting and we found evidence of cases where the operating control had started to malfunction and the boiler was actually operating on the high limit control but the operator was unaware of it Then this recommended minimum control which we hope to get into our safety orders and we hope to incorporate this feature into our regulations

I would agree that no boiler should be left completely unattended I feel very strongly about this and I think everyone would agree that all boilers are potentially hazardous pieces of equipment and potentially lethal weapons and they should not be shoved off into a corner and forgotten about Someone at the place of employment should be, it seems to me, delegated the duty and responsibility of seeing that the boiler is properly taken care of I would also believe they would have to agree that the degree of attendance is somewhat dependent upon the installation, but I agree 100 percent that you must have a maintenance program to maintain controls if you aren't going to have constant human attendance, if you are going to have a safe installation

The training of properly qualified inspectors is certainly a practical problem that we cannot ignore We have found it increasingly difficult to employ competent people in this field As a matter of information to you, we presently have eight vacancies for this position We find it difficult to get qualified people One solution is that which Mr Fox mentioned of possibly setting up an apprenticeship program to train these people, but this takes time also

Assuming the same ratio of low-pressure boilers to high-pressure boilers are insured, we would probably, I would say, require somewhere

in the nature of 15 or 20 additional field personnel to handle this workload And this I would want to make very clear is all a guesstimate because we very honestly do not know how *many* low-pressure boilers there are in the state They are not required to be recorded, they are not required to be inspected, and we do not know We do know very precisely how many high-pressure boilers there are, but the low-pressure boilers we do not

We try to delegate all of this to local people that they will take For example, we do not inspect in the City of Los Angeles at all if the city makes the inspections We do not inspect boilers that are inspected by certified inspectors employed by insurance companies The law, as originally written in 1916, permits the division to delegate this work, and we believe it was a wise move We would like to, let us say, delegate all of it if we could, because we think this is the most economical both from the standpoint of the state and it is also the standpoint of the owners of boilers and pressure vessels, because there is certainly no need for them to open a boiler for two different people to inspect

At the present time there is somewhere in the nature of about 280 certified inspectors in the state to 37 state inspectors As you can see, the major portion of the work is delegated to other agencies

At the present for low-pressure boilers, we require, in our administrative regulations, that they be constructed according to the nationally recognized standards We also require certain controls to be on the boiler to permit them to operate reasonably safe We also require that they be attended by a competent attendant

JOSEPH MCBRIDE, *Supervisor, Heating and Ventilation, Board of Education of San Francisco:*

I believe someone brought up the question as to who maintains and operates the boilers in the schools In all the high schools, we have operating engineers maintaining the boilers and in the junior high schools In all the elementary schools, they have janitors and custodians there full time It is up to us to instruct them in their duties in such as that but with 135 schools, counting the high schools, that is a physical impossibility, counting the paperwork, maintenance work, etc , although it is a requirement of civil service and the Board of Education In all the boilerrooms throughout the school department, we have instructions for them.

Some of our elementary schools are so small, it is not feasible to have an operating engineer They have a small cast iron boilers in most cases, although we have a lot of steam boilers in these schools We have schools where they have both steam and hot water, in the same boilerroom Rather than make it a standard design there for easier operations for the man, where you may have an addition, they put in hot water although there was an original steam boiler

One thing I would like in this law for my own personal protection would be yearly inspection, internal as well as external, of valve safeties and the boilers, particularly on these water controlled Just because they are inspected, that is no sign they are going to be working three months, or six months from now But if you are only required to open

them up every two years, that is a long time to wait, because sometimes the condition of the water is such that you get quite a bit of sediment in it which affects the full control in these water operated types I would like to see them opened up every year, but of course, that involves more money, too, which we are always up against.

JOHN GERHARD, *Chief, Fire Prevention Bureau, City of San Jose:*

Unfortunately, the City of San Jose does not have a drive to inspect these low-pressure boilers as do other cities and it is also unfortunate that Penney's had this happen in our city But one thing the city would like, and I don't know where the money is going to come from in this state to carry this out, but we would like the state to adopt rules for these low-pressure boilers and also to supervise the inspection I know that is a knotty problem but that is our position If for some reason the state did not provide the manpower to inspect the boilers, I presume the city would have to because another explosion like Penney's would leave a blight on the entire state But it is the position of the city administration that they would like the state to adopt the rule and also enforce it, if possible

One of our problems is that we actually have nobody who is competent to go there and inspect the boilers I know I have nobody in my office and I don't know of anybody in the actual city employed for that purpose But we have—let me read you one little thing that we have in our law at the present time, and this was there before the Penney's explosion "No person shall use any boiler or steam generating apparatus of over 10 pounds pressure per square inch who has not at the time of such use a certificate showing that said boiler or apparatus is in good and safe condition " There is much more to this, but, in essence what it amounts to is that we have a board of steam engineers or board of engineering examiners who are appointed by the city managers and serve at his pleasure, and they give examinations But these people are private citizens and work without pay And this only covers boilers that have 10 pounds pressure per square inch or over This particular boiler we are talking about in the explosion, that was inspected by an insurance company representative, if I remember right, about 17 months before and presumably had been inspected every two years, and was coming up at the end of another two-year period

ORMOND B STULL, *Associate Fire Prevention, Explosives, State Fire Marshal:*

I have worked in the office of the Fire Marshal for 8½ years and during this period, considerable time has been spent in the field of inspection We check the schools and we do check boilerrooms and we try to pick up the obvious hazards Some of these we know have been pinpointed and we check to see if there is an inspection being made by the insurance company or the Division of Industrial Safety and this follows through on the other facilities that we deal with also But then, as with all of our facilities, responsibility is delegated to the local fire authorities and here we have in many cases, the volunteer fire departments We have some 1,000 departments in the state and perhaps 400

of these are volunteers, so you know the inspection work in some of these facilities isn't being done We also have a small staff and we do assist them if they request our assistance So there is a very definite need for, we feel, a routine inspection, particularly on the boilers, and how to pay for this is the problem

ARTHUR G CLARK, *Chief of the Mechanical Bureau, City of Los Angeles:*

Our primary purpose is to assist the committee in any way we can, as far as the city requirements are concerned, and secondly, we would like to raise two questions here The first question pertains to Section 7621, subsection "e"; it is on line 11 We feel that the wording in this particular line is rather vague, and we are not sure exactly what the intent of this was The way it reads, it appears as though an open pressure vessel—or an open vessel, not neeessarily under pressure—would be subject to the definition of a boiler If I may read that part—it states, "or water pressure less than 160 psi"; so this would mean any pressure less than that apparently would be included in the definition of the boiler

I believe the wording is a little confusing there, if I may say so, and I believe it should be clarified Because as I read that, it doesn't make any difference whether it is the boiler or not, if any fired or unfired pressure vessel with the water pressure less than 160 psi, now if you mean more than 160 psi, that's different.

We also made that objection before, but if it isn't within the scope of a water heater of 120 gallons, if it is an open vessel, which it might be and not be a water heater, it looks like it would still be included I just raised the question before the committee, because I think that this subsection "e" needs some revision as to wording

Our second question pertains to Section 7770, line 11 again, and here again we raised the question as to what is meant by buildings of public assembly We have been unable to find any definition in the Labor Code, or elsewhere, as to what the meaning of buildings of public assembly is

We do inspect all pressure vessels in the City of Los Angeles on an annual basis We do inspect some of these hot water boilers, as they are called, by our plumbing division, and they are not subject to annual reinspection Now this generally is in the range of 120 gallons or below and it is covered by the ASME Code This is a first time inspection only—just like in any other plumbing or a domestic hot water heater

The hot water boilers above that—that are slightly above the 120 gallons—our boiler and pressure vessel inspectors inspect them also, but again only on a first time inspection This briefly is what we do It is a permit system We are a building department, and we have two sections that operate under state regulations On steam boilers, we have an annual inspection On any steam pressure at all, low pressure or above, we have one, what we call principal chief inspector, three seniors and nine field inspectors—field engineers And in addition, of course, a supporting staff,

HENRY B ELY, *Legislative Counsel, Construction Industry:*

I would like to point out how many agencies are concerned with boilers, at least a few of them, and then I ask why is this in the Labor Code The Legislature, very wisely, tried to make uniform laws governing the construction and maintenance of buildings, and we have the Uniform Building Standards Commission, which has been established by the Legislature Then, at a recent session of the Legislature, the Uniform Housing Act was passed The Uniform Housing Act applies to apartments, hotels and dwellings, and under the recent Title 24 of the Uniform Housing Rules and Regulations, there are rules and regulations governing hot water heaters, and there will be further rules and regulations Then, of course, as indicated, under Title 8, the Department of Industrial Relations, Division of Industrial Safety, regulates boilers in various manners, and they have completely revised recently, as indicated, their rules and regulations on fire boilers, which are covered here

Then there are the regulations of the department enacted in 1955, which it was indicated may be changed as to fire boilers Then, in addition, we have the Uniform Plumbing Code, which is about to be adopted and has been adopted in Los Angeles as to gas-fired water heaters and water boilers Now, when you were talking about construction and maintenance, we are talking about putting more costs on the public by having too many rules and regulations I submit to the committee that they should consider the place of this boiler installation license, as well as annual inspection for boilers and the whole picture of the building code, because I hate to see, after the Assembly worked for five years or seven years, getting the Uniform Building Standards Commission and uniform consideration for various state agencies, that then it should start enacting additional laws involving buildings and construction

The need for legislation is always based on the problem at hand. We have had a serious accident in San Jose, one was mentioned in Atascadero and one in Los Angeles We don't want to belittle the seriousness of those accidents, but if we are going to regulate and have inspectors inspecting every type of boiler and hot water heater, except as specifically exempt, we are undertaking a great deal of regulation and cost

We feel that the abuses haven't been shown, the dangers haven't been shown to be sufficient to have hordes and hordes of inspectors Now, as I say, as to subsections "a" and "b," we have no objection Those are dangerous, and we think that they should have inspection, but we might make a suggestion to the committee that if there is some specific problem within subsection "c" that a meeting be held of the interested parties to see if a proper definition can be worked out.

BURTON A CURRIE, *Assistant Engineer in Charge of Operations, Department of Water and Power, City of Los Angeles:*

As Mr Clark and others have pointed out, this subsection "c" is so all-inclusive, I think that some further study should be given to it And the second comment I would have is that with reference to

domestic-type water heaters of 120-gallon capacity, or less, this was included as an amendment, and as far as the Department of Water and Power is concerned, and its operations of electric water heaters in residences, we feel this exemption is a fine amendment and should not be changed

I checked this morning with our electrical servicemen who maintain these water heaters throughout the City of Los Angeles, and they tell me that they have never had an accident through the years, that they know of. Occasionally, as with any other mechanical device the thermostat might stick or an element might be grounded causing the heat to continue and water to boil, but this backs up into the supply lines and does not create excessive pressure And this is something that we feel should be maintained, and otherwise, the intent of the changes, the better definitions, we are in favor of it. We feel that anything that can make the operation of these devices safer is in the public interest and is good.

J. W. SCHAEFER, *Building and Grounds Services Administrator, Los Angeles City School Districts:*

Let me state unequivocally that the Los Angeles city school districts are sincerely interested in the safety of the students and the employees This is shown by the fact that every year thousands of dollars are spent in improving conditions and teaching safe practices We have recently completed a retraining program for 1,300 custodians who are, or may be operating low pressure heating plants Examinations were held and certificates of completion issued to the successful custodians

There is no record of there ever being a boiler explosion in the Los Angeles city schools in all of our years of operation We have had a few minor firebox explosions in our districts

If enacted into law, the effects of A B 2896 on the Los Angeles school districts is considerable The amendment eliminates the exemption of low-pressure boilers as shown in Section 7625, subsection "b" of the Labor Code It then has the effect of classifying low-pressure heating plants with high-pressure boilers, and makes the operators subject to Chapter 6, Mismanagement of Steam Boilers, Sections 4 and 5, which has penalty clauses, definitely affecting the operator. If this happens to become law, it will be necessary to assign a custodian full time—to the full-time operation of a heating plant

The above action would require the addition of operators in over 400 schools at an added cost to the districts and taxpayers of between $1,500,000 and $2,000,000 annually.

Because of the above facts, I want to go on record as a representative of the Los Angeles City school districts in opposing AB 2896 You know what the school districts are doing in the way of safety, what we are teaching our custodians, how we are teaching them, what we are requiring of them We have instructions posted in the boiler room for operating and servicing oil-fired, low-pressure steam and hot water heating systems When we have combined systems, we post both of these. We also have this record posted in the boiler room, which must

be kept daily as to the day of the month, the startup time, the temperature at the startup time, shutdown, all the way through, so we have an accurate record of what has happened during the day on each and every boiler in the district

We have very well-trained, very acceptable operators who did the training in this field Our area operations supervisors in all cases have come from the custodial field with a tremendous background in years of experience in operating equipment. They have done the instructing

The question also was raised about the city inspecting. Now, prior to 1960, the city and the state both, along with the insurance carrier, did some inspection of boilers in the Los Angeles city school districts At that time, I believe they were doing it on a no-fee basis, and we ran into difficulties in getting the work done, the inspections made—primarily because of a shortage of funds, I am sure.

We did then go to our carrier—insurance carrier, and the insurance carrier now makes annual inspections of every boiler, high and low pressure, in the districts Granted, you can't inspect the inside of a cast-iron low-pressure boiler, but you do and can inspect the controls, the low-water cutoff, the safety release valve, and so forth Beside that, these items, these safety controls are checked daily by the custodian in charge of the boiler. The way he shuts down a low-pressure boiler is to run the water down and kill the cutoff The lower water level cutoff shuts the boiler down. This indicates at that moment the safety cutoff is working

The installation is inspected by our heating inspector, who is a qualified heating inspector, licensed and who is accepted by the insurance company and they, therefore, will grant the insurance based on his acceptance.

Now, I think it should be remembered that there is one reason that the city could not do all of this boiler inspection if it wanted to The school district is almost twice the size of the city. We have many incorporated cities besides Los Angeles within the school district; therefore, we would get into working with every incorporated city, plus the county, and the problem would be just tremendous It would be almost impossible to work out, so we feel we are far better off with the insurance company's qualified inspectors

To bring this point to your attention, we have 453 locations where we have boilers — low pressure and high pressure There are only nine locations with high-pressure systems Now there are also some sites in which we have 14 low-pressure boilers on that one site, and if we should ever get to the point where we have to treat them the same way we treat the high pressure, which means the operator cannot leave the boilerroom for more that 10 minutes at one time, it would be impossible for him to get from one boilerroom to the other and over all of these within that 10-minute period It just can't be done

The following are pertinent excerpts from testimony on AB 2364 given at the hearing in Sacramento, October 19, 1964:

DANIEL MOLLES, *International Representative, International Union of Operating Engineers:*

If we can accept the concept that a steam boiler is a potentially hazardous instrument or machine, and if we can accept the concept that setting the machine in the hands of a totally incompetent person increases the possibility of accidents, we must also accept the concept that something can and should be done to control, to evaluate the knowledge and capacity to function properly of an individual assigned the responsibility of operating boilers It is our belief that the most commonly used method, that is, licensing after examination of such individuals, is the answer for the State of California If there are better ways to control competency, or rather to avoid the assignment of such a machine to the hands of an incompetent, we, as advocates of this particular piece of legislation, are willing to accept that Every individual who has anything to do with a steam boiler in the State of California—that is, design, erection, construction, and inspection—must meet rigid standards as to their competency, their training, and their experience Yet after all of these precautions are taken, the same boiler under present law may be placed in the hands of a person who is totally incompetent The State Labor Code requires, on certain types of so-called high-pressure boilers, the attendance of a human being, a competent human being, and yet no method is provided for determining his competency. In other states, in cities within our own state, the method of determining such competency has been the examining and issuing of a certificate of competency for a license to control this factor. I represent a labor organization that numbers among its members men who are boiler operators, and yet I wish to make clear that we do not consider this bill, AB 2364, to be a craft licensing bill, for the simple reason that the operation of a steam boiler represents only a small part of a stationary engineer's work functions In the State of California, a modern industrial state by and large, an individual who can only operate a boiler is almost unemployable The operation of a steam boiler, as hazardous as it is and as important as its control is, is a tool of the trade There are many hundreds of workmen in the State of California who operate boilers of all sizes and shapes, who are members of a wide variety of labor organizations, industrial unions, such as the rubber workers, the automobile workers, chemical workers, craft unions, electricians, boiler makers, teamsters, and so on There are hundreds of individuals employed in the State of California as boiler operators, who do not belong to any labor organization

MERLE MILLER, *Association of California Manufacturers of Coil Type Forced Circulation Boilers:*

The California manufacturers of coil-type forced-circulation boilers are vitally concerned about the safety of the operator and those persons within the near vicinity of the boiler We would not want to recommend any legislation that would endanger the lives of any persons On the

other hand, we certainly do not feel that you would want to pass any law that would only add economic burden to hundreds of California business concerns where such costs are entirely unnecessary If a miniature boiler is exempt from these requirements, then we feel that any other design of boiler that is proven to be less hazardous, should also be exempt

We believe that every boiler should be properly installed and correctly maintained by competent personnel That we definitely feel should be done However this does not require constant attendance of a boiler operator or a stationary engineer for equipment which is inherently safe against any possible hazard from a steam explosion It is our contention that safety regulations should be based on the potential hazard which might result from a steam explosion rather than on a general basis, which would include all types of boilers regardless of their inherent safety Mr Walter Parker, chief engineer for the Hartford Steam Boiler Inspection and Insurance Company, in a recent article in the *National Board Bulletin*, stated that "if a failure should occur in a coil-type water tube boiler, the release of energy is relatively small " It's the sudden rupture and release of all the water flashing into steam that causes a boiler to release such destructive energy This condition cannot occur in a coil-type boiler where the water is released in a small quantity, should a rupture occur

Since we are primarily concerned with safety, may we request that the coil-type, forced-circulation boiler be judged strictly on safety and classified on an equal basis according to the potential hazard to operating personnel If a miniature boiler is considered to be safe from the hazard of a steam explosion, then other types of boilers having less water content should likewise fall within the same class, in the writing of these regulations.

ROBERT HANLEY, *Legislative Representative, California Farm Bureau Federation:*

The California Farm Bureau Federation, which is composed of 53 county farm bureaus in 54 counties, having an aggregate membership of approximately 60,000 farm families in California, has been at somewhat of a loss to determine the impact of Assembly Bill 2364 on agricultural operations and the extent to which such operations would be affected by the bill in its presently amended form

Under the broad definitions of major mechanical equipment contained in the bill, and without limitation as to size, horsepower, etc, of such equipment, just about every piece of stationary power plant equipment used by farmers would be covered With over 200 commodities being produced commercially by California agriculture, each of which undoubtedly employs some or several pieces of stationary power plant equipment, it would be a major undertaking to make a field survey of such equipment We did, however, attempt to obtain as much information as possible by mail, and here again, because of the lack of explicit definitions, it was difficult to document information as to what would come under the meaning of this equipment and what would not

I do not wish to take the time of the committee to quote from all of the letters we have received from various commodities producers in groups, including livestock and dairy, hops processing, hog feeders, fresh and frozen vegetables, citrus, poultry and eggs, hatcheries, irrigated crops, bulb growers, and even mushroom growers I believe there are a number of growers present who could speak for some of these commodities, if you care to call upon them The important flower-growing industry is definitely affected.

We believe that insofar as agriculture is concerned, the bill is impractical in its application to on-the-farm operations and would result in many complications and unworkable situations As you are doubtless aware, all mechanical, electrical, and similar operations in agriculture are subject to safety orders of the Division of Industrial Safety It is our belief that procedure through present laws and regulations of the division is the most desirable approach in the interest of safe operation of equipment as covered under the bill. We would urge the committee to seriously consider following this latter course of action, rather than report favorably on AB 2364 as it is presently, without a great deal of further study

WILLIAM ENOMOTO, *California State Florists Association:*

In California we estimate there are slightly more than 1,000 flower growers and of these possibly 400 are greenhouse flower growers In describing the flower growing industry I can safely say that our magnitude is about equal to say the cling peach industry in agriculture, and also the lettuce industry, such as the one in Salinas and Imperial Valley, so we are not just a small section or small corner in the total agriculture picture in California, but these thousand or so growers have made an industry in California to make California the flower basket of the United States

The boiler plays a big, important part in the greenhouse—it is really the heart of our industry—in bringing off-season flowers and in bringing them in the quality that will be acceptable in the United States market However, many of our operations are seasonal, in that several months of heating may be required for some crops, and other crops, such as roses, require year-round heating.

This bill, if enacted as it is, could conceivably drive most of us so-called medium-sized operations out of business. They are all owner operated, and because they are owner operated, the attendants on our boilers are very thoroughly trained by the owners, and the owner, recognizing that it is the heart of his business, makes sure that the maintenance and equipment are in proper order I think we can be very proud that our workmen's compensation insurance is among the bottom of the list in all industrial activities That is because it is owner operated and it just makes good sense to see that his business is operated efficiently and in a safe manner I cannot recall any boiler explosion in the flower industry. There may have been, but I do not know of any myself in say the last 25 years that I have been in business

Now in our industry we do not deal with the public and no one lives in the structure where the boiler is (usually it's quite isolated) and

therefore I would like to suggest that if boilers are used in the agriculture operation, if they are housed in a separate structure where no one is living or where the public is not admitted, that the boiler in that structure be excluded from the requirement for the licensed engineers.

CHARLES KERSHAW, *Imperial County Farm Bureau Association:*

I am part owner of a family business engaged in cattle feeding and farming in Imperial Valley since 1929, and in the commercial cattle feeding business for 15 years.

For several years now we have been rolling grain for cattle feed, an operation which as you know requires steam. Modern boilers, such as ours, are equipped with numerous safety devices which automatically prevent them from operating in the event of any mechanical malfunction. In order to have adequate insurance coverage it is necessary to comply with present state requirements concerning boiler operation and maintenance. Boilers are periodically cleaned and thoroughly inspected by state-approved inspectors, and state operating permits are issued only if prescribed operating and safety standards are complied with. I agree that safety precautions regarding boiler operation should be strictly adhered to; these precautions are explicitly and, I think, adequately defined under present California state law Passage of Assembly Bill 2364 requiring a licensed operator to attend certain boilers would not, in my opinion, necessarily provide greater safety in boiler operation. In view of the fact that efficient and reliable safety devices now in use already assure safety in boiler operation, safety would not necessarily be improved by having a licensed operator in attendance, this opinion is shared by all other cattle feeders I have contacted.

RICHARD MCDOUGAL, *California Cattle Feeders Association:*

The California Cattle Feeders Association, a nonprofit, nonmarketing organization, was organized in June 1953. It is composed of cattle feeders and feedlot operators throughout the State of California. At the present time in California there are approximately 600 feedlots, 400 of which are active. Within the organization we have 250 feedlots, which generate $500 million in sales every year On these feedlots we have approximately, and this is in estimation, approximately 200 boilers.

Perhaps I could explain to you why we use boilers It's in the barley rolling that we use the steam. It enters into a chamber where the barley gradually flows through this steam and it softens it so it can be rolled out flat without having a great amount of dust in it Members of the association are very safety conscious. They employ every safety measure and device possible to insure the safety of their employees, in an effort to reduce hazards and to improve the efficiency of their methods of operation Accidents of any kind are expensive and wasteful Feed processing facilities for cattle feedlots, those using the kind of stationary boilers referred to in AB 2364, are not assembling places for groups of people, and as a rule they are not close enough to residential

areas to be a hazard from the standpoint of a boiler explosion We feel that the provisions of Assembly Bill 2364 would place an additional and unnecessary expense on the cattle feeding industry. We firmly believe that the requirements are not needed in this industry, and hope you will amend the bill to permit us this

IVAN GENNIS, *California Society of Professional Engineers:*

The California Society of Professional Engineers is a society concerned with the professional aspects of engineering, the public interest and the relationship of the engineer to the public interest. We have no quarrel with licensing of operators of the steam plants if this is deemed to be in the public interest We feel that certain aspects of the proposed bill are not in the public interest One of those is the use of the term operating engineer or stationary engineer Professional engineers have been registered in California since 1929 and we feel that the confusion between a registered professional engineer and a licensed engineer or whatever term is used to describe a boiler operator would not be in the public interest because we have enough confusion in this area already.

The other aspect is that there should be no question of the right of a professional engineer to supervise the operation of these installations These are designed initially by professional engineers and the installations themselves are getting highly complex. We're getting into nuclear structures and things of this nature. If a bill of this nature is passed, it should spell out the right of a professional engineer to supervise the operation of these more complex locations.

RICHARD GERHES, *Gerhes and Todd, Consulting Engineers:*

My interest is that of the registered professional engineers I have one point only, and that would be with respect to the degree of experience that the examiner must have who is going to state whether or not a man is qualified to operate a boiler I think it has been stated here this morning by others that the American Society of Mechanical Engineers is basically the controlling code for the construction of boilers Here in the State of California we have the title "mechanical engineer." Prior to the use of that title, one must qualify himself by state examination as a professional engineer I think we all recognize, and I'm sure I do, that there's absolutely no substitute for experience This is essential in determining whether or not a man is going to be qualified to operate a boiler, but in order to establish some standard of formal education of this examiner, I think we can at this point rely on the professional engineer

H J STONE, *California Employers' Safety Committee:*

It appears to us that the proposed bill, A B 2364, is so inclusive that it would require licensed employees in attendance at hundreds of thousands of units which, because of mechanical safety guards, should need no such constant supervision. It is the feeling of the safety engineers who make up the membership of the California Employers' Safety Committee that enactment of legislation of this type is the wrong ap-

proach to the accomplishment of safety It appears to us that it will tie the hands of the California Division of Industrial Safety, will make safety controls inflexible and is likely to increase the incidents or accidents from human neglect and would be difficult—if not impossible —to administer

It is our opinion, based on long experience, that adequate control of safety should remain the responsibility of the Division of Industrial Safety of the State of California, so that any changes or additions that may be deemed necessary may be included in the safety orders which are more flexible to administer and can be amended with the minimum of delay as conditions warrant Enactment of unnecessary statutory controls tends to limit prompt action in the correction of a real safety hazard

Realizing that the safe operation of boilers depends upon the construction and control systems, we now have fail-safe devices on all our pressure vessel systems so that regardless of the cause of mechanical or electrical failure, the boiler automatically shuts down in a safe manner.

It is our position that the work and recommendations of the Division of Industrial Safety will result in the greatest possible safety for all Californians We therefore urge that this committee's report recommend that the Division of Industrial Safety investigate the need for new or amended safety orders so as to provide proper controls of low pressure as well as high pressure vessels

AVY LEWIS MILLER, *President, Laars Engineers, Inc :*

I am a professional mechanical engineer, registered in the State of California, and Laars Engineers, Inc , the company of which I am founder and president has, for the past 11 years, been exclusively engaged in California in the manufacture of boilers During this period more than 50 000 boilers of our manufacture have been installed and are in operation in the State of California This is recited by way of pointing out that we have some competence and considerable experience in the boiler field.

The manufacture of boilers is one of the most stringently regulated and supervised of all industries By state, county and municipal code most boilers installed in California must be approved by the American Society of Mechanical Engineers (ASME) and/or the American Gas Association (AGA).

The effect of this excellent and smooth-working combination of industry self-regulation and government regulation has been that boilers have established for themselves a remarkably good safety record In our own experience we know of only three Laars boilers which have caused injury or property damage, and I am sure that our friendly competitors in this field have an equally good safety record

I think it proper to point out that to add the cost of attendance to the cost of operating a boiler would, in most instances, force the user to some other form of heating, and I respectfully suggest that it is very possible that the alternate methods of heating may be inherently more hazardous than a modern automatic unattended boiler

J W SCHAEFER, *Administrator, Buildings and Grounds Services, Los Angeles City School Districts:*

From the wording of Assembly Bill No 2364, it appears that the intent is to require licensed operators on all boilers, including the low pressure type. Exceptions are stated in Section 9951 (1 and 2)

May I enumerate the items that are worrying those of us in the Los Angeles School District responsible for the maintenance and operations of the school plants.

The initial fee and the renewal fee would be paid by the employee who is near the bottom of our salary schedule, ranging from $355 to $440 a month. They can little afford this expense and since it is not legal for the district to pay these fees, the burden would fall directly on the employee

To hire new employees with the necessary two years' experience, we would undoubtedly be forced into hiring engineers at a salary rate of $516 to $641 per month This poses another problem, will we be able to convince an engineer that he must sweep, dust and do other custodial chores for six out of his eight-hour assignment? I doubt it

If A B. 2364 becomes law and we are forced into hiring engineers to watch automatic controls work, the cost to the Los Angeles City School District and the taxpayers will be between 1½ and 2 million dollars annually.

This definitely affects the ratio of instruction costs to all other costs, the 55-60 percent law

Because of the above facts and the belief that the money for this could be better spent on educating the children, I want to go on record, as the representative of the Los Angeles city school districts, as opposing A B 2364

KARL SCHULZE, *Fire and Safety Committee, Western Oil and Gas Association:*

We are opposed to this bill We assume that the sponsors of the bill wish to improve safety and we approve of and agree with this objective However, we do not feel this bill will accomplish an improvement in safety

We feel the way to improve safety is to study the accident history and take steps to correct the conditions which lead to these accidents, as shown by the history

There is no history to show that there is any need for licensing or that it will improve safety In fact, one of California's most recent serious cases took place in a town which I understand requires licensing, and the licensing had no effect whatever on the prevention of this occurrence

Further, the state has an adequate method of control by the use of its safety orders If additional safety is needed, the way to attempt to obtain it is through revision of these safety orders

Our association stands ready at all times to cooperate with the Division of Industrial Safety in revising any of its orders We have done so in the past, and we'll continue to do so in the future We feel this is the way it should be done.

CHAPTER 3

KAISER STEEL CORPORATION LONG-RANGE SHARING PLAN EXECUTIVE HEARING, KAISER STEEL PLANT, FONTANA, CALIFORNIA, SEPTEMBER 2, 1964

On September 2, an executive hearing and tour of the Kaiser Steel Plant at Fontana, California, was held by the full Industrial Relations Committee The purpose of the meeting and tour was to gather information on the long-range sharing plan of the Kaiser Steel Corporation and its effectiveness in dealing with technological change and employment dislocations resulting from it This sharing plan resulted from the collective bargaining agreement entered into between the Kaiser Steel Corporation and the United States Steel Workers of America on October 26, 1959, which established a long-range sharing committee consisting of executives of the corporation and officers of the union It represents an historic development in dealing with the impact of technological change and automation in particular The long-range sharing plan is a significant step in meeting one of the fundamental concerns of our time—that is the concern that there is an orderly adjustment to current technological change which enables industries affected to soften the impact on the economy, provide for employment relocation of the displaced, and permit both industry and employees to derive benefits.

The committee wishes to express its thanks to Mr Joe Ternes, director of state relations, Kaiser Industries Corporation, and Mr Ralph L. Vaughn, assistant to the executive vice president, Kaiser Steel Corporation, for the courtesies and kindnesses extended to the committee in connection with its hearing and tour of the Kaiser Steel Corporation plant

FINDINGS

1 The Kaiser Steel Corporation and the United Steel Workers of America are to be commended for their intelligence, initiative, and foresight in working out the long-range sharing plan

2 The plan commands the study of its feasibility for other industrial concerns

3 This type of plan does help in the overall problem of employment dislocation and scarcity brought about by automation or technological change in general in that it avoids a further compounding of the problem by providing for a given industry to control its own internal problems

4 This plan does not deal with and is not intended to deal with the fundamental problem of the need to expand existing industries, create new industry, or regulate employment in order to deal with technological employment displacement, employment opportunities for the

constant influx of new entrants into the employment market, and the dependency of our prosperity on the maintaining of a high public buying power potential

Kaiser Steel Corporation Long-range Sharing Plan

Statements were presented to the committee by:

RALPH L VAUGHN, *Assistant to the Executive Vice President, Kaiser Steel Corporation*

GEORGE SIROLLI, *Staff Representative, United Steelworkers of America*

KEITH GEIBERT, *Staff Representative, United Steelworkers of America*

The following are salient parts of the statement of Mr Vaughn

"I would like to briefly set the stage, if I could, with a little history. As the chairman pointed out, this really started in October of 1959 This was after 104 days of strike that brought heavy financial losses to all parties. Kaiser Steel as well as the employees represented by the United Steelworkers of America The employees returned to work under terms of a contract that was really a new idea in management-labor relations For the first time, I think, the public was invited to become an active third party with management and union in forming a long-range committee to develop ways of eliminating incessant rounds of drawn-out negotiations and the threat of strike deadlines over matters of wages and benefits that have plagued industry in the past This language in the contract in part was as follows 'The parties shall establish a joint committee consisting of Dr George Taylor, chairman, David L Cole and Dr John Dunlop, and three representatives designated by each party to recommend for the consideration of the parties the establishment of a long-range plan for the equitable sharing among the stockholders, the employees, and the public of the fruits of the company's program The formula shall give appropriate consideration to safeguarding the employees against increases in cost of living, promoting stability of employment, to reasonable sharing of increased productivity, labor cost savings, to providing for necessary expansion and for assuring the company's and the employee's program '

"As a result of this committee being established, they started to function almost immediately It was not, however, until approximately three years later that all of the subcommittees which had been appointed started to bear some fruit It was in December of 1962 that all of the subcommittees brought some concrete recommendations to the long-range committee for their consideration which they subsequently approved and the employees had the opportunity to vote on what we now know as the long-range sharing plan Incidentally, the employee vote was overwhelming in favor of the plan to the extent of about three to one This vote was taken at the end of the year 1962 It was not until March of 1963 that the plan was actually put into effect

"I think there is one important point I should make here Before the employees voted, the union representatives held numerous sessions for the employees to attend so that they could clearly understand the details

of the plan, how it would affect them, what it would do to them, and what they might expect after the plan was installed I think this was one of the basic reasons that the vote was so overwhelming in favor of the plan itself As you know, the plan was installed in March of 1963 and we have been working under it since that time

"I think, for this committee, inasmuch as I am sure you are interested in a little more depth than just the details of the plan, if we could. I would like to briefly go through the underlying facts and assumptions which is on page two This really had to be worked out and agreed to as sort of guidelines for us to develop the plan Item No 1—progress—is achieved by an industrial corporation and its employees as a result of many factors including, but not limited to capital investments, advances in technology, public investment in community services and facilities, a skilled, intelligent, and alert work force, competent and skilled management, mature labor relations, and free collective bargaining"

Summary of Key Factors

Plan Coverage

It is a single, plantwide plan, covering all United Steelworkers of America employees (production-maintenance and clerical-technical) at KSC, Fontana.

Employment Security

Protection is provided against loss of employment and of income because of technological changes (automation) or new or improved work methods.

Standards

Standards include labor performance, material and supply usage, yield movements, and utilization of technological improvements Standards are developed for various products to permit adequate reflection of changes in product mix, as well as changes in operating levels.

Establishment of Standards

Standards are based on the actual experience for the year 1961, adjusted for wages and benefits put into effect through January 1963

Calculated and Paid

The plan will be calculated and paid monthly Payments of sharing plan gains will be made on the last Thursday of the following month

Protection Against Inflation

Standards are adjusted monthly by appropriate BLS indices to reflect industry and national economic movements The wholesale price index is applied to material and supply standards, and the consumer price index is applied to labor standards

Technological Investment

Net gains from technological improvements made to reduce product costs are shared

Sharing Ratio

The employees' share of the total net dollar gains generated under this plan is 32 5 percent.

Wage-benefit Reserve

A portion of the employees' share may be allocated for the improvement of an existing or for a new benefit, as the parties may decide.

Distribution of Employees' Share

The employees' share is distributed to employees not now on individual incentives on the basis of historical and equitable earnings relationships. Each occupation is assigned to one of five groups, with the maximum range of earnings relationships being 4:1

Existing Incentives

Employees on individual incentive plans may, at any time, withdraw from coverage of such plan in favor of full participation under this plan. In addition, such employees have the option, when offered by the company, of accepting a lump sum payment to eliminate their individual plan and thereby participating in the long-range sharing plan; or of continuing on their individual incentive plan.

Minimum Guarantee

Provision is made to ensure that the sharing ratio of standard labor cost to total standard cost experienced in the past is maintained. Also, unless changed or modified by this plan, all existing agreements between the company and the union remain in full force and effect under their terms.

Other Agreements

Grievances concerning application of or compliance with plan provisions will be handled under existing contract procedures.

Review and Duration

The plan is subject to review annually, is not applicable during periods of no finished steel production, and may be terminated by either party on the fourth anniversary date, and each fourth year thereafter.

THE LONG-RANGE SHARING PLAN

Introduction

The October 26, 1959, agreement between Kaiser Steel Corporation and United Steelworkers of America included an agreement of the parties to establish a joint tripartite committee The committee was charged with the responsibility of formulating, for the consideration of the parties, a long-range plan for equitable sharing of the company's progress The plan was to contain appropriate safeguards to deal with increases in cost of living, and was to promote stability of employment, reasonable sharing of increased productivity and labor cost savings and to provide for necessary expansion, all aimed at assuring progress for the company, the employees, and the public interest

The plan developed by the long-range committee has been conceived in the light of (1) the objectives of the parties; (2) the type of industry of which the company is a part; (3) the nature of the collective bargaining relationships involved; (4) the methods of wage payment and their relationship to production which have evolved in the basic steel industry; (5) the desirability of establishing a means by which all the parties at interest can achieve their objectives without impairing the vital function of free collective bargaining; and (6) giving due consideration to the public interest.

Underlying Facts and Assumptions

1. Progress is achieved by an industrial corporation and its employees as the result of many factors including, but not limited to, capital investment, advances in technology, public investment in community services and facilities, a skilled, intelligent and alert work force, competent and skilled management, mature labor relations, and free collective bargaining.

2 In order to attain and maintain mature labor relations, constructive attitudes must be engendered. constructive employee attitudes toward their jobs, toward the importance of the success of the business enterprise, and toward management, reflected individually and collectively through their union An integral requirement for achieving such attitudes on the part of employees and of the union, is the development on the part of management of appropriate attitudes concerning all of the human factors involved Not the least of these human factors is the need for security, recognition, equitable treatment, and appropriate sharing of progress.

3 An industrial enterprise is properly concerned with maximizing the return to its shareholders and maintaining and improving its competitive position. Unit costs are certainly a factor, although not the only factor, in its ability to accomplish these objectives. To the extent that rising dollar costs, whether they reflect rising hourly labor costs or rising material costs or other business costs, are absorbed by increased productivity through decreased labor, material or other requirements per unit of production, they present no problem to cost stability. It is possible, of course, to attain even a falling unit cost under conditions of rising total costs, depending upon unit requirements for labor, materials and the like.

4. Employees, and the union representing them, are properly concerned with the employees' job and income security, a rising standard of living, equitable wages, hours and working conditions, and a fair share of progress achieved.

5 The public is properly concerned not only with the avoidance of economic conflict between the industrial enterprise and its employees, but also with the achievement of stability of employment, increased productivity, improved quality and service, and increased economic returns to the community.

6 Some of the measures necessary to achieve the company's objectives are outside of the sphere of collective bargaining. With respect to such matters as sales policies, purchasing policies, research projects, management compensation, expansion of capacity and other similar areas, no measure of control is exercised by the employees or their collective bargaining representative.

The cost implications of management decisions in such areas are almost, if not completely, unaffected by the employees. However, in the case of labor performance, material and supply usage, yield improvement and utilization of technological improvements, product costs are directly affected by the cooperation and performance of the employees, as well as by management. There is a clear-cut opportunity for improvement in these areas. The gains achieved are, furthermore, measurable.

These factors, therefore, should be used as the basic determinants of a formula for the sharing of the progress which results from the mutual efforts of the company and the employees

7 Such improvements are reflected in the production value of a company Production value is the cost (not price) of the product sold It is a plant's internal productive effort in converting purchased raw materials into its finished product It excludes, for example, selling, administrative and general expenses, depreciation and depletion, lose or profit on sale of property, plant or equipment, interest, taxes, and profits The production value at Kaiser Steel is made up of approximately two-thirds material and supply costs and about one-third employment costs The ratio of employment costs to production value (about 1 to 3) has remained quite consistent over a period of years. This, of course, reflects a variety of factors including the results of collective bargaining Sharing in this ratio through future periods would mean a sharing of gains in the proportions achieved in the past, without setting maximum limits to the potential which exists

8 Formulation of a sharing ratio will not, of itself, generate gains to be shared A vital key to such progress is the relationship between labor and management at all levels, and especially at the plant level Work practices exist in every industrial establishment In fact, specific practices which take on the character of rules governing or guiding conduct exist everywhere Practices are neither "good" nor "bad" in themselves Moreover, they cannot be evaluated outside of the context in which they arose and in which they exist Only those who know intimately the meaning which particular ways of doing things have for the people involved, can hope to be constructive in this area, thus making it possible to bring about the improvements which may be necessary to achieve a proper balance between the goal of the lowest possible product cost and the human factors involved And even where objective solution can be clearly seen, habits, customs, ways of doing things change but slowly even in the best circumstances

A sharing plan can contribute greatly to the elimination of the obstacles to progress in this area Under a sharing plan, there are mutual advantages in putting into practice the best methods available. The economic progress to be shared is based on the ability to achieve, through cooperative effort, an improving productivity while maintaining a consistently high-quality product A sharing plan which also alleviates well-founded fears of job insecurity, when combined with education, understanding and cooperative discussion, will provide an environment in which the agreement of those directly involved can best be achieved.

9. Progress toward providing employment security and, in its absence, progress toward income security of employees has been made by the company and the union principally through supplementary unemployment benefits, seniority provisions, pensions, severance allowance, and a certain amount of in-plant training Accelerated progress toward additional productivity will be encouraged by providing additional employment and income security to the employees The interests

of all concerned will also be furthered by a thorough study of the types of training and retraining programs which may be required and the means through which such programs can be instituted

10 The company's records of employee turnover—retirements, deaths, quits—reveal an attrition rate which has consistently exceeded the long-term rate of employee displacement due to technological change and other causes related to improved productivity To the extent that this remains true, workers hired by the company need not suffer technological unemployment Given an attrition rate which exceeds the rate of increase in output per man-hour, steelworkers suffer periods of unemployment because of cyclical downturns, or because of. (a) temporary lags of the attrition rate behind the rising productivity rate in a given period of time, (b) fragmented seniority units which result in displacement of senior employees from one unit while hiring of new employees is taking place in another seniority unit, and (c) inability, at a particular time, of individual workers to perform the work required by vacant jobs Important strides will be made toward continuity of employment and income security by providing· (1) that increases in productivity will not result in loss of employment or income for the employees; (2) greater integration of seniority units; (3) training and retraining programs for employees in relation to the skills required for prospective job vacancies, and (4) conditions which will lead to improved product quality and customer service in order to earn and keep customers Of course, any growth in the demand for steel will be of great, additional aid in accomplishing this aim

11 While it is practicable to move toward continuity of employment and income of present and future steelworkers, it is important to note that the larger problem of creating additional, new jobs is affected by considerations which lie, at least in part, outside of collective bargaining The steps which can be taken to resolve this problem within the sphere of collective bargaining include such measures for minimizing layoffs and income losses as noted above, actions designed to stabilize or reduce units costs as a step toward gaining a greater product market, and development of progress on an equitably shared basis to enhance purchasing power through increased compensation It is apparent though, that the many additional measures required to achieve greater employment opportunities are largely outside the area of collective bargaining

12 Wage incentives have been an integral part of the method of compensation in the basic steel industry for many decades. In the early days of Kaiser Steel Corporation's operations, shortly after World War II, the company and the union negotiated a wage rate structure. When standard hourly wage rates were negotiated in the basic steel industry, these were adopted at Kaiser and supplemented by additional compensation Such additional compensation was applied only to certain production units and was designed to yield compensation in relation to levels which prevailed for such production units at the largest steel companies' plants. Subsequently, this method of payment was changed at Kaiser Steel by agreement to install individual unit incentive plans where economically feasible. At the present time, approxi-

mately 40 percent of the company's employees are covered by incentive plans of various types; 60 percent receive no incentive earnings Furthermore, within the 40 percent covered, there is a relatively wide variation in earnings levels under these separate plans. As might be expected, this situation creates numerous problems of equity among the employees. What is needed, and is desired, is an integrated equitable system of compensation In order to achieve this through a long-range sharing plan, there are certain basic requirements The plan should be designed to operate in conjunction with existing incentives. It should provide a potential for immediate gains for all employees, incentive and nonincentive. It should provide a means through which, over a period of time, employees covered by existing incentives can achieve higher compensation without such incentives than through their continuance. And it should be designed to produce earnings relationships of a more equitable nature among all the employees.

13. The plan has been designed to meet these requirements and to provide for automatic sharing of all the economic gains arising from manufacturing cost improvements as they are realized. In so doing, the plan will serve to minimize the area of potential conflict by eliminating contract termination deadlines centered on wages and other economic benefits.

14. The company and the union, in establishing this joint committee, called for the creation of a long-range plan. The nature of this plan may require an extended period for the development of its full potential. Therefore, it would be advantageous to institute the plan for an extended period, subject to periodic review by the parties for evaluation of their experiences and of results in relation to their joint aims

Scope of Plan

The plan shall cover all employees of Kaiser Steel Corporation at Fontana, California, who are represented by the United Steelworkers of America. The plan shall become effective March 1, 1963.

The following are some salient portions of the statements of Mr. George Sirolli: "Very briefly, from what Ralph has covered from the beginning, I would like to say and I think we should emphasize very strongly, that this was perhaps the first time that both the United Steelworkers of America, and a major steel corporation, decided that it would be to the best interest of all parties, including the public, that they would have members that would in general represent the public and also, from time to time, inject their thinking in the management-labor relationship that might exist or problems that might arise. This is revolutionary, because, to the extent that in the past before they brought mediators or arbitrators, it is something after there has been a deadlock. And then there's some difficulty of choosing them, and also there might possibly be a strike going on, and this is a tremendous loss to everyone The Steelworkers Union and the Kaiser Steel Corporation realize this and we have provided, in case of a situation arising to where it requires the public members, so to speak, to inject their thinking in what they believe the thinking of the public would be in a particular item, that they are there, present, and it's agreed upon.

"Also to align briefly what has already been covered by Ralph, this is also revolutionary for a steel corporation to realize that the employees have a very major stake in the progress of the company, and also they realize that this is a continuous situation that requires keeping the people themselves briefed on the intended expansion of the company, and also the company recognizes that in the area of the technological change, that the employees are very uneasy, they are concerned about their jobs, especially as they get older and the company recognizes this and they agree with the United Steelworkers of America to provide for this I think it is a major step forward and I think we're going to build upon it, and I think that the fact that we have provided for security for our people in the area of technological changes that this will open an avenue to where the employees themselves will greater accept these technological changes because they feel they have a protection. They don't fear technological changes when they know they are not going to lose a job by doing it; they're going to be protected. Thank you."

CHAPTER 4

SUBCOMMITTEE ON INDUSTRIAL SAFETY

The Chairman of the Subcommittee on Industrial Safety was Assemblyman Edward M Gaffney Members of the subcommittee were Assemblymen Lou Cusanovich, John Francis Foran, Clair Burgener and Walter Powers

The Assembly Interim Committee on Industrial Safety has been functioning under the chairmanship of Assemblyman Gaffney since 1947 with the exception of the year 1952 The Industrial Relations Committee wishes to reaffirm the confidence expressed in the work of this committee in the 1963 Report of the Assembly Interim Committee on Industrial Relations, which stated

> "There is a continuing need for this type of committee In addition to its function of proposing legislation or administrative regulations to protect working people against injury or accident, it performs a service as a sort of watchdog agency "

We believe that the work of this committee over the years has helped to keep California in the forefront in the field of accident prevention and industrial safety

The subcommittee held hearings at the following times and places

September 30 and October 1, 1963, in Salinas, on the subject of safety in railway crossings

September 14, 1964, in Los Angeles, on the subject of the operation of high lifts and elevators on construction job sites, and matters related to employees' safety in work near high voltage wires (A B 2783, 1964 Regular Session)

September 21, 1964, in San Francisco, on the same subjects

September 28, 1964, in Eureka, on the subject of safety in lumbering and related industries

Safety in Railroad Crossings—Chualar Bus Collision

FINDINGS

1 The committee found no evidence that the railroad personnel was in any way at fault in this tragedy

2 The committee was unable to discover any violations or neglect in regard to the legal responsibility of the railroad company involved

3 No evidence was adduced that the bus did not meet the standards prescribed by law

4 It appears to the committee that human fallibility, particularly in reference to the bus operator, was the principal factor in this disaster

5 The committee finds that the State Department of Motor Vehicles may have been less diligent than desirable in its attention to the written examination in English required in the licensing of the bus operator

6 That the occurrence of tragedies involving the death and injury of farm workers in railway accidents while being transported by buses makes it incumbent upon the Legislature to give constant scrutiny to safety procedures in this field.

7 The committee finds that there are measures that can be taken to lessen the possibility of such accidents

RECOMMENDATIONS

1 The committee recommends that legislation be enacted requiring farm labor buses to contain a window providing a view of the driver's cab and a warning system from the rear to the cab

2 That windows be required along the sides of the bus permitting the passengers to see outside

3 That legislation be considered requiring a "lookout" to ride in the cab in farm labor buses where dangerous crossings such as railway rights-of-way are involved in the transportation of workers

4 That the Department of Motor Vehicles, Drivers' License Division, be required to include, in its examination for drivers of vehicles which transport passengers, eyesight tests for "tunnel" vision in addition to the tests already given

5 That railroad companies be encouraged to install gates where private roads and easements cross railroad tracks in places where it does not appear feasible to install a conventional type of signal or traffic control device

Hearing in Salinas, September 30 and October 1, 1963

On September 17, 1963, at 4 20 in the afternoon, a farm labor bus carrying workers from a celery field at the end of the workday, was driven directly in front of a northbound diesel driven freight train of the Southern Pacific Railroad at a private crossing on the Demeo Farms near Chualar in Monterey County Twenty-two of the bus occupants were instantly killed, and 10 more died subsequently of injuries All but four of them were Mexican "braceros" working in California under Public Law 78

The driver of the bus, Francisco Gonzales Espinosa, was not a "bracero" but an employee of the Demeo Farms Corporation residing and working in the area under a "green card" permit issued by the U S Department of Immigration Riding in the cab beside the driver was the crew foreman, also an employee of Demeo Farms Both escaped serious injury, since the bus was struck at a point approximately two-thirds of the way toward the rear

At the time of the hearing, the driver was being detained under charges of felony manslaughter, and was not permitted to testify, and the California Highway Patrol was under instructions from the Attorney General and the Monterey County District Attorney not to divulge any statements made in the course of the investigation as a privileged communication The charges against Mr Espinosa were subsequently dropped

Both the driver and the vehicle were validly licensed under the Motor Vehicle Code, and the bus was carrying less than the maximum permissible load

Under the direction of Captain Francis Simmons, the California Highway Patrol carried out a very thorough investigation of the circumstances of the accident, including several reenactments of the episode using a similar vehicle and under similar conditions

Captain Simmons described the bus as follows:

"The original unit was a 1950 Ford, actually a two-axle cab-over-engine truck Through the years it had been completely rebuilt and modified, including stripping of the cab, the motor on it, and somewhere in time gone by a 302-cubic-inch General Motors engine was installed in this unit So it was a V-8 The persons responsible for installing it we do not know because the information would not be released to us by the company which had done the work

"On the truck chassis the custom-made body—the package unit which is fabricated here in Salinas by a local manufacturer for the purpose of transporting farm workers—was then mounted as a separate component."

As to the permissible capacity of the bus, Captain Simmons testified

"The rated capacity on a labor bus is predicated upon actual linear measurement of the interior That is, the number of inches per individual seating is 18 inches per human being of seating space and a minimum of 24 inches of aisle space where two of the benches of seats face each other. In this particular bus, on the basis of the measurements of the seating capacity, computed on this linear-inch basis, the capacity in the back of the bus was 69 persons."

In other testimony it was established that the windows of the bus were set high up in the body, so that the passengers were unable to see outside The crew foreman riding in the cab with the driver, was checking his timecards at the time of the impact and did not observe the approaching train

The accident occurred on a private road within the boundaries of the Demco Farms, at a point near the juncture where this road enters U.S Highway 101 at a right angle to the highway The Southern Pacific right-of-way crosses the farm in a direction parallel with Highway 101.

On the matter of the crossing, Captain Simmons testified as follows:

"I think it probably should be clarified that the particular roadway in question is a privately owned, privately maintained ranch road. The crossing, the Southern Pacific right-of-way, naturally is the property of the Southern Pacific, and insofar as any warning signs or official traffic control signals are concerned, the only thing that is there is the sign that it is a railroad right-of-way There was not, in the parlance, a sawbuck, which is a crossarm for railroad; there were no advisory or warning signs that this was either a private road or that there was a railroad crossing or track there "

The authority of the California Public Utilities Commission in the regulation of railroad crossings was summarized by James K. Gibson, and further clarified in answer to questions from the subcommittee Mr. Gibson testified, in part, as follows

"The California Public Utilities Commission is given authority by the Public Utilities Code, Sections 1202 and 1201 and some of the others, to authorize the opening of any public or publicly used crossings, and that has been in effect for some 50 years So whenever a grade crossing is opened in this state, the party wishing to open it, be it the railroad, the county, the city, or the State Department of Public Works, they must seek our authority to open that crossing, and the commission, by a hearing or otherwise, prescribes the protection to be put on those crossings, on that particular new crossing

"The code also gives authority over all existing public or publicly used crossing and to prescribe the terms of protection, use and operation of those crossings That, in general, is our authority on those crossings"

Question "Could I ask when this particular crossing was opened and was it under your jurisdiction when it was opened?"

Mr. Gibson. "This particular one at Chualar?

Question "Yes"

Mr Gibson: "No, sir. We do not have it listed as a public crossing, and my investigation indicates that it is a private crossing and is covered by a deed"

Question. "Then it was never under the jurisdiction of the PUC?"

Mr Gibson. "Well, they never came to us for authority to open it. I understand it was opened in the seventies some time, and that was long before our commission was in existence"

Question· "Has there ever been any other problem on this particular crossing?"

Mr. Gibson: "We have never had any other accidents We have never had any complaints about it"

On the matter of state regulations on buses stopping at railroad crossings, Captain Simmons testified as follows

"The Vehicle Code is only specific insofar as public streets and railroads are concerned, and the Vehicle Code laws are not in effect on private property or private roads, unless there is an enactment of legislation by local authorities So actually, technically and legally, the Vehicle Code was not in effect at this particular place because it was a private roadway"

Federal requirements relative to the transportation of "braceros" were read into the record by Randolph Kerr, General Attorney for the Southern Pacific Company, as follows:

"Pursuant to Public Law 78, there has been issued by the Government Joint Operating Instruction No 4, which I recite

"A The Migrant Labor Agreement of 1951, as amended, imposes upon the employer of Mexican nationals the responsibility of the safe transportation of the workers during the period of their employment whenever he provides or is responsible for providing transportation.

This responsibility remains even though the employer provides transportation through independent contractors

"Section J of this Joint Operating Instruction No 4 provides every motor vehicle transporting Mexican workers shall upon approaching any railroad grade crossing make a full stop not more than 50 feet and not less than 15 feet from the nearest rail of such railroad crossing, and shall not proceed until it has been ascertained that the course is clear.

"Section E, Subsection 6, provides that no employer shall operate or require or permit any person to operate a motor vehicle if there is any person or object in or on the vehicle which obstructs the operator's view or interferes with his freedom of movement to operate the vehicle

"No employer shall operate, or require or permit any person to operate a motor vehicle unless, when driving six or more workers, the operator is at least 18 years of age and possesses a valid appropriate chauffeur's license under the law of the state in which the vehicle is being operated"

Mr Karr's full statement is as follows

"Robert E Cripe was the locomotive engineer and J W Cady was the locomotive fireman on locomotive No 5857, which was the leading unit of a freight train consisting of four diesel locomotive units and 70 freight cars which collided with a labor truck owned by Demeo Farms, Salinas, California, and operated by Francisco Gonzales Espinosa on September 17, 1963, at a private road one and one-half miles south of Chualar railroad station, Monterey County, California, at about 3 23 p m, Pacific standard time, which is 4 23 daylight saving time.

"The freight train originated at San Luis Obispo on the morning of September 17, 1963, and was enroute to Chualar and Watsonville Junction at the time of the accident

"The leading diesel unit was equipped with an air horn, two oscillating headlights, two fixed-beam headlights, and a bell of approximately 60 pounds weight All of these devices were tested in San Luis Obispo prior to the departure of the train and were in proper working order

"Standing brake tests and running brake tests were conducted in San Luis Obispo prior to the departure of the train, and the brakes were in proper working order The train was stopped from time to time between San Luis Obispo and the scene of the accident, and the brakes at all times responded properly The whistle, bell and headlights were at all times in good working order

"The engineer, Mr Cripe, occupied the right side of the engine cab in the direction of the movement, and the fireman, Mr Cady, occupied the left side As the train approached the crossing at which the accident occurred the engineer, one-quarter of a mile south of the crossing, sounded the crossing whistle of two longs, a short, and a long, and when it became apparent to him that an accident was imminent, he changed his last long whistle to a series of short, abrupt blasts which continued until the leading locomotive passed over the crossing

"As the locomotive proceeded in a northerly direction approaching the crossing, the fireman, Mr Cady, observed the labor truck proceeding at a slow rate of speed in an easterly direction on the farm road toward the railroad track Mr Cady observed that the engineer commenced blowing the whistle when the train was one-quarter of a mile south of the crossing When the engineer commenced blowing the whistle, Mr Cady put the bell into automatic operation, which continued across the crossing

"The labor truck stopped, as observed by both Mr Cripe and Mr Cady, when the truck was 10 to 15 feet from the track, and then slowly started forward When the railroad train was approximately 10 to 15 car lengths—and you compute that at 50 feet per car—from the crossing, both Mr Cripe and Mr Cady observed that the labor truck slowly started up from its stopped position and proceeded forward toward the tracks

"When this was observed, Mr Cripe immediately applied the brakes in full emergency In this particular case, he was going to stop at Chualar and had already put a slight amount of air on so that his brake shoes were up against the wheel, so that there was no lapsed time It was one of those times where the brakes—as soon as you threw the air over—were in full emergency

"Just before the impact, Mr Cripe and Mr. Cady threw themselves to the floor of the cabin in an effort to avoid injury Mr Cripe continued to blow the whistle from his position on the floor of the cab The emergency brakes took hold immediately after the application and the train came to a complete stop with the engine approximately 3,440 feet north of the crossing, and he will tell you they took a lot of metal off the front of the cab at that point At the time the brakes were applied in emergency, the train was moving at approximately 60 miles per hour The stopping distance was good The applicable company speed limit for this train was 65 miles per hour "

An eyewitness account of the accident was given by Robert Cripe, the locomotive engineer, as follows

"Approaching the quarter-of-a-mile whistling post, I sounded the regular regulation crossing whistle Just prior to sounding that whistle at a quarter of a mile I had to head into Chualar, so I had made a slight automatic reduction of my brakes to set the brake shoes up against the wheels of our train That is always customary That was about, just a little bit longer than 1¼ miles, and at the quarter-mile whistling post from the crossing I started my regular crossing whistle

"Just before I stopped blowing the whistle—I guess maybe a few seconds before—I observed this farm truck coming toward the railroad crossing Just before I ended the crossing whistle that truck came to a complete stop momentarily He stopped momentarily Then he just started to move again, very, very slow It is hard to imagine anybody at a railroad crossing trying to go across slow like that, and I immediately started to give short sharp blasts of that whistle, and I immediately put the train into emergency application at the same time I told the fireman, I said, "We're going to hit him," and he hit the floor, got his back up against the cabinet I ducked down behind my automatic brake belt for protection and kept the whistle going continually until after the crash."

On the question of the employment of the bus driver, Mr. Jack Bias testified as follows.

"Under the regulations of the Department of Labor, a bracero is not permitted to drive a bus or any mechanical equipment. So the individual growers employ their own drivers. They are employees of the grower and they are required to have a chauffeur's license Our office has six fieldmen checking to see whether the drivers are qualified In addition to that, the Department of Labor in the Salinas office has four compliance people checking not only on the drivers of the buses, but on the camps and the regulations of the department In addition to that we are insured by the State Workmen's Compensation Fund

"The function of the growers association—when we are using braceros—is to bring in the braceros. The grower first must go to the Department of Employment and place an order with the department for domestic workers, and he must show his acreage, the type of acreage he has, the type of employment that is going to be needed, and not until the Department of Employment determines there are not sufficient domestic workers to do that type of work will they certify for braceros.

"When they do certify for braceros, the grower then notifies the association, and we get a 3401 order from the Department of Employment and then proceed to contract for braceros at the center. The braceros are brought in for and on behalf of the individual grower who has received his certification They are delivered to his camp or to our office, where he will pick them up in his buses. It is our function to see that the grower knows all of the regulations that are required by the Department of Labor and to see that he complies with these regulations."

The responsibility of the State Labor Commissioner was defined by Mr. Walter F Swope as follows

"The State Labor Commissioner's office is charged with the responsibility of licensing farm labor contractors and, in addition thereto, enforcing workmen's compensation acts Of course, if there is a labor contract involved then we are concerned with liability insurance on the equipment or the vehicle involved So we have three primary functions, and I immediately checked with the employer following the notification of this accident, and we determined that there was not a farm labor contract involved; that the driver of the truck was an employee of the Demco Corporation—that is, David E. Meyer's Company—and that the greater portion of the passengers were Mexican braceros here under Public Law 78

"So the Labor Commissioner's office then had a very small part to play in this Our greatest concern is that there should be workmen's compensation insurance, and I examined the compensation policies and found that the employer was properly insured through the State Compensation Insurance Fund and that it provides full coverage In addition thereto, the employer, Demco Corporation, did show me that they carried a liability insurance with, I should say, excessive limits."

Mr. Arden P. Jacobsen, supervising driver improvement analyst, Division of Drivers' Licenses, Department of Motor Vehicles, testified

as to the department's licensing procedures covering the situation under inquiry The department's records showed that Mr Espinosa first applied for an operator's license in 1956, and that on August 16 of that year he failed a written test in the Spanish language on his first attempt.

On August 27, 1956, he repeated the test, again in Spanish, and this time received a passing mark On August 17, 1959, he applied for a chauffeur's license and passed all the written tests, this time in English, since these latter tests were not given in Spanish On both occasions he also passed the visual test and signed the required oath as to his physical condition

Questions by the subcommittee brought out some significant details as to the physical and visual examination required by present law

Question "Was any physical examination given?"

Mr Jacobsen "None other than the visual one and the statements on the reverse side as to physical disability"

Question "Would you kindly tell the committee how extensive the test on vision is?"

Mr Jacobsen "Primarily the only testing is for visual acuity"

Question "Could you briefly describe in laymen's terms what is required for a chauffeur's license in the way of vision? Not this particular man, but generally"

Mr Jacobsen "Well, the screening standard is 20/40 in his best eye, and not over 20 points difference between it and the poorest eye In other words, if one eye was 20/40 and the other 20/60, that would be passing the screening standard But if they go beyond that, then they are required to go to an eye specialist, or eye doctor, and get an examination indicating whether glasses are needed and whether they are being obtained Then when the applicant returns with the necessary correction, he is tested with the correction"

Question "Is there any test on angular degree from the point of direct vision as to encompassing the vision on the right or left side of the person?"

Mr Jacobsen "No, sir There are tests such as that available, but the department does not give that type of test"

Question "Do you know that there are persons who cannot see more than 15 or 20 degrees of the semicircle on the right or left, and it is called tunnel vision?"

Mr Jacobsen "That is correct, and there should be more adequate testing"

It has been noted above that the subcommittee had no opportunity to interview the bus driver, Mr Espinosa, since he was then being detained under felony charges, and his statements to enforcement officials were held to be privileged communications The subcommittee was informed, however, that his interviews with the officials concerned had to be conducted through a Spanish-English interpreter, although the records of the Department of Motor Vehicles showed that he had passed the written test for his chauffeur's license in the English language

Employees' Safety in Work Near High Voltage Wires—A.B. 2783

FINDINGS

1 The committee finds that the resistance to this type of legislation by the management of both privately owned and publicly owned utilities was not tempered by constructive counter recommendations.

2 The committee believes that legislation assuring greater protection to those working near high-voltage wires is needed, but that more information and study are required in order to work out the precise language of legislation which would afford this greater protection without unduly hampering or burdening those involved

RECOMMENDATIONS

1. The committee recommends that legislation be enacted to bring Section 385 of the Penal Code into conformity with the more precise language of the safety orders of the Division of Industrial Safety with respect to the placing of cranes near high-voltage wires.

The following are pertinent excerpts from testimony given at these hearings:

FLOYD A. GOSS, *Electrical Engineer in Charge of Operations, Los Angeles Department of Water and Power:*

We have as great an interest as you have in this question of the safety of people who work in the vicinity of high-voltage lines I am a member, and have been for a number of years, of the Industry Advisory Committee to the Division of Industrial Safety I think my comment, generally, is that it seems to me that this question of working safely in the vicinity of high-voltage lines is well covered in the safety orders of the Division of Industrial Safety In my opinion, it is covered better there than it is in this bill It goes into more detail As you know, this matter is also covered in the Penal Code, Section 385, which gives the division, in my opinion, sufficient powers of enforcement.

So, in my opinion, the bill is not necessary to accomplish this thing we're all interested in, and that is the safety of people working in the vicinity of high-voltage lines I have some specific reasons for feeling that subject matters such as these are best covered by the administrative orders. And one of them is, it's been my experience that as we go along through life, we do things better as new methods, improved methods of performing work become available to us, and this requires changes in the orders to reflect that And it's much easier to change them than it is to change provisions of the code itself.

As far as the specific bill is concerned, I think there is apt to be confusion and there's a chance of confusion arising out of three sets of orders covering the same thing. One, of course, in the Labor Code, the second the orders of the Division of Industrial Safety, and the third the Penal Code For example, in this proposed order, high-voltage is defined as in excess of 600 volts under the present amendment; whereas, in the electrical safety orders it's 750 volts, as it is in the Penal Code.

Furthermore, I would refer to the provision that's been added in the amended bill beginning on line 6 of page 2 I'll read it "The provisions of this section shall not be applicable to tools, machinery or equipment personally used or operated by qualified electrical workers engaged in

construction, reconstruction, etc." This would mean that only a qualified electrical worker could operate such things as are normally operated by licensed equipment operators in the state and the general practice for the use of cranes and lifts by the utilities building, operating and maintaining these lines is to use equipment operators rather than electrical workers

Now, my only other comment is related to the amended bill, beginning on line 39, page 2, in which a qualified electrical worker is defined In almost every bill that comes up before the Legislature that has anything to do with industrial relations, this question of the definition of a qualified electrical worker is raised It's my position that I don't think it's within the prerogative of the Legislature to qualify people for electrical work; I think that's the responsibility of the people who use them, it's the responsibility of the unions, and I think working together we can best qualify our workmen For example, under this it would require a man having a minimum of four years' training experience under the instruction and direction of a qualified electrical worker who's familiar with the hazards involved Well, this four years is a rather arbitrary thing It may not at one time be necessary to have four years, it may require more than four years or three years

EDWARD V MULLER, *District Engineer in the Construction Section, Division of Industrial Safety:*

There are two provisions in the bill that I would say I think will do some good, although I'll frankly admit there isn't universal agreement on it One of these is the insulated cage-type guard around the boom and the other is the insulated hook I have personally investigated a number of accidents where, if these things had been provided and maintained in good condition, they would have saved lives The fear has always been that if this were made a provision, it would tend to make the operators careless, because they would feel it was safe to operate the equipment near a line and this is one of the things that many people have been opposing But I am sure that there would have been a number of cases where it would have saved lives if these things had been provided.

There is another point under items 1, 2 and 3 on page 2, which has caused a little concern on the part of the division, because it appeared to be putting the cart before the horse There are 11 field engineers in the electrical section to cover the entire state and they can't possibly keep up with these things Another thing that they have been faced with is the attitude in the courts I have taken a number of these cases into court In one case the judge said, "Well, I'm not going to find you guilty, it won't bring the dead man back" This is where a man was killed In another case a man was killed and the judge said, "Which would you rather have, a small fine or ninety day probation?" No sentence, just ninety days probation Report to the court every 30 days In other cases we've had fines of $25 I understand if you catch 11 fish and the limit's 10, they're liable to fine you $50 This is the thing that we're up against in trying to enforce these kinds of provisions and save lives It hasn't been any laxity on the part of the division; it's been partly the lack of personnel and partly the attitude of the

courts, which have never been cognizant of what's involved in these industrial accidents.

M A WALTERS, *Assistant Business Manager, Local 1245, International Brotherhood of Electrical Workers:*

With respect to A B 2783, we feel it addresses itself to a problem of the building and construction industry which has become increasingly evident in recent years With more and more high-rise buildings under construction, the use of high lifts and elevators on construction probably has grown with the result of construction workers being subjected to increased exposure to overhead high-voltage lines Not being in this industry myself, I don't have any statistics as to the results of such exposure, but being in a related industry, the utility industry, I have from my own knowledge evidence of electrical contact in this kind of situation While there are existing statutes directed to the foregoing problem, such statutes only provide coverage for a portion of the problem We feel that A B 2783 goes more fully to the heart of the problem and places the corrective legislation and preventive measures in the Labor Code where they properly belong This because employers and employees alike are more likely to go to the Labor Code than to any other orders for matters relating to employment practices and policies

We also recognize the hazard involved in working on energized high-voltage lines and equipment, and believe that in providing any exemptions, the Legislature should take the necessary steps to provide reasonable assurance that workmen are qualified by training and experience to protect themselves before they are exposed to the hazards involved Thus our support for the second amendment which defines a qualified electrical worker In our opinion, anything less than this definition would be inadequate

I have heard the statement made that the existing provisions of the electrical safety orders cover this subject adequately and that nothing further is needed. I would point out that there are provisions in the bill which are not covered in the electrical safety orders, and these are covered in Sections 7852, 7853 and 7854, which I think are very important In addition, there is a provision in the safety orders as they now exist which grants an exemption from the provisions of the safety orders which the bill would not grant The exception that the safety orders provide exempts the employees of the utilities from the provisions that are comparable in the orders However, the provisions of the electrical safety orders go one step further They also exempt the employees of employers who are performing work for the utility companies and this, I think, is a very important factor because the utility companies hire contractors to do various functions for them which require their employees to get within six feet of high-voltage lines.

For example, the utility companies, some of them, will hire painters to paint their towers carrying voltages anywhere from 60,000 on up to 200,000 With the advent of new techniques these are going on up to 500,000 and 750,000 on extra-high-voltage circuits There have been instances in the past where these painters have gone up to these towers, not familiar with the hazards and not being able to see which of the lines were energized, or on which side of the tower the lines were

energized and on which side they were not energized, and have gotten too close to the high voltage circuits and there have been accidents as a result

But of even more concern to me is the practice of the utility companies of letting out line clearance contracts That is, they let work out to tree-trimming contractors to provide tree clearance from their overhead lines In the tree trimming industry they take employees who have had absolutely no experience and put them into trimming trees around high-voltage lines—maybe a month or two, and they get them closer than six feet to these high-voltage lines Now the existing safety orders permit this to be done The bill, as it is before us, would preclude this from being done

ALBERT G BOARDMAN, *California State Conference of Operating Engineers:*

We have in excess of 20,000 members working in the State of California Our people operate the heavy-duty cranes and the hoisting equipment used on construction projects Our people are the ones usually involved in accidents where people on construction jobs are killed due to cranes contacting high powerlines and also due to equipment failure by these cranes Our people are subject to charges of a felony whenever such an accident happens Our people are not usually the ones killed in these accidents, it is usually the laborers, the people working on the ground around the cranes They are electrocuted, and this is of deep concern to my organization Our operators are usually pretty well grounded where they sit and are not killed But we are concerned with the poor man who gets caught on the ground and has no ground—nothing to take care of him

Under A B 2783 there would be insulation on the top part of the boom and this insulation probably would save the lives of many people for the very simple reason that when these accidents happen it is not one person who is killed but several We know that the state has a law that requires that the operator of a crane must not get within 6 feet of a powerline, but we are very much aware of the fact that, whether it is 6 or 12 feet, when a man is operating a crane and is occupied in placing materials, concrete, forms, there is always the possibility of a slip There is also a possibility that our people sometimes can be careless and careless people are usually killed

We are also under a tremendous pressure of speed—the requirement to rush a job The contractor makes his money by getting the job done as rapidly as possible This puts the pressure on the man who handles the big equipment because he is the producer, and when the pressure is put on him, sometimes unconsciously or sometimes under order, he moves in close to these big powerlines—and all you have to do is let your foot slip and you're into them Now any kind of insulation, any insulator that would save the life of the man on the ground, we are in favor of We feel, though, that this might just remotely give our people a false sense of security when they're working around these cranes But I believe that that possibility and that gamble is worth taking if we can save the life of just one man

NORMAN E WOODBURY, *California Municipal Utilities Association:*

Our association is composed of, I think, all the cities in the state which have their own utility system and also a number of the public utility districts, municipal utility districts, and special districts which have both water and power in their systems Our primary point to make today is that many of our members have been on the committee, which is appointed by the DIVISION of Industrial Safety, which tends to review and to recommend changes in the industrial safety orders I have talked to many of these men who tell me that the place for safety is in the safety orders rather than the general statutes, such as the Labor Code There are several reasons for this One is that this committee can be called at any time during the year to review those types of orders which have been found to be wanting, and make immediate changes, recommend those changes for immediate adoption This is keeping current the thing that should be kept current, which is the safety of the workers It should not be left up to the general course of change which we find in our legislative system When you are dealing with safety and with men's lives, these are matters which should be changed immediately, if necessary

Now, my people at least have found extreme satisfaction with the general safety orders from the standpoint of being called in for consultation on these matters, and these are top electrical engineers, top construction people in the municipal field And they tell me that such things as these safety booms have been discussed and rediscussed for years And they still feel that the reliance upon a crane with certain insulation—and it is my information that this insulation has a certain maximum capacity and does not compare in any sense with the type of insulation necessary when you're coming in contact with certain high voltage wires—permits the lessening of the human responsibility for the operation of these cranes

There are certain tiedowns and certain safety restraints on the degree in which this crane can move, and that is the real safety factor which should be considered It is in effect This has resulted in very little loss of life where these have been followed It is my information that there has been no loss of life attributable to the use of a crane in contact with a high-voltage wire where these tiebacks, tiedowns have been in operation

I think our main presentation to the committee is that those of my association who have been in this field of high voltage power lines feel that these things can best be handled through safety orders

JACK VALOV, *Supervisor for the Construction Section, Division of Industrial Safety:*

The Legislature can pass, say, a minimum or a maximum law, as you might look at it, in this case the 6-foot law If the problem becomes severe, then through administrative practices and approaches we may ask for, say 12 feet But the aggravating situation we have today is perhaps more clearly pointed out in the safety committees' actions in Fresno and other places We have had a statutory law which has required a sign in cranes to the effect that it is "unlawful to operate this equipment within six feet of high-voltage lines " This is in the Penal

Code But the safety committees were so aggravated by this obvious misinterpretation, or we'll say misdirection of the crane operator himself, that they are asking that all cranes or pieces of equipment have a second sign which states "All equipment shall be so positioned, equipped, or protected, that no part shall be capable of coming within six feet of high voltage lines" The first sign says unlawful to operate The intent is that you do not position yourself—that you at no time can allow the violation of this six-foot rule So now we have the strange situation where one sign must read "Unlawful to operate within six feet of high-voltage lines" because the Penal Code requires this sign Then we put another sign in there which will state "Unlawful to position, equip, and so forth" We would like to have the Penal Code changed to more clearly indicate what we mean Not just to operate, but even to position the crane

JOE ROBERTS, *Labor Liaison Representative, Division of Industrial Safety:*

The DIVISION of Industrial Safety electrical section has a safety order, 2363 I believe, which was promulgated and adopted years ago at the insistence of labor because of so many men being killed by electrocution That order spells out that not only must the crane be kept six feet away; it goes further than that and says, even loads or any part of that crane shall not be able to come within six feet of a high-tension line It's spelled out so that, for example, if a boom would fall, it would fall clear If a cable would break, it would break clear of the six-foot line If a load was attached, if the load swung around, the load couldn't touch the six-foot line Now that's the safety order we have on the books

However, since that time the Legislature added a section to the Penal Code—it is now Section 385 of the Penal Code—which requires the posting in plain view of the crane operator, of a durable sign legible at 12 feet reading "Unlawful to operate this equipment within six feet of high-voltage lines" That's the matter that was brought out here, that you have a sign saying that it is illegal to operate a crane within six feet, and actually it doesn't do the job Actually, the safety order in itself, if it were in the Penal Code, would say that no part of this load should be able to come within six feet of a high-tension line Then we would have it covered

E E CARLTON, *Supervisor of the Electrical Section, Division of Industrial Safety:*

I would agree with the other speakers that the insulation provided in the form of an insulating device between the hook and the line and also a cage around the boom would probably save some lives, but this would only be in the case where the insulation were maintained. And this is pretty difficult to do Many of these booms on these mobile cranes are as long as 125 feet Most of your overhead lines range in the vicinity of from 28 feet to about 35 feet clearance above the ground This is an economic problem Most of the lines that you operate around in construction fields will be in that neighborhood, which means that if you have a boom 125 feet long, probably the outer 100 feet of this would have to be covered with this cage, and since the boom has to be guyed

back to the body of the crane, this becomes a cumbersome, bulky affair Add to that, many times during the day this insulating link would probably be just above the hook, because they need the weight there to get the hook back down as the load is released to pick up a fresh load. This would mean, in many cases, that the boom and the hook and the link would lie on the ground And you're familiar with a construction job Most of them are pretty muddy and dirty, and so maintaining that high degree of cleanliness on that insulated link to make sure it is fully insulated at all times, it would be a practical problem that would be pretty difficult to maintain

The same would be true with the framework or cage that you would build over the boom, because at lunchtime, or coffee break, or end of day, normally they lay those booms down on the ground, which would mean they're in the mud, and these insulators are of the nature that if you're going to try to put them up there structually, they can't be too long, and the result is they would not be insulated for some of the voltages that you might come in contact with We now have voltages as high as 110,000 volts running into the customers' plants

From a practical standpoint, keeping six feet away from a high voltage line is providing reasonable safety As long as a man can keep that equipment away from it, the people on the ground are reasonably safe. So the cage and the link are good factors, but we don't think this is a substitute for keeping away from the line We don't think this should be accepted as a substitute It might be a supplement to these but it is no substitute for staying away from that overhead line

Operation of High Lifts and Elevators on Construction Jobsites

FINDINGS

1. The committee finds that attention to safety needs in construction elevators was most timely. The Division of Industrial Safety of the Department of Industrial Relations is in the process of revising, improving and modernizing its safety orders in this field The committee believes it has been of assistance to the division in this endeavor

2 The committee finds that most of the safety problems in regard to elevators and high lifts can be met by safety orders of the division, but it does appear to be desirable to provide for some amendments to the State Labor Code in order to facilitate the activity of the division

RECOMMENDATIONS

1 That the inspection of construction elevators and the administration of safety provisions related to them be made the responsibility of the Elevator Section of the Division of Industrial Safety

2 That there be a clearer distinction made in the Labor Code between construction elevators, high lifts and hoisting devices by amending the language of Section 7200 of the State Labor Code in order to provide for such clarification.

The following are pertinent excerpts from testimony given at these hearings:

JOHN E DOWD, *Business Manager, Local 18, Elevator Constructors Union:*

The committee I represent has put in about 2½ to 3 years work on this particular item of construction of personnel elevators I would like to bring this up to date and advise you exactly of the action that has taken place recently This, of course, is our position, and the people that I have contacted and talked to throughout the State of California—and I might add, other states around the country—are interested in pushing for the construction of personnel elevators for the protection of the men who up until now have been made second class citizens We furnish safe elevator transportation for office employees, janitors or anybody else, but if you have to be working on a construction job, they give you some broken-down material hoist or something else that is far from the California Code of Safety in respect to elevator equipment It is our concern that we could do something for the construction personnel who are working in the State of California

An analysis prepared by the Legislative Counsel of present law and safety orders in this field reveals that we are very lax as far as construction personnel elevators are concerned This is the reason for the activity on my committee's part to place these construction elevators under the jurisdiction of the Division of Industrial Safety, not just to erect them and put in a signal system and turn them loose We want the safety devices adequate and operative and this is the reason for this particular proposal to add, commencing with Section 7210 of the State Labor Code, the following amendments relating to construction personnel elevators:

An act to add Article 4 (commencing with Section 7210) to Chapter 1 of Part 3 of Division 5 of the Labor Code, relating to Construction Personnel Elevators

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

SECTION 1 Article 4 (commencing with Section 7210) is added to Chapter 1 of Part 3 of Division 5 of the Labor Code, to read:

Article 4 Construction Personnel Elevators

7210 As used in this article

(a) "Construction personnel elevator" means any elevator used to hoist persons on a building under construction

(b) "Building" means structures of all kinds during the course of construction regardless of the purpose for which they are maintained and whether or not such construction is above or below the level of the ground

7211 A construction personnel elevator shall be furnished to transport employees on all buildings when the construction has progressed beyond the fifth floor level, and no employer shall permit employees not directly connected with the installation of floors or elevators to work above the fifth floor level until temporary elevator equipment has been installed and is operating on the sixth floor level, and, except as provided in Section 7213, on all levels thereafter

7212 Construction personnel elevators furnished as required by this article shall comply with the standards for passenger elevators adopted by the division pursuant to Chapter 2 (commencing with Section 7300) of this part

7213 Where a temporary installation of elevator equipment is installed to provide a construction personnel elevator to comply with this article at other than the permanent location of elevator equipment in the building, the elevator service need not be extended beyond the fifth floor to newly added floors until at least three additional floors have been added to the building

7214 Construction personnel elevators shall be used only to transport persons and their personal hand tools

JAMES E BUSHER, *District Engineer, Elevator Section, Division of Industrial Safety:*

Normally, we inspect, if an issue permits, for all elevators in the state, and I have charge of the elevators in the southern part of the state. We do not, at the present time, cover construction elevators. They come under the construction code and not under the elevator clause. We act as consultants for the construction section, and our men who are trained in elevator construction work go out with the construction engineers and actually run safety tests and inspect the construction elevators We are limited because we have to work in this case under the construction orders and it is my opinion, in conferring with Mr. Dowd, that these orders are not sufficient. They don't supply the man working on the construction job with the same safety that he would have if he came into this building and rode the elevator here I think in the past it has been looked on as a temporary hoist, and for this reason there was a certain laxity in safety devices as covered by the California Elevator Safety Code I believe that a separate code for construction elevators or elevators used in construction. temporary elevators, should be written and incorporated in the California safety orders under the Labor Code, because as they are written now, there may be cases where they are not practical.

The normal trend now is to have a separate elevator tower that is put up on the outside of the building to be used for construction There are cases in which a permanent elevator is temporarily installed in the permanent elevator shaft if it is going to be a large building and they are going to have several elevators, and this is used for construction However, it is usually quite late before this elevator can be put into use. There is a long period where there is no elevator

These construction elevators will have to have a competent person to operate them and also competent people to maintain them. This is a big feature of these elevators and they need numerous inspections Normally, the elevators like the ones in this building are inspected by law once a year On a construction job, in my opinion, they should be inspected every three months and a permit issued each time Every time they are moved, they should be inspected and safety tested again

INMAN S. REID, *District Engineer, Construction Section, Division of Industrial Safety, Department of Industrial Relations:*

There is no conflict between the Construction Section and the Elevator Section within the Division of Industrial Safety Now a comment was made on high-rise buildings, and I might further clarify that to this extent: that the removal of the height limit on buildings in Los Angeles has highlighted this problem of construction elevators or elevators for construction personnel It was not half as much of a problem with men climbing 10 to 12 stories as it is climbing up to 30 stories, so the Construction Section of the division has been well aware of the need for personnel elevators on high-rise buildings, and also a need of close supervision over these so-called construction personnel elevators We heartily agree that there should be some regulation requiring elevators for construction personnel starting at some figure, whether it is four stories or six stories, but for a regulatory body to decide.

One means of hoisting construction personnel allowed at the present time are the so-called man lifts, which are endless belts with platforms on the belts Personally I don't approve of those and I think that is something that needs to be considered along with the whole problem of construction personnel elevators There have been at least two bad accidents this year in southern California involving the use of these man lifts.

JOHN WITTE, *Chairman, Safety Committee, Associated General Contractors:*

We have worked for the last five years and more accurately the last three years, in two groups One is the Governor's Safety Group, which meets in this very room occasionally during the year Then we have a committee for the Revision of Safety Orders, and we have been meeting for the last three years, I would say on the average of twice a month, with the idea of drawing up new revised safety orders We have had meetings in southern California in Los Angeles, and in the north in San Francisco, we have had two sessions in Fresno I might add that the committees are made up of representatives of labor and management and representatives from the Department of Industrial Relations. Now between those meetings and those people we have come up with what we feel are adequate safety orders pertaining to any phase of construction We have been working on these from five to seven years and it has been accelerated the last three years, particularly this year when it was all brought to a head We now have safety orders that are ready to go to public hearing in San Francisco and in Los Angeles the first of next month Now at the public hearing there undoubtedly is going to be an extensive discussion, but essentially, I believe, we will have the orders as they stand with proposed revisions

C. V HOLDER, *Building and Contractors Association:*

The thing that I would like to see clearly brought out here is that, as far as personnel elevators are concerned, the contractors are not in any way in conflict with the unions, in regard to the rigid inspection of elevators that are used for personnel It seems to me that what has been said here is that there is going to be a personnel elevator on every job Now my thinking on this would be that if you had a personnel elevator for buildings that go beyond five floors, what is being said here is that this elevator will be used to transport a man from the fifth to the sixth floor and from the sixth to the seventh I just wanted this clearly brought out, for certainly, in the rigid inspection of a personnel elevator, there would be no objection to this at all by the contracting units in any elevator that was used for the transport of men We do not think that an elevator should be restricted only to the use of men and toolboxes We think that that elevator should be absolutely safe if it is to be used by men and toolboxes, but when the elevator is not in use, it would be a ridiculous cost to assume that an operating engineer would sit and wait until somebody wanted to go from the fifth to the sixth floor or from the sixth to the seventh or the seventh to the eighth

THOMAS E FITZGERALD, *International Vice President and Regional Business Agent, Elevator Constructors International:*

The information available to my committee pertaining to accidents of workmen climbing ladders and in construction stairwells that are incomplete, includes the following items In 1962 throughout the nation, the information states that there were 14,000 deaths and two million disabling injuries, a large percentage of which were due to climbing. In 1962 in California alone, 752 lost-time accidents were construction workers, directly attributable to falls from ladders and injuries sustained due to incompleted stairwells There is no possible way to isolate trauma or cardiac conditions brought on by excessive climbing, this being a dangerous activity whether ascending or descending According to a recent report by Albert B Tieburg, State Director of Employment, out of $11,500,000 in claims paid out in the second months of 1962, $5,800,000 was paid to 7,400 persons for heart disease during this same period

The State of California is investing millions of dollars in training and enriching our skills to meet the demands of the construction industry Our investigation also showed that the highly skilled and more qualified men of the building trades were of an average of 42 years We found that by checking progress of the workmen of all ages, walking up six floors, there was an average loss of time of 28 minutes to the sixth floor On a building of some 10 to 15 floors, this loss of time sharply increased above the sixth floor Our report to you does not take into consideration the items of falling objects that are encountered on all construction work and cause crippling injuries and lost-time accidents

Our recommendation to this body is that on every construction site of five floors or over, for the protection of the workmen, a personnel elevator be provided free from the incumbrances and danger of freight or building material

I am sure that the contractors on an item of this nature are interested in the immediate costs On a large-size construction site, a building of 15 to 20 stories, there are 10 or 11 crafts involved in its construction by the time the project has reached the third or fourth floor. This represents approximately 150 to 250 men and the average wage rate for these crafts is $4 62 per hour For the sake of argument, say that 100 of these men are working around the sixth floor Your arithmetic will show you that something like $231 per half-hour is involved in nonproductive time A slow-speed personnel elevator, depending upon the stops involved, will travel 10 floors per minute Here is a saving to a contractor of several hundreds of dollars The elevator not being provided for the purpose of hauling freight or building material, there should be no tieups or delay in expediting personnel throughout the building. We have found that subcontractors are happy to pay a nominal cost to expedite the movement of their workmen and have them arrive at an upper level with no loss of efficiency

I would like to take this opportunity to say that state and city codes of the Elevator Division are being rewritten at the present time to cover the installation of workmen personnel elevators This will include the periodic tests and inspection by their personnel.

VINCENT L. WHITE, *Assistant Chief, Division of Industrial Safety, Department of Industrial Relations:*

Speaking briefly on the subject, as I understand it this proposed legislation would do two things it would provide elevators on buildings under construction five or more stories high, and it would further provide a very good type of elevator Both of those are worthwhile goals The division favors this move The only question we would have at all is the matter of timing, and I am sure this committee is more alert to this than our division as to whether the industry is ready to take a big step like this We particularly believe that the industry should take the step on providing elevators on buildings five or more stories high In fact, we have a proposal right now in our construction orders They, by the way, are up for adoption now. And we have a proposal in there that would call for this same thing. It would call for elevators on multistory buildings for construction workers So we're thinking along the same lines as this committee in that respect. We were not thinking of making these elevators as good, as permanent, as those that go in buildings, and I see that that is proposed here. We believe that there should be two classes of elevators One for the building that must last 50 years, and another for the construction job that maybe lasts two or three years But we agree that it should be a good, sound, safe elevator.

JACK VALOV, *Supervisor for the Construction Section, Division of Industrial Safety:*

The Construction Section has, for some time, been holding meetings with what we consider our revision committees to form proposals and to bring out most recent thoughts so that we might revise the construction orders and aim at modernizing or keeping in touch with construction problems as they change in this rapidly changing business. There has been a proposal made, Section 1630, which refers to access to multistory buildings The original proposals, as brought to our committee, called for six stories or more on highrise buildings to provide a method or means of carrying men and material to these high reaches. At subsequent hearings or meetings, our committee changed this to four stories or more. I am sure that before this becomes law we will have quite a bit of opposition—perhaps we'll fail to achieve or reach this four-floor limit

It appears, with many contractors, that five or six or perhaps seven stories is the economical breaking point for making money in raising materials and men If you take a large building and you have 300 men working there, it becomes quite obvious that if you walk stairs all day long with 300 people, you are losing a lot of money.

The committee did not consider the separation of men or material in these hoists In other words, we were concerned with providing some access where the law did not require any at this time It may be that men will be mixed with material It may be, as some contractors do every five minutes when they do run an elevator, that they run a load of material, the next load will be men This issue was not brought out at the committee meetings.

The division is concerned with the design, the erection, and with other features of construction elevators for men or materials In our new revisions, we say that in lieu of a construction elevator, installations complying with the elevator safety orders may be used as construction elevators

The Labor Code is precise in the elevator section, but it lacks that precision in the construction section It points out a construction elevator to lift men or materials and then says the division shall inspect But at no time does it say, as it does to the elevator people, that you shall inspect, that you shall permit, that no elevator shall operate without a permit, without a fee, without a precise date and time of inspection; and it is my personal feeling that at this time this hearing and other hearings that have occurred are attempting to break through and to point out some of these areas of perhaps, shall I say, evasion, or lack of precision We feel that there is a necessity for annual inspections and for identification Not only of elevators but of cranes and other types of hoisting equipment We feel, in general, that a stiffening of minimum standards, or we'll say a new form of higher minimum standards, is necessary It is my hope that we can make a transition with labor and with industry without jolting this particular industry or asking for such great minimums that we cannot achieve these things The necessity is there How we do it is another problem

Safety in Lumbering and Related Industries

FINDINGS

Although the frequency rate of injuries is relatively high in the lumber industry, the local safety committees appear to be functioning well in cooperation with employers and the Division of Industrial Safety in identifying and directing attention to unsafe operations in the various phases of the industry

Safety provisions are also given close attention in most contract agreements between employers and labor unions

Good relations with Division of Industrial Safety personnel appear to exist with the employers and workers in the industry

RECOMMENDATIONS

1 Clarification may be needed as to workmen's compensation coverage on proprietary drivers of logging trucks

2 The Division of Industrial Safety should consider amending its safety orders covering the loading and securing of logs on hauling equipment and logging trucks

Hearing in Eureka, September 28, 1964

The following are pertinent excerpts from testimony given at this hearing:

FRANK E GORDON, *Local 98, International Woodworkers of America, AFL-CIO:*

There are just a few things that I would like to call to the attention of the committee that are giving us trouble. One in particular is the

manhandling of heavy timber in sawmills In most of the larger plants these heavy timbers are handled by the crane method, but in some of the plants they send them out on the green chain So they have to be handled off the green chain, and we're getting a lot of back injuries and ruptures from it

The green chain is the chain that carries the lumber from the mill out to be piled or to be shipped to some other kind of mill When you're handling them by hand it takes quite a bit of lifting Some of these operations, with respect to men, you take 8 by 10's and 6 by 10's, 6 by 12's, in fact in one mill I've come into, they're handling 4 by 16's, I think they were.

These are about 42 feet long and they had two men taking those things out They said they were giving them lots of time But if they need more men, we'll put more men on it There was one man in the hospital when I was out there because one of the other men slipped a little bit and the load dropped on him and threw his back out, and a back injury of that kind can be serious for these men So we maintain that all of that stuff should be put over a separate chain where it can be handled with some kind of crane.

The excuse that is given by the operator in most instances is that they put more men on it when they have the heavy timbers to handle, but we find that is practically as dangerous as having one man handle it, because if two men are handling one of those timbers and one of them happens to slip or something, why the other one gets the whole load on him unexpectedly and you have an injury There's no limit set, as I understand it, in the program on this thing, but something should be done about it

In this part of the country, you have a lot of large timbers and most of the union-operated mills have a limit in their contracts of what the men are supposed to handle on the green chain for that type of timber.

Another thing that has been brought to our attention is the breakage on the highway of hauling equipment, with the logs spilling on the highway and things of that kind, and we were wondering if there couldn't be some kind of inspection or something of the hauling equipment to prevent that It seems to be mostly gyppo haulers that have this trouble, and in fact the most recent ones have been that Certainly it's nervewracking to think, every time you meet a load of logs, that that load might be dumped right in your lap, and it seems to me rather unnecessary to have a setup of that kind

Another thing that we are wondering about is if there's ever anything done about the hours of work for people driving heavy equipment Now we find there again people who are driving their own trucks working in the neighborhood of 20 hours a day regularly They take off at two in the morning and they get in around seven or eight at night, and then put in several hours monkeywrenching on their trucks It's the opinion of our people that a man just isn't working at top efficiency when he's putting in that kind of hours on the job.

LEONARD CAHILL, *Secretary-treasurer, Redwood District Council of Lumber and Sawmill Workers, AFL-CIO:*

In most of the mills we have a safety committee that is set up to meet each month for the inspection of the various mills and to turn in the

violations, if any, and these are usually worked out within the next 30 days with the employer. If not, then we call in the state safety inspector, and he makes an inspection and takes the violation to the employer and tells him he's in violation of the law

We find that the top officers in the operation many times let things go that we haven't found out about There are violations that they let go and they are not always taken care of and sometimes it takes time.

We've been fighting and insisting through the meetings they had between the employers and the Division of Industrial Safety that there are not enough teeth in the law many times to enforce an unsafe condition There are too many and it takes too long, and there are too many loopholes in the law to enforce safe conditions when they come up right away In other words you may see something unsafe but we can't just say, "Shut this job down," because we think it's unsafe, unless we have something that's real.

I'd like to state that we have no quarrel with the Division of Industrial Safety. We have good relations with Mr. Batterton and Mr. Brubaker whenever we call on them As far as what I was mentioning and what the staff was talking about was this green chain, and Mr. Batterton has agreed to look at it next week and to get something done about it.

CLARENCE E STARTT, *General Superintendent, Lorenz Lumber Company:*

Load Binders: On checking Article 12, Division of Industrial Safety Code of Logging and Sawmill Safety Orders, we have the framework set up to cover the binding and safe transportation of logs, however, the $\frac{3}{8}$-inch cable binders set forth in Article 5288 are not adequate for off highway loads This should be given consideration as an addition to this article and not as a new law. I would suggest that nothing less than $\frac{1}{2}$-inch I W R C rope be used on the off highway loads for both gut and top wrappers This, I am sure, can be enacted with the present framework of these orders.

Weight Lifting I would protest any such enactment of law by the Division of Industrial Safety as I do not believe there is any realistic approach to this problem The size of the article, the position in which one must lift, how and when this lifting is to be done are all factors that would be impossible to delineate in any written set of rules This would lead, I am sure, to considerable confusion and would in no way help the safety factor in manual labor

Workmen's Compensation I wish to reiterate that we need a definite clarification of the workmen's compensation law as it covers the proprietary driver of logging trucks and other vehicles As it now stands, every operator who employs a so-called "gyppo trucker" is subject to the opinion of one hearing officer in the event of accident to this trucker as to whether or not the employer has, as the law states, adequate workmen's compensation on every employee The law specifically states that one cannot be self-insured which leaves a doubt in an employer's mind as to who is responsible for workmen's compensation on a proprietary trucker.

Hours of Labor of a Gyppo Trucker Here again this subject, I believe, is pretty well taken care of in the Gaffney Law that requires every operator of a heavy-duty vehicle to have in his possession at all times a chauffeur's license or a class B license which entitles him to operate heavy-duty trucks regardless of ownership Any violation of the Vehicle Code is cause for revocation of this chauffeur's license, and, since the Vehicle Code states no registered chauffeur will be allowed to operate a vehicle for longer than 16 hours out of each 24-hour day, here again we already have the framework set up to take care of this problem

Economics of Safety I believe that this is one factor in the safety programs of our Department of Industrial Relations as well as in the field of top management that has been overlooked in trying to sell safety to the employer It is an impossibility to write regulations that will provide all of the adequate safety measures that would be required We cannot legislate safety, we can only set up the framework under which good safety programs, an adherence to good common sense methods will accomplish our goal As one of the other gentlemen testified "our insurance rates on workmen's compensation have almost tripled in the last 12 years" This is a deplorable situation and I doubt that few operators have really taken into account the cost factor involved Safety and efficiency cannot be separated; the reverse is true Once every employer realizes that he cannot continue to pay his insurance premiums and let someone else head the safety program for him, we will be able to cut the rate considerably as well as keep down this incidence of more and more legislation which on the broad plan can only be enforced by the employer himself

D. R MITCHELL, *Georgia-Pacific Corporation:*

I have just a few comments I would like to make in reference to the previous discussions relative to back injuries Numerous references have been made to injuries resulting from lifting an a number of pounds Over the past five years, we have been experiencing numerous back injuries The difficulty is to legislate a specific amount of weight any one individual could or could not lift safely

The other reference I would like to make is in regard to what we often call "moonlighting" in the industry, which has a reflection, I feel, in regard to the truckdrivers driving so many hours per day. I'm sure that the Georgia-Pacific Corporation has employees, and I'm certain likewise that there are other employers in this group, who have employees who work an eight-hour shift in our operations and then in some instances work another eight-hour shift elsewhere, or at least a half shift of four hours I feel that if you were to legislate for a certain number of hours for one type of occupation, it seems it should also fit the same pattern of various other occupations

EDWARD A BRUBAKER, *Supervising Engineer, Division of Industrial Safety, San Francisco:*

In terms of statistics, the latest figures on accidents in this industry have been published by the DIVISION of Labor Statistics for 1963 In this industry the total number of injuries was a little over 7,000—

actually 7,500 injuries This is not a large number of injuries, yet when you think of this in terms of frequency rate, the frequency rate of 46 for the lumber industry, it means that this is about 90 injuries per thousand employees in terms of normal statistics, and this happens to be the highest frequency rate for injuries per thousand of any major industry in this state that we know of Next to this is construction, which has about 88 injuries per thousand So even though the record has improved, and very decidedly improved, there's still a long way to go, with a lot to be done

I think as far as our function is concerned, this probably will relate to the number of people who are assigned to work in this industry and what we try to do about it safetywise We have had the same thing for the past several years now, with approximately five to six man-years of effort in this industry When you consider that this is devoted to 7,000 in the logging industry, this is a large percentage of our manpower assigned to this sole function For the other industry that the industrial section is responsible for, we have approximately 130,000 injuries, lost-time injuries, with a total manpower of about 55 engineers in the field, so normally the average man is assigned a workload of 2,300 injuries, whereas, for the lumber industry and forest products, it has 1,000 to 2,000—actually it averages out about 1,200 I think in our own efforts we have certainly concentrated and put our manpower in this field because of its extremely high frequency rate

CHAPTER 5

SUBCOMMITTEE ON APPRENTICESHIP TRAINING

The Subcommittee on Apprenticeship Training was created to study the provision of H R 160 (Foran) 1963 General Session, and A B 604 (Dymally and others) 1963 General Session Assemblyman John Francis Foran was appointed chairman The other members of the committee were Assemblymen Robert E Badham, Lou Cusanovich, Mervyn M Dymally and Alfred H Song

The subcommittee held the following hearings July 21, 1964, San Francisco; September 15, 1964, Los Angeles, October 21, 1964, Sacramento

The general subject of these hearings was the overall effectiveness of the California apprenticeship program, means to bring about fuller participation by labor and management; and possible incentives to participation The subject matter was largely embodied in House Resolution 160, which was introduced in the 1963 Regular Session by Assemblyman John Francis Foran The subcommittee also heard related testimony on AB 604, by Assemblyman Mervyn M Dymally, which was referred to it for interim study by the Assembly Rules Committee of the 1963 Regular Session

HR 160 recognized the crucial importance of a skilled labor force in California It also suggested that apprenticeship could substantially contribute to the building up of such a skilled force in the state if properly utilized The resolution therefore called for thorough study of the existing program in order to induce maximum participation and cooperation

Since the scope of the resolution was a very broad one, a brief summary of some of the concepts of apprenticeship may be desirable to indicate the general direction of the subcommittee's inquiry In the first place, the objective of apprenticeship is naturally to train an adequate number of youths to meet the needs of industry for skilled workers Ever since the enactment of the Shelley-Maloney Act of 1937, California's apprenticeship program has developed to a point where we lead the nation in this particular activity Apprenticeship programs are training some 24,000 apprentices in roughly a hundred different trades

If we are satisfied with simply comparing our own progress with that of other states, there would be little purpose in attempting to improve it On the other hand, if we examine some rather elementary facts of economic life in California, there is a great deal to be done Thus the subcommittee was concerned not only with the quality of the present program, but with the quantity of skilled workers which can be produced

California's economy will grow and prosper in direct relation to industry's ability to expand its facilities in operation But in the face of an increasingly accelerated technological development, industry

cannot expand without a sufficient skilled work force It was with this in mind that the subcommittee sought for means to develop an apprenticeship program capable of meeting the present and future needs of this state for a well-trained work force This issue, of course, is compounded by the rapid disappearance in our economy of the job opportunities for the unskilled and the semiskilled The technological revolution that is going on in California and the nation places a premium on the services of skilled workers. Still another complicating factor is the massive migration of people to this state, many of whom bring little or no skills to find such jobs as may be available.

One of the areas the subcommittee explored was in the direction of determining what methods would be effective in making a promise of apprenticeship clear to those entering the labor force and to those who may hire them Because of the voluntary nature of apprenticeship, it was felt that a greater effort toward generating interest is necessary A part of this generation of interest would be to make it abundantly clear to our younger people that their earning capacity will be significantly enhanced by the possession of a needed skill At the same time it should be made equally clear to industry that the existence of sufficient journeymen in their respective industries depends on full and active cooperation in an effective apprenticeship program.

The practice of pirating journeymen from one company to another is pretty widely regarded as self-destructive for the result is a scarcity of skilled workers so as to create an excessive demand for their services ultimately causing wages to spiral higher and higher

There are some 40,000 occupations in California, at least designated occupations, and approximately 400 of these are classified as apprenticeable Of these occupations classified as apprenticeable only about 25 percent actually participate in apprenticeship programs Noncraft skills, electronics and other technical skills which are developing in our economy demand a more substantial part in our apprenticeship program

In the matter of fuller participation, incentives need to be found to assure a most vigorous participation by both labor and management The possibility has been suggested that there should be tax incentives, rebates or reimbursements Whatever the answer, the subcommittee has felt that this is a matter that must be fully explored

One of the most important factors which must be taken into consideration is that of the minority groups as they relate to the job market in the State of California At present unemployment is more than twice as high among minority citizens, and it is recognized that they generally represent the least skilled and least educated of our society. In California this problem is intensified by mass migration from the southern states and other rural areas

In 1920 the agricultural employment represented one-third of the total labor force Today it constitutes approximately 8 percent These newcomers to California settling in our urban centers which seek highly specialized and industrial skills soon discover that California is not the land of opportunity they expected. They have neither a specialized skill nor a needed skill nor educational background, and they become practically unemployable The result in social and political problems is clear to everybody.

Finally, the subcommittee endeavored to explore ways to diminish the number of apprentices who drop out of the program before acquiring the necessary skill The apprentice dropouts not only diminish their own chances of finding permanent and productive employment but they drain the resources of the employers so as to seriously impair full and continued participation by management in the program Ultimately this in turn weakens the overall effectiveness of the program

Finally, with our rapid technological development, we find that the economy is demanding more diverse skills, and when we train one man for a particular trade or craft he may not stay in that craft for a very long period of time, and consequently we must look to making his training as flexible as possible so as to meet the ever-changing needs of industry.

FINDINGS

While California has one of the most advanced, if not the most advanced, apprenticeship training programs in the nation, it lags far behind its potential There are about 24,200 apprentices in the program in California at the present time This represents probably about one-fifth of the number that should be in apprenticeship programs

There are about 400 occupations in California considered to be "apprenticeable." But only about 25 percent of these occupations have apprenticeship programs.

If incentives were provided, management and labor might be induced to a fuller participation in apprenticeship programs

In recent years there have been developed industrial in-service training programs, public and private school training programs that overlap into the "apprenticeable" trade area and meet a great deal of current occupational training needs

The impact on the unemployment problem in California of an expanded apprenticeship training program does not promise to make as much of a contribution to the reduction of the unemployment rate as all persons of goodwill would hope Nevertheless, the committee feels that all reasonable efforts should be made to encourage such an expansion

RECOMMENDATION

That the Division of Apprenticeship Standards of the Department of Industrial Relations, in cooperation with the State Department of Employment, develop and submit to the Legislature a program designed to create incentives to employers and others, including but not limited to, direct reimbursement for cost of training, such a program to be administered under the California apprenticeship law and regulations It is proposed that such a program be presented on a pilot project basis which would be directed to creating new opportunities for unemployed youth to learn apprenticeship trades in industries where there is already a need for additional craftsmen

Assembly Minority Report on Apprenticeship Training

The undersigned members of the Subcommittee on Apprenticeship Training cannot agree with either the findings nor the recommendation of the subcommittee for the following reasons

1 Although the Director of the Division of Apprenticeship Standards claimed that there is a pressing need for the expansion of the state's sponsored apprenticeship programs, there was little or no evidence of such need aside from this self-serving assertion

2 Industry spokesmen demonstrated that private industry now has efficient training programs which adequately provide for their needs Little desire to have the state expand its apprenticeship programs was expressed by employers As a matter of fact, opposition to the intrusion of the state in-training programs was rather forcibly expressed

3. It is fair to assume that if industry believed the state could be of any real assistance in this field, it would have had representatives appear before the committee to urge state action

4. No convincing evidence was produced to support the assertion that an expanded apprenticeship program would reduce unemployment

The minority feels that an incentive plan such as recommended by the majority would entail an unnecessary and wasteful expense of state money, and the pilot project should not be undertaken in the absence of convincing evidence of a need for an expanded state program

ASSEMBLYMAN ROBERT E BADHAM
ASSEMBLYMAN LOU CUSANOVICH

The following testimony is pertinent to the key phases of the subcommittee's inquiry:

DR. LOUIS DAVIS, *Professor of the Department of Industrial Engineering, University of California:*

Perhaps I should indicate at the start that my interests in appearing before this committee are perhaps restricted to a particular segment of the considerations that the committee is looking into I might say that, as of this month, we have at the University of California the establishment of a research group—the first of its kind—particularly devoted to the study of human performance in technological settings, and one of the new studies that we are about to begin is being financed by the United States Department of Labor It is particularly directed at looking at evolving jobs and evolving skills with implications for training and education with advancing technology, and this study is expected to be started within the next month We are in the final stages of working out the details So that this particular group of investigators, some of whom have been drawn from different countries of the world, will have in fact carried on over the years the only significant studies in this area and will be available for advice and counsel in the conduct of studies as these may develop

I think I've mentioned two publications, and perhaps I might mention a third that should be looked at One is the review called "Apprenticeship in Europe," which was written by Gertrude Williams at the request of the Minister of Labor in England two years ago It reviews every apprenticeship program in western Europe The other is a study called "Automation in Skill," done by Dr. Crossman at the request of the British government. He is one of our new staff members, a professor

at the university, a former professor in England Here he particularly looks at jobs and skills in automated industry A third study is called "Vocational Training in View of Technological Change," which was conducted by a man by the name of King at the request of the European Productivity Agency Here again they particularly looked at what is happening to jobs, and what kind of training is likely to be needed as technology evolves

My own interests, of course, are informational interests, research interests I don't have any particularly program that I would bring before the committee It's rather early for me to make any such statement, but I would like to direct the committee's attention to a series of developments which are taking place in very diverse sectors which seem to be pointing in the direction of some new combination of tasks, some new combination of skills, which are likely to have an impact not only on apprenticeship training, but on vocational training in general They are likely to pose some real problems in areas which concern present established job boundaries as they exist in industry

These developments are probably spurred on by innovation itself, by new products, by research and development, and by changes in technology All of you seem to be pointing in a direction of individuals whose training is such that they can be useful in advanced industrial situations to carry out a number of related tasks which we now carry out in more specialized fashion Mainly such tasks, for instance, as servicing of automatic equipment in which the individual would need to know something about electronics, electricity, hydraulics, pneumatics, something about control theory and so on

Now the French National Vocational Training Establishment has already embarked upon these particular changes They call it the polyvalent craftsman, which I think we can interpret as the multiple-skilled craftsman This program in France is now underway, probably about five to seven years It is done under their apprenticeship arrangements, and those apprenticeship arrangements are rather different from ours In fact they have a variety of apprenticeship arrangements in which apprenticeships are based in schools from which apprentices go out and get practical experience in related industries, and also where they are in industries working on the job and are assigned to schools for a certain number of hours per day and so on

There are three or four arrangements that the French have These are described in the Williams' book on "Apprenticeship in Europe" The French have been on the way for some time in this regard in turning out mixed electromechanical craftsmen, hydraulic-pneumatic electrical craftsmen, and so on Now when one looks at the technological developments that are going on, one looks at the development of machinery, one looks at the costs of owning and using this machinery by an industry From all of these indications we can fairly forecast that the demands will be in this direction and the reasons are economic

The greatest single cost in a highly automatic piece of equipment is when it is not being used, so-called "down time" trouble And this is now being solved in a number of ways, largely through overtime using specialized craftsmen available working overtime to make sure they are on a standby basis so that this "down time" trouble does not become excessive Now with these particular pressures it's not very difficult to forecast that industry, when it can, will be asking for and looking for these particular multiple-skilled or polyvalent types of craftsmen

Now beyond that there have been some other studies, and these are of two kinds One has been the series of economic studies on how industries are to be organized, given the fact that the products that they are producing are to be changing all the time More new products constantly facing the industry, and these studies again seem to be pointing in a direction indicating that what will be the wave of the future, if one can speak of it in this sense, is multiple-skilled people, less specialized organizational groupings within industry, more multiple-skilled people

They are already in California One or two companies that are so organized in the electronics field in the southern part of the state are moving in the direction which has been predicted by these earlier studies.

Another group of studies are those that I am involved in, which are studies looking at the consequence of the contents of jobs on the performance of individual workers, supervisors, and the performance of the company Recently we finished a study in a chemical plant not far from the bay area and here maintenance craftsmen were retrained by the company, given multiple training so that each maintenance craftsman, whereas before he may have been a welder *or* a pipefitter, became a welder *and* a pipefitter He had two major skills and two minor skills The company paid for this retraining, reevaluated the jobs, adjusted the wages, and so forth The consequence of this change that took place was a marked improvement in the company's costs for maintenance, and also an improvement in the quality of its product Because of our research interests we were looking at the reaction of the men and the reactions of their satisfaction over the variety of tasks that individuals have to carry out and the way in which they could organize their work

We are just finishing a study at a large naval aircraft installation right here in the bay area where again the results are pointing in the same direction. Here again jobs were made larger and individuals who formerly simply did mechanical repair work were now doing the mechanical work and inspection activities as well, as part of their standard job Again performance is improving for the firm and the satisfaction of the individuals is very much enhanced I point to these straws in the wind, if you wish, which would seem to indicate that in planning an apprenticeship program, or in the planning of any vocational training, it is likely that the pressures are going to come for economic reasons from management's desire to minimize its costs of "down time" in the use of machinery

The chemical plant is the only concrete reference I can offer where this has specifically been done It was done about four years ago and is still in operation In the naval aircraft installation, which is under civil service, this is now a matter of policy They have observed the results of our experimentation and they too are now moving definitely in this direction This poses a vast variety of questions on the jurisdictional distinction between types of crafts and jobs which I don't want to enter into The utility of individuals in a world in which technology is going to force constant changes in what people do, the demands of industry in using their equipment and the restructuring of organizations—all of these seem to be pointing in the same direction, namely multiple skills, polyvalent crafts, and the like How it's going to be worked out I really don't know We never have looked specifically at how to do it The French have looked at it publicly That is, their program is not a private program carried out by a few employers on their own, but a public program established through the state's vocational training schools and the state's apprenticeship program In fact, in the report on apprenticeship in Europe the polyvalent type of craft training is raising some serious questions as to the efficiency with which apprenticeship training can be given On the one hand there are the large groups that will say apprenticeship which is entirely based within industry doesn't permit this type of training That there has to be a strong element of schools involved, whether or not the craft, whether or not the apprenticeships are based in school and put into industry for the particular practical experience, or whether they are in industry getting their practical experience, and then are required as a given part of their daily activities to be in schools to pick up these particular additional skills to provide this particular background

Right now, if one reads this review of apprenticeship in Europe, one is struck very quickly by the fact that you can furnish your programs across the board They are not restricted to any section of the economy Here in California our apprenticeship program by historical circumstance—and this is no criticism, it just happens to be this way—seems to be concentrated in those segments of our economy which are largely associated with construction, whereas in the European reports they are across the board In any kind of skilled work required in any kind of industry in European countries individuals enter into these either through organized apprenticeship programs or through the vocational training programs where these are linked together The state links the vocational training and apprenticeship together in various forms Different countries go about it in different ways We even have a highly industrialized western country such as Sweden which has no apprenticeship program whatsoever All of it is done through vocational training supported by the state and governed by a tripartite board of labor, management and others The major difference, of course, is that in western Europe all technical jobs, all skilled jobs are part of the programs and are not restricted to any one segment of the country This seems to me to be one thing that needs to be looked at here Why do we have the restriction? And what perhaps is more important, what can be done about the developing of the program?

Now once we get beyond construction, then of course, I think my remarks in the future would begin to be something to be looked at If we are to look at industrial type activities, manufacturing—although you would have to look at administrative clerical types of activities which are based on advanced pieces of machinery, advanced pieces of technological equipment—then my remarks become important

CHARLES F HANNA, *Chief of the Division of Apprenticeship Standards, Department of Industrial Relations*·

I believe we have clearly established that there is a need for more apprenticeship and other training on-the-job, and that this varies from occupation to occupation Some crafts are doing a very fine job and some are woefully short of skilled craftsmen This has identified, first of all, a need for some good research, which none of us has been able to do, to find out more specifically which crafts need more craftsmen and secondarily, how we could go about expanding those programs where the need exists Secondly, we must not overlook the fact that while we're concerned with quantity, we are also equally concerned with quality And even though a craft may not need any additional journeymen over a period of time, certainly they need to expand the apprenticeship training so as to improve the quality of those craftsmen who practice the occupation.

We have submitted that our program is voluntary and that the governmental effort has been promotional in nature There is nothing in apprenticeship that's enforceable, no one is required to train apprentices But we also submit that the voluntary system has not been exploited to its fullest potential Certainly, the promotional effort of our division is very limited, and except in instances where industry itself has appropriated funds, very little promotion in apprenticeship is being done, and this is an area that we need to look into We have also submitted that until a full effort is made in the promotional field, we will not determine whether the voluntary nature of apprenticeship is a success or failure, and I would even suggest that before mandatory provisions are even considered, that serious consideration be given to doing the full job of promotion and development in apprenticeship I I am satisfied that much more can be accomplished if the means to properly promote a voluntary apprenticeship system is made available What is needed is a comprehensive program and I doubt that any one particular suggestion that I have made, or that others have made, would tend to solve the whole problem And in the several discussions that we have had, I have suggested a number of areas of consideration

As an example, and this is controversial, it is a fact that the government is one of the largest of all employers of skilled craftsmen, and that generally speaking with some minor exceptions, the government does not employ apprentices They do employ a great many journeymen and this is at all levels of government, the federal, the state, the county and municipal This is a complicated and complex area, and proposals to develop apprenticeship in civil service have met serious opposition, while at the same time, most groups wish to have their journeymen employed as a matter of excessive force account work, etc , which creates objection to civil service, but from our standpoint and the

standpoint of the public, we who preach apprenticeship to private industry feel that government itself might well set an example in doing all they can do.

We have discussed incentive systems We looked at other countries that have developed such systems, and by incentives we mean something that would attract more employers to train apprentices One of the objections of many employers to participate in the apprenticeship system is that they say it costs too much money, and therefore we suggest consideration of reimbursement to employers for cost of training We feel that an experimental program along these lines might well attract many more employers to participate The employers who do participate and contribute all they possibly can object to having their skilled craftsmen pirated by those employers who contribute little if anything to the program.

The Defense Department, as you well know, has a lot of work going on, as do other agencies in the aerospace industry They plan to reach the moon and other planets in the near future and they employ many journeymen in many different crafts, but here again in California the record of apprenticeship is deficient to say the least The records indicate that in California all of the defense industry have about 200 apprentices in training in all of their skilled craft occupations We submit that something needs to be done about this The incentive system here apparently isn't going to work because the Defense Department does reimburse the cost of training, including the wages of the trainee And even so, in apprenticeship we don't find very many.

This is, of course, a federal government problem basically, and the Secretary of Labor has developed a task force of which I am a member to study this matter, and we have conferred with the Defense Department and haven't gotten very far, so we're still seeking a solution to that one

I have already mentioned that a broad, comprehensive, well-financed promotional program would persuade many more employers to hire apprentices than do so now, and employ up to agreed ratios Direct reimbursement for cost of training additional apprentices is also a matter for consideration In the area of job development there is one agency of government at least that does a substantial amount of this, but in the apprenticeship area they've done very little

The Department of Employment has cooperated with us during Apprenticeship Month, and we have found that by having people going out and actually seeking jobs for apprentices, many jobs are found During this one month when we could find time to concentrate, we increased the number of apprentices there by five or six hundred simply by doing some specific job development The point here is that governmental agencies do not have very much time to do this I am satisfied that if more people were hunting more jobs for apprentices we would find more of them An employer will essentially call for a skilled craftsman, if that's what he wants, and seldom will he call for an apprentice

This leads us to another point which deters the employment of apprentices in some trades more than in others, and it is the preparation of youths for entry into an apprenticeship system or an on-the-job training system There are certain minimum requirements for academic

and basic work habit skills that must be met, and we find too often that our youth of today have been deprived of this basic opportunity to ever learn how to work.

A number of apprentices who are motivated, who are now in apprenticeship, found their own jobs, nobody found them for them They were motivated, they were qualified They vigorously sought these programs and this is particularly important to the minority community where the story in the press thus far has been that it's no use to look for apprenticeship, you will be discriminated against We have a program to bring the facts to the public regarding minority youth in apprenticeship California, I am happy to say, has I think led the nation in solutions to this problem Most joint committees have adopted a fair and impartial selection process, taken the pledge so to speak, and much of what remains is for the minority people to prepare and compete for the apprenticeship jobs that there are available This won't increase the number of minorities even if they all compete successfully, because the number of jobs is limited, and so we're going in two directions One, to help the minority people to compete successfully; and second, to expand the number of those jobs that are available to all.

A little more on the incentive system, I think California has operated the most successful apprenticeship program, certainly of any state, and equally as successful as any program operated by the Federal Bureau of Apprenticeship in states where there are no state programs We've increased apprenticeship in the last 10 years by about 30 to 40 percent. We've increased our productivity of each individual by about 3 percent per year But this is certainly not enough It is the line between the increase in apprenticeship and the total population that is getting wider all the time

In some instances, there needs to be an accelerated number of young people trained to meet the needs of industry There have been proposals, and it seems the most popular one at the moment, although I have some reservations about it, is a tax incentive system By that we would mean that there would be a tax offset to defray the cost of training for employers who could show that they were doing the training My reservation is simply on the basis that this would be a very complex type of program to administer Incentive systems which would provide for direct reimbursement to those who would expend the money for training, I think would be more direct and should not involve any more agencies than are absolutely essential, and should be very simple in their administration In apprenticeship, it would seem to me that where there is an apprenticeship system, all that would have to be shown is that the man is training apprentices according to an established program, not to develop a whole new batch of papers such as we have to do in MDTA. We have the one or two programs that we can look at to consider whether the incentive-type system is going to do the job We got the federal government to agree in a limited way to approval of a program to expand the nongoing apprenticeship system to 50 apprentices, where there was a clearly established need for 200 more journeymen The Joint Apprenticeship Committee will administer the program, the federal government is going to reimburse the total program including

our administrative cost and that of the employment service in the school to somewhere around $60,000, or approximately $1,300 per apprentice per year

The program will be supported only for one year, and it is expected after that that they will carry it on themselves A reimbursement to the employer will be in the amount of one journeyman-hour per apprentice-day The amount equal to that on the basis that the journeyman spends at least that much time in instructing the apprentice In addition, they will pay partial costs of the apprenticeship coordinator and clerical costs and the agency administrative costs, and that's all that there is in there There is no training allowance involved and there is no direct reimbursement to the labor organization involved either Although the labor organization has expended substantial sums of its own money to support the ongoing apprenticeship system There is also a guarantee that this will not replace the ongoing system The act requires that there be a maintenance of effort, and this I think is a reasonable requirement And from this we shall see whether the employers — and I call them the tough ones, those who have not participated thus far — will be attracted to participate by this offer of direct reimbursement to them

Now we've already found places for 25 of these added apprentices and we expect to find the 25 other jobs in the near future by going to other employers who could use them and should have been using them all along by offering them this incentive

There is a hazard in this, in that the cooperative employers, the employers who have been spending their time and money all down through the years, are not likely to receive any reimbursement at all because they now have a full quota of apprentices But the committee is a very knowledgeable group and they are willing to do this experiment and almost anything else they can to bring that program up to a point where it produces the needed number of journeymen This is in San Francisco and all down through the years there have been 200 good journeymen machinist jobs vacant This is a substantial piece of industry that San Francisco doesn't have because we haven't trained enough men

I might mention a few other types of incentives that are worthy of consideration I won't dwell on them at any great length The tax incentive has been endorsed by the Federal Bureau of Apprenticeship and the National Committee on Apprenticeship, and it may well be that it will appear in the form of legislation at the next session of Congress The details have not been worked out In France, there is a direct 4-percent payroll tax on all employers They have an option of paying this payroll tax, and this is a tax for training purposes, or they can demonstrate that they themselves are spending up to this amount and that tax is then offset and they don't pay it In Great Britain recently there was legislation enacted in an appropriation of $140 million to bring apprenticeship out of the doldrums One of the authorities of the board that is established under this $140 million appropriation will have the authority to impose a tax, a training tax, on industry Again, to build their program so that they can compete with the other European countries that have done much more than Britain has in training skilled craftsmen,

The matter of training allowance is one worthy of consideration also By training allowance I mean a training allowance to support a young person while he might be in a preemployment class for a short period of time to sustain him and subsequently a training allowance on the job, particularly during periods of unemployment This type of system is used in Canada In the winter months we lose a great many apprentices because they are unemployed, they're married, have responsibilities, and they must continue to work so they take other jobs And quite often rather than risk the hazard of intermittent employment, they quit the program And so it would seem to me that a training allowance, again properly developed and administered, might tend to reduce the number of dropouts and complete total losses in current apprenticeship systems

In justification of these proposals for incentives, reimbursements, I think we might look to almost any other system of education and training and find that all of these have expended substantially more than the government has expended altogether for apprenticeship I have already mentioned MDTA and the fact that they're willing to spend up to $1,300 per apprentice year to do that job They feel that this is well justified

In our Youth Conservation Program down at Oak Glen, the state, to do something for our underprivileged youth, is willing to appropriate $300,000 to administer that program Here again the objective is to straighten the young people out in some basic work skills And if they have 200 men per year, which would be 100 for every six months, this would cost about $1,500 per man per year in that program And the purpose there is much the same and would accomplish less than we accomplish if we can spend that kind of money for apprenticeship I don't suggest that the incentive system would solve all of our problems because apprenticeship is very complex There are many and varying views on this subject and I'm sure you have heard many of them And yet in representing the public interest we have to try to cut through the positions taken by many others occasionally, they have for their own special reasons taken this position Labor has its objectives Management has its objectives But we have a public objective, and that is to provide all of the opportunities that we possibly can for our youth to acquire a skill in which they can make a decent living And so I think there are three interests that have to be met None of us, I think, can override the views of the other, and we have to have some means of compromise in the putting together of views I think this is our job and it is a tough one Yet the need is very definitely there and certainly the needs of youth for these opportunities are there I think we have to do something about it That, I believe, briefly summarizes this I am suggesting that at least we ought to consider a pilot project here in California Certainly we haven't any great amount of money that we can put into it, but a pilot project would enable us to test and find out with reasonable certainty whether this kind of a system will work

CHAPTER 6

SUBCOMMITTEE ON SPECIAL EMPLOYMENT PROBLEMS

The chairman of the Subcommittee on Special Employment Problems was Assemblyman Alfred H Song Members of the subcommittee were Assemblymen Clair W. Burgener, Mervyn M. Dymally, Edward E. Elliott, and Victor V. Veysey.

The subcommittee held hearings at the following times and places:

January 10, 1964, in Los Angeles, on the subject of special employment problems of Mexican Americans

October 8 and October 9, 1964, in Los Angeles, on the subject of problems in public employment.

Special Employment Problems of Mexican-Americans

FINDINGS

Americans of Spanish surnames make up the largest single minority in the State of California and their tremendous contributions to our culture and economy have been an important factor in the progress and development of our state

Among these Californians of Spanish surnames there presently exist serious problems in the areas of education, employment opportunities and housing.

The committee recognizes the socioeconomic circumstances that presently exist and handicap many of the members of the Spanish-speaking communities of our state.

Both the State Legislature and the administration should give constant scrutiny and attention to these unique problems, and accelerate their efforts to assist this vital element of our population to achieve its full potential in our society and in our economy.

RECOMMENDATIONS

1. The extension and expansion of the McAteer Compensatory Education Act of 1963 and its continuance on a permanent basis

2. An immediate and comprehensive study by the Legislature of the conditions adversely affecting the Spanish-speaking communities and an immediate implementation of programs designed to ameliorate these conditions.

3. Greater attention to children with language handicaps, with emphasis on reading, writing and arithmetic in the early elementary grades.

4. The inclusion of the "national origin" category in all laws banning undemocratic discrimination.

The following are pertinent excerpts from the testimony given at the hearing in Los Angeles, January 10, 1964:

J J RODRIGUEZ, *Los Angeles Community Service Organization:*

For the past 17 years, C S O has participated with many prominent groups, locally and throughout the State of California, in an effort to end discrimination in employment and other injustices imposed upon human beings because of race, color, creed or national origin.

In spite of our successes, we feel that we have not yet eliminated discriminatory practices adequately enough to insure equal opportunities for all All these years we have fought for justice for the Mexican American and Spanish-speaking people in many fields; therefore, we understand through these many years of experience and many campaigns in these endeavors, the nature of the problems and the bitterness felt by the Spanish-speaking people in relation to employment and unemployment.

At this time, I would like to point out a few references to education, and how it relates to this hearing today.

In a report of the National Conference on Office Education in Washington, D C., May 1960, the following statements were made:

"The shortage of trained manpower is one of the most acute problems facing the United States today The maximum development of the capacities of all citizens becomes essential to the continuation of economic and social development of the nation. Office education, as part of Adult Education, can help in the development of trained manpower.

"Technological change is increasingly rapid The retraining of employed persons is a pressing problem Office education can contribute to this retraining program through the development of specialized education."

These two quotations refer to officeworkers in our country. And if this can be said of officeworkers, and their need is so important, C S O believes that it cannot be said enough times about the immediate need for the Spanish-speaking skilled, semiskilled and unskilled, to receive immediate consideration and action Certainly the need is even greater than for officeworkers

C S O would also like to refer to the tremendous impact of modern technology and automation in employment for the Mexican American.

The insidious thing about automation for two major groups, the Negro and Mexican American, is that it operates in several special ways to keep them out—ways that cannot be met by the passage of a Fair Employment Practice Act of the State of California or any other legislative bar to job discrimination

First, and most obvious, automation has its most drastic effect in eliminating unskilled and semiskilled jobs In factories, mines, packinghouses, and many other fields, the jobs that have been wiped out are those in which Negroes and Mexican Americans used to find it easiest to qualify This is especially true for those who never got past high school Most work that used to be done by people without a high school diploma, can now be done more cheaply by a machine Two-thirds of today's jobless are in that class.

Negroes and Mexican Americans experienced both more frequent spells and longer periods of unemployment.

So many youngsters are coming into the overcrowded labor market that it would require 25 000 extra jobs every week throughout this 10 years just to keep abreast of the inflow No one has the faintest idea how much higher this figure has to be to take account of the shrinking effect of automation on total job opportunities The Bureau of Labor Statistics estimates the loss each week at only 4,000 jobs John L Snyder, Jr., chairman of the U S Industries, Inc., an important maker of automated machinery, puts the figure at 10 times that Senator Jennings Randolph of West Virginia stated, after listening to scores of expert witnesses at Senate manpower hearings, that he was convinced it was really 80,000 a week, or four million jobs a year

KMEX, Channel 34, research established facts that there is a sufficient number of Spanish-speaking people in this area for private enterprise to appeal to and advertise on their channel

The same 1960 census figures used by KMEX also revealed that there are more than a sufficient number of Mexican Americans untrained, at the lower end of the socioeconomic scale, and therefore *that they can* certainly *appeal* for immediate consideration and direct action from local, state and governmental bodies in generating new and additional programs, like the youth training and employment project in East Los Angeles The latter program is aimed at youth between the ages of 16 to 21 We are concerned with the rest, above 21 through 65 years of age

C S O would favor direct action from the State of California in promoting and establishing training and retraining programs for semi-skilled and unskilled workers immediately A 6-month or 60-month training program is less costly than 6 years' time of unemployment insurance, Bureau of Public Assistance aid, aid for the needy, et cetera

Besides the monetary aspect to be considered, there is the stronger moral emphasis of self-pride, regained confidence of once more being a productive, self-sustaining and taxpaying individual citizen of the overall community

C S O has always advocated participation for all members in a given community during elections, in voicing opinions, et cetera, in order to have a stronger and improved citizenry *Now* C S O *also urges* overall consideration and action from members of the State Legislature to effect a program, and/or programs for the immediate and long-lasting betterment of the Spanish-speaking citizens of this community, and that of the State of California, so that they may be in a position to reciprocate and participate in society as a whole

MRS GEORGIANA HARDY, *California School Boards Association, Los Angeles:*

If I may speak for a moment on Los Angeles, making it quite clear that I am not now speaking for C S B A, we have a large manpower development and retraining program The major problem with a large number of people who have tried to come into this program is their lack of basic English and basic math Under the present federal legislation, the manpower redevelopment program will permit us to go back into these subjects before we start training for jobs because in this day and age, and I am not now speaking only about the Mexican American, but to a very large degree this does affect him It also affects many people who come from our southern states, and so forth If they cannot

speak adequately, if they cannot read adequately, and if they cannot at least do algebra, it is very difficult for us to put them into manpower retraining except in such jobs as, let us say, pressing for cleaning firms which are very low income jobs and I have some reservations about this retraining because what it does is to continue to hold down the wage structure because these jobs which are specified as being unfilled by the State Department of Employment are the jobs that nobody wants to fill because they pay so badly

Many people assume that we should be teaching English to children of Spanish background in kindergarten and first grade, but many of them come into our schools at the sixth grade, the seventh grade, the eighth grade and have moved in from Mexico within the last three weeks and at the present time we do not have funds for special training programs for these students at the high school, junior high and senior high school level We put in remedial reading teachers into elementary grades for our non-English-speaking children We very desperately need teachers to work with three or four or five seventh graders or ninth graders, and we need state funds for this I know we are not involved with education funds, but the problem of these students is just as desperate as the problem of the deaf student or the blind student or the polio student for whom the state does give us additional funds The retraining that they need, their education and concepts that motivate ambitions, all of these things at the age of 13, 14 and 15, this is as important to us as what we do in the second grade And we have no additional funds for this and no leeway within our budget for special programs for these students

WILLIAM ACOSTA, *Community Services Coordinator, Youth Training and Employment Project, Youth Opportunities Board of Los Angeles:*

Typical of the feelings of most minority groups which have been labeled as "culturally deprived," there still exists a strong feeling among most of the Mexican-American population that for the most part they still are the "last to be hired and first to be fired " This strongly suggests that in many areas of industry there still exists de facto discrimination in relation to employment opportunities Language differences and cultural isolation have usually been emphasized as two of the major problems belonging to the Mexican-American population which have tended to generate resistences to being hired, while among employers, attitudes toward cultural differences, including the stereotyping of minority groups, have tended to prolong this problem Yet, we must recognize that as a result of the Fair Employment Practice Commission and other organizations at all levels of government and private concerns, this problem has decreased within the recent years However, continued work and effort in this field remains an absolute necessity

Among the Mexican-American population living in East Los Angeles, research indicates that 38 1 percent of the work force is involved in some kind of work generally classified as "unskilled " Comparing this population to other local areas, we find that in Hollywood only 3 1 percent of the work force is involved in unskilled work, while in Van Nuys 10 2 percent is involved in unskilled work, and in central Los Angeles, 18 6 percent is involved in unskilled work Of this same work

force, namely, among the Mexican-American population, only 1 5 percent is involved in professional or managerial type of work In fact, the percentage of workers in all work categories and classifications is much lower than the average for Los Angeles County except in the unskilled occupations.

WILLIAM GUTIERREZ, *Consultant, Los Angeles County Commission on Human Relations:*

Let me begin with the high dropout rate Mexican Americans It is a foregone conclusion that school dropouts generally have greater difficulty in finding employment It is also a foregone conclusion that Americans of Mexican descent in this area have the highest rate of dropouts. Most definitely, therefore, it can be stated that unemployment among them is double that of the so-called equal "white boys "

It has been my experience that Mexican Americans leave school, not so much because they seek remunerative alternatives as other non-Latins do, but because they have no interest whatsoever sometimes in school

This is a precarious condition At least members of the majority and even Negroes, perhaps, will drop out of school and yet are able to speak and read and write adequately, often enough to be getting opportunities at least unskilled for menial jobs Not so with Mexican Americans Invariably, these Hispanic dropouts were being carried by schools only marginally. In fact, at times, some schools were just waiting for some Mexican-American pupils to become of age when they could be suspended or expelled because of behavior problems, when in reality, the youth had become illiterate

Thus, an illiterate Mexican American redoubles his already poor opportunity in employment Need I go into the ramifications of this last fact, of this condition? Suffice to say, that in a progress report by Mr. Joe Maldonado, a few months ago, he said, "Sure, we are reaching many unemployed Mexican-American youths; that is no problem The problem is that they are untrainable because they cannot even read, much less write This is the problem "

Concerning prejudice and discrimination as the cause of the factor, many Mexican Americans have not learned to exert their civil rights on employment matters Perhaps if they were as alert as the other large minorities, the Mexican American would have fewer employment problems. But such is not the case Few will deny that there is discrimination against Mexican Americans All that has to be done is to take a survey of employment in any civil service agency to determine if members of this ethnic group are working in government in proportion to their numbers in the general population And of those who are in civil service, do they hold a substantial number of positions of any importance commensurable with the number of their people whom they represent?

Perhaps under an aura of inferiority complex domination, the Mexican American has developed characteristics not advantageous to his personal and economic growth Certainly FEPC investigators frankly say this is a problem because they sense that the Mexican American is "scared stiff" or "afraid" to make complaints against abuses against him

Briefly, I said this: Our American economic pattern of highly technical nature demands, not tomorrow, today, now, that we shift resources (money, material, ideas and imagination) to bear heavily on doing away with those forces that are known to many of us and are keeping the Mexican American from developing his potential workmanship. This is necessary now because all Americans must be developed to meet the onslaught of technology The Mexican American needs more attention because he has more problems He is considered a member of a minority He has traditionally the highest rate of school dropouts, and when he drops out of school, he may be a functional illiterate All these factors combined mean (1) he cannot take advantage of future opportunities open to him in employment; (2) lack of opportunities will triple for this marginal excluded citizen; (3) he will do less and less meaningful work, losing interest in himself, his family and his community; (4) he will not earn enough to sustain his family, thus losing respect all the way round, and (5) finally, he will join the island group of the unemployed, an island where such terms as "the lonely crowd," "nothingness," "godless," "powerless," "reduced to nullity," and the "alienated man" describes the natives

SAM HAMERMAN, *Administrator of Urban Affairs, Board of Education, City of Los Angeles:*

The employment problem of the Mexican American is typical of that of the other minority groups; that is, "last to be hired, first to be fired," and he is encountering an increasing difficulty in finding jobs suited to his talents . and in many cases he lacks the necessary skills

In the case of the Mexican American, this situation is further aggravated by a lack of communication skills, his inability to speak English proficiently enough to get along from the point of view of the employer

So it is, too, that in attempting to succeed in school, this same language barrier proves to be an obstacle, and in some cases so insurmountable, we can conclude that it is a significant factor in the high dropout rate which is typical of schools with large concentrations of Mexican-American youth

A survey was taken recently in the Lincoln Heights, Boyle Heights, City Terrace and surrounding adjacent areas by the Youth Opportunities Board of Greater Los Angeles in conjunction with the current employability project headed by Mr Maldonado It showed that 2,400 young people between the ages of 16 and 21 must be given help if they are to become contributing citizens of their community. These are individuals who have been out of school six months or longer, out of work, and in many cases, two or three time losers who realize this may be their last chance to "make good" Assistance for these persons is now being provided through means of a pilot program of which you may have heard, the East Los Angeles Youth Training and Employment Project, being conducted by the Youth Opportunities Board of Greater Los Angeles

The Los Angeles school system is one of the five agencies which make up the board's membership, and is responsible for all education and training aspects of Youth Opportunities Board programs. We have

found, in the initial phases of this project, that many of these young people lack the same communication skills that I mentioned earlier, that there is a need for remedial programs in English and basic mathematics, as well as the need to instruct these young people in the mechanics of applying for and holding a job

We are providing these specialized remedial programs, as well as providing opportunities for training in marketable skills, especially in such shortage occupations as clerical work, drafting and auto mechanics Many of these opportunities are being made available through our adult education program, found at convenient locations throughout the East Los Angeles area

The things we have learned from this first phase of the East Los Angeles project have merely served to reinforce our previous convictions—that many of the problems attendant with a failure to adjust to school situations, which lead to dropouts and unemployability—can be corrected if students, early in their school career, acquire a sound basic knowledge of fundamentals, specifically reading

Many of our specialized programs in compensatory education for "culturally different" children are centered around this concept We know they provide an answer Our problem is to find the means to implement these programs on a wide scale

MARION J WOODS, *State Supervisor, Minority Employment Program, California Employment Service:*

It is clear that many of the occupations in which Mexican Americans are employed are occupations which have relatively low status and offer smaller wages These are the occupations mostly affected by automation and technological change and some of them are simply disappearing. A few months ago I made a valiant effort to compare 1960 occupations with 1950 occupations as given in the census and we had to give it up because many of the occupations stated in the 1950 census did not exist in 1960.

Our analysis shows that the automation is not the only menace for the Mexican American worker Another job discrimination—another problem he often faces is his cultural, language and educational handicaps Attorney Carlos F Borja, Jr , president of the Council of Mexican-American Affairs, in his speech before the Regional Conference on Equal Employment Opportunities in Los Angeles on November 14, 1963, pointed out, and I quote, "In many cases the worst economic disadvantage that a Mexican American faces today is not prejudice based on his racial background, but it is his lack of preparation " Dionicio Morales, in his presentation, *The Need for a Social Service Agency to Serve the Mexican American Community,* in his discussion of the problems of the new immigrant, points out that "employment usually becomes an immediate problem primarily due to the language barrier "

The Mexican American's lack of preparation can, in large part, be traced to a bilingual environment which has interfered with the Mexican American attempts to adjust in American society I hasten to point out here that we do not—that this is not a reflection on the Spanish-speaking culture or the policies of the government of Mexico—but it is merely an immediate and practical reflection upon the difficulties of a

person trying to exist in two cultures In one culture in which he resides, he speaks one language but he is forced to earn his living by mastering fluently another language. In addition, many who have migrated to California from Mexico and other states have been illiterate or, at least, poorly educated For this group, and frequently for their children also, the lack of an education poses an additional handicap.

RAFAEL VEGA, *Consultant, State Fair Employment Practice Commission:*

Between September 1959 and December 31, 1963, a total of 3,048 complaints charging discrimination in employment and investigation requests were filed with the State Fair Employment Practice Commission Of the above total, 143 complaints were filed by persons with Spanish surnames, the majority being Mexican Americans Forty-three of the Spanish surname cases were reported in northern California and 80 cases were reported in southern California. Of the 80 cases reported in southern California, 24 were filed in 1962 and 44 were filed in 1963 During the years 1962–1963, 51 cases named private employers, 9 named public employers, 2 named unions and 4 named schools as respondents

It is necessary to point out that the relatively small number of complaints received by the Fair Employment Practice Commission from Spanish surname complainants cannot be assumed to be an index of the incidence of discrimination against Spanish surname workers We are aware of the heavy concentration of Mexican Americans who have been victims of a history of unequal opportunity in jobs, education and training However, it is necessary to have an individual complaint or a request for an investigation before the Fair Employment Practice Commission opens a case

We were unable to obtain figures on the unemployment of Mexican Americans The Los Angeles *Times* reported recently that in an area where one-fifth of the Los Angeles population lives—and where large numbers of Negro and Mexican American workers are concentrated, the rate of unemployment ranges up to 29 8 percent of the work force, compared to 6 6 percent for the city as a whole

There is a very limited statistical and factual picture on the entire subject of minority employment, particularly as regards the Mexican Americans There is an obvious need to gear research and to develop statistics on the employment problems of our Spanish surname population, some of which are as follows:

1 A large part of the Spanish surname labor force in southern California consists of Mexican immigrants, most of whom speak little or no English. When they have a need to visit public agencies for services such as job referrals, claims for unemployment and disability compensation, filing of wage claims, complaints of unlawful employment discrimination, or reporting of infractions of industrial safety and industrial welfare regulations, if they are unable to communicate their problem because of a language difficulty, they go away discouraged Usually, they are unable to return with an interpreter as they are frequently requested to do Consequently, they fail to receive services to which they are entitled.

It must be acknowledged that some agencies have recognized that in order to fulfill their service function they must recruit bilingual staff persons Among the state agencies who have established job classifications calling for ability in Spanish, in addition to the other job requirements, are the Fair Employment Practice Commission and the California Department of Employment

2 A very small number of the Spanish surname complainants are referred to the Fair Employment Practice Commission by Mexican American organizations This would indicate that organizations are not reaching the average working person; or, if they do, they are not informing him about his rights. Those who do know their rights under the law more often than not hesitate to file complaints because they do not want others to know they have been discriminated against.

3 Mexican Americans are often unaware that they are being refused a job because of their ethnic identification, mainly because of the subtle manner in which discrimination is practiced against them Sometimes it is not so much a case of overt discrimination on the part of an employer as it is ignorance or misunderstanding of the potential of the Mexican American as an employee

4 The World War II G I. Bill enabled many of us Mexican Americans to obtain a college education. We now have a new generation of Mexican Americans Among them there are many children whose families need financial help if they are to get an education There is need for legislation which would offer assistance to the average student on the basis of need.

Problems in Public Employment

FINDINGS

The committee heard frequent and detailed criticism of the present weight given to the oral portion of civil service examinations based on a variety of objections Among other things it was contended that the applicant, in the event of rejection, is usually left in the dark as to the reasons for his failure, that factors other than capability often determine the decisions of examining boards, that the present procedure may permit covert discrimination as to race, color, age or national origin; and that no record is normally kept in case of appeal from the boards' decisions

It was also suggested that in many cases a written examination may put too much emphasis on verbal skill and facility of expression without giving a sufficient measure of the applicant's ability to perform

The professional qualifications of examining boards were also brought into question, particularly in the areas of public employment involving technical skills and training

RECOMMENDATIONS

The committee recommends the creation of a citizens' commission for the purpose of studying

(1) The feasibility of reducing the weighting of the oral phase of civil service examination,

(2) Substituting, to the extent practical, on-the-job practical demonstrations for oral examination;

(3) An interview board composed of permanent professionals,

(4) Drastic revision of the written examination, to minimize emphasis on verbal skill and facility, on the assumption that the best qualified are not necessarily possessed of these skills

The following are pertinent excerpts from testimony given at these hearings:

FERNANDO DEL RIO, *Job Development Consultant, Youth Opportunities Board of Los Angeles:*

This is specifically in relation to the oral portion of the entrance examination in the civil service procedure I want to point out a specific case involving a Mexican American and it may reflect some of the reasons why you don't find Mexican Americans in high civil service positions and, for that matter, perhaps even lower positions This is the case of a Mexican-American male. He was a qualified journalist and he qualified to take a public relations test with the City of Los Angeles He took two written examinations, this was specifically for the Los Angeles International Airport Having the mastery of both the Spanish language and the English language, and Los Angeles being a port of entry from South America and Mexico, he felt that he had quite high qualifications He took a test for a public relations representative as a staff member and also another one for a principal public relations representative, which is a supervisorial position He was notified of the written examination and he passed both examinations; he then was subsequently notified of an oral interview but without being told which of the oral examinations he was to take, that is, either the public relations staff or the supervisorial position However, he did go to the oral examination and the oral interview and nothing was stated by the interviewers, at the time, regarding the nature of the interview or which two of the positions he was being interviewed for. But when he received the results of both the oral interview and the composite written and the oral score, a strange thing happened In the oral score for the public relations representative, which was the lower staff position, each interviewer gave him a different score and the composite of the oral and the written score for this position placed the subject fourth from the top on the examination However, on the principal public relations representative, which was the supervisorial position, he received a unanimous low 60 score from each interviewer, which disqualified him from the principal position

The subject then subsequently filed a written protest and he was advised of the hearing During the protest hearing he was questioned about his insistence on qualifying for the high supervisorial position due to the fact that he had never been a government employee, although it was an open examination He received the results of the hearing, which was negative, on the protest hearing From that time—perhaps a year and a half following—he had interviews, oral interviews, for 10 or 11 different openings with the City of Los Angeles (in this same category in different agencies or different departments) and for one reason or another he could not qualify for any position He then charged dis-

crimination based on racial reasons and on the fact that the departments, within the City of Los Angeles, would shuffle employees from lesser positions into the public relations positions and, therefore, there was never an opening in those areas Up to this time, no Mexican American has been put in this position

MRS CARMEN H WARSCHAW, *Past Chairman, State Fair Employment Practice Commission:*

The California Fair Employment Practice Commission has now had more than five years of experience in dealing with employers, both private and public, on matters related to equal opportunity and the elimination of discrimination

Let me first state some general conclusions based on our experience in more than 3,700 cases over a five-year period, of which 780, or about one in five, involved charges of discrimination by a public agency—city, county, school or other district, or state

We observe that, historically, civil service has provided better opportunities in the lower levels than private industry for the employment of minority workers, that this has resulted in more minority applicants for public employment, and thus FEPC receives more complaints of alleged discrimination, proportionately, against government agencies, and frequently the red tape of civil service regulations makes the work of FEPC more difficult

We observe from our experience that government agencies, as respondents in cases of alleged discrimination, offer greater resistance and less cooperation than do private employers

The rule of three is more often than not used to cloak discriminatory attitudes and practices Many Negroes have been referred literally dozens of times, but never chosen Investigation covering months of referrals may be required to uncover the subtle discrimination in which the rule of three has been misused

Among the types of personnel actions involved in charges brought to FEPC are these. (1) refusal to hire on the part of an individual agency after referral of the applicant by the civil service office, (2) discriminatory dismissal from employment before the end of the probationary period, or failure to give tenure; (3) denial of permission to take a civil service examination—rejection as "not qualified"—or failure to pass an oral examination after the written examination is passed; (4) suggestion to Negroes that they waive their rights on an eligible list, or abolition of the list when Negroes are at the top or in the first three

We have found that in the majority of cases Negroes are taken into city or county government employment in token numbers in the lowest positions in public works, sanitation, and maintenance crews, and then do not receive opportunity to advance to foreman or to fill vacancies in other departments

You will note that my references are to alleged or proved discrimination against Negroes It is true that about 90 percent of all FEPC cases, both in employment and housing, are concerned with problems of that racial group. We are aware, however, that the Mexican-American population of southern California is quite as large, and that Mexi-

can Americans are just as much the victims of a history of unequal opportunity in education, jobs, income and housing

I remind you, however, that it is necessary to have an individual complaint or a request for investigation before FEPC opens a case Although we emphasize the problems of Mexican Americans and other minorities in our information and education and affirmative action programs, only a small fraction — 4 or 5 percent — of our employment cases come from Mexican Americans

Of the 3,620 individual complaints filed with FEPC from September 1959 through September 1964, a total of 513 charged discrimination by school or other districts or by city or county governments Another 236 complaints were filed against state agencies Then there were 29 investigations initiated by the commission on receiving information other than individual complaints that the fair employment law had been violated by such public agencies

You may be interested in some further statistics based on our experience here in southern California In this part of the state, 90 complaint or investigation cases named schools or school districts as respondents, 49 named the civil service or personnel agency of the city or county, 15 named public hospitals; another 31 named local utilities or public transit systems, and 13 named local law enforcement agencies Various city departments were named in 42 cases, and county departments in 35 cases

More than one-quarter of the completed cases in this area have shown clear evidence of discrimination and have been resolved through conference and conciliation Other cases contained elements of discrimination or inequities in the handling of applications or treatment of minority employees In a large number of these cases improvements in recruiting, interviewing, referral and other practices were made by the agencies concerned

Statewide, more than one-third of the cases against California state agencies have been settled through conciliation, and the remaining two-thirds have been dismissed. I am pleased to report that Governor Brown's directives and the ethnic census of all state employees which he ordered have brought about many worthwhile changes and improvements in making job opportunities available to minority people This does not mean that every problem has been solved But I congratulate the State Personnel Board and many other agencies on their intergroup training programs for supervisors and their moves to recruit qualified workers of every racial and ethnic group

Some of the same things are being done by cities, counties, and school districts, and in a number of instances with the advice and consultation of FEPC For example, I urge you to read the report of an FEPC investigation of the San Diego city civil service by Commissioner Dwight R Zook, and the report of an investigation of the Oakland city schools by Commissioner C L Dellums

I believe you will want me to give you some detail on the kinds of inequities we have found in civil service jurisdictions

Typically, in the past, and now as well in many places, a survey of the ethnic pattern of employment in a city government shows that Negroes are generally relegated to lower-paid, lower-status jobs, with a high percentage of Negro and Mexican American employees in such

activities as street maintenance. There are many Negro clerical and other workers in lower classifications, but Negro supervisors are almost unheard of, and there is little horizontal movement from one section or department to another. Negro professionals are relatively few

One source of difficulty is the oral examination system, which leaves so much room for free play of prejudice The few Negroes or other minority persons who serve on oral panels are chosen because of their prominence in the community, whereas the other panelists are picked for their knowledge of the specific job Our suggestion is that Negro, Mexican American, and other minority engineers, office managers, and others specially qualified be sought as panel members.

For another example, take the probation department of a large county Certain of the lower classifications have a substantial proportion (30 to 50 percent) of Negro employees At the higher, supervisory levels, the percentage of Negroes is drastically reduced To some degree, this may be accounted for by earlier discriminatory practices which prevented Negroes from acquiring sufficient experience for certain positions But it also appears that there are current barriers to advancement which result in the small number of Negro supervisors at the higher levels.

Housing discrimination, of course, limits the Negro executive to certain localities

A study was conducted by the Los Angeles City Administrative Officer and the city's civil service agency, taking as data 371 certifications comprising persons of more than one ethnic group to some 41 city departments or bureaus The rule of three applies. In all but four departments or bureaus, the percentage of eligible Caucasians appointed was greater than the percentage of eligible Negroes appointed (Of the four exceptions, two involved large numbers of custodial or labor positions The other two involved only three or four jobs each, and the percentages may not be significant.)

The figures for the great majority of these certifications are of special interest because they obviate the frequent question of whether qualified Negroes were available Thus, even if the certification process itself, including the oral examination, is entirely free of bias (an assumption I would not make), the consistently lower percentage of eligible Negroes who were appointed strongly indicates racial discrimination in selection under the rule of three

One extremely important point for public employers is this· It is not enough for high-ranking officials to declare themselves in favor of equal opportunity They must be certain that all supervisory personnel, up and down the line, are not only dedicated to such a policy but instructed in methods of making it effective. They must conduct periodic reviews of procedures and test the results in terms of ethnic pattern among the employees

Private employers, I believe, realize this They know that policy becomes practice only when it is carried out at the lower echelons as well as the higher ones It must be stated and restated to all supervisors Public employers, too, cannot afford to take these matters for granted.

It should be made clear that what the Fair Employment Practice Commission is interested in is equal opportunity for those who are

qualified. We administer the law, which prohibits employment discrimination on grounds of race, religion, or ancestry It is not a law for one group, but is intended to protect all Californians. The affirmative action program of the commission, by widening access to good jobs for members of every group, strengthens our economy and our way of life. All employers, public and private, will benefit when recruiting, hiring and upgrading are truly equal.

HAROLD JAEGER, *Business Representative, Local 11, International Brotherhood of Electrical Workers, AFL-CIO:*

For the record, I would like to state that it is our view that an oral examination should be recorded and, in connection with this, I have a figure which may be of interest to the Committee. During the years 1954 to 1958, in the City of Los Angeles, there were 365 protests of oral examinations Of this number, the commission, after hearing, allowed three of the protests I think it is rather farfetched to feel that 362 out of 365 people, who felt they had been done an injustice, were entirely wrong. Without any record, it must of necessity be a rather subjective thing and not conducive to the objectivity we seek in public employment.

Additionally, I would comment that after an applicant has undergone the procedures of filing an application, having the application approved—which shows, of course, that he does possess the minimum qualifications to fill the position—he then takes the written examination, then is subjected to this oral interview; as a result of a composite score his name is placed on an eligibility list. He then is interviewed by the appointing authority; in other words, the person under whose jurisdiction he will be employed This comprises another oral interview because that person has the authority to choose one out of the top three; that's called the rule of three. I would like to suggest that, if possible, a step toward correcting obvious opportunities for bias and discrimination would be to require, by law, that where the appointing authority selects other than the top man of the three he be required to furnish in writing his reasons to the Civil Service Commission having jurisdiction

The percentage of the composite score given to the oral examination in the City of Los Angeles varies between 30 and 50 percent depending on the specific examination If I may make a recommendation, we feel very strongly that this should be reduced if we must retain the oral, and I am quite sure that people who administer the civil service system will be able to give convincing reasons as to why it should be retained, but I do feel it should be limited to the maximum value weight of 15 percent rather than 30 to 50

ARTHUR E GREEN, *Business Representative, Local 434, Los Angeles County Employees Union, AFL-CIO:*

For many years this organization has been dissatisfied with the administration of the oral part of civil service examinations In consultation with other unions throughout the country which represent civil service employees, we have found general agreement on the various points of dissatisfaction.

At the convention of the Building Service Employees International Union held in Los Angeles in May of 1964, the convention adopted the general policy statement on oral civil service examinations, which we are herewith submitting to you

(a) Each test, written or oral, conducted by a public agency, shall conform to measures or standards which are sufficiently objective to be capable of being challenged and reviewed, and shall be recorded in a manner and to a degree sufficient for this purpose

(b) No applicant for public employment shall be questioned as to his political views, religious beliefs, labor affiliations or racial extraction

(c) Any member of an oral examining board who personally knows an applicant shall disqualify himself from questioning or rating the applicant, and staff members of the agency or personnel board shall not participate in the oral examination.

(d) The weight given to any oral examination shall not be more than 15 percent of the total examination score

(e) The original rating sheets, as marked by the oral board, accompanied by written statements as to how each examiner arrived at his rating of the applicant, shall be a public record available for examination by the applicant or his representative, and all examination scores, showing the details from all types of tests, shall be published following the completion of the grading process

(f) The right to a direct and unqualified appeal from an oral examination shall be granted to all employees.

(g) Uniform oral examinations should be given to all applicants.

(h) Inclusion of members of minority groups on oral board panels should be encouraged

(i) The applicant or his representative should have the right to challenge members of oral board panels

MRS NESTA GALLAS, *Faculty Member, U S C School of Public Administration:*

I am particularly interested in the matter of the use of oral interviews and the use of written tests, and I submit that the written test is as discriminating against certain groups as the oral interview for this reason Much of our research in the field of written tests shows that it is loaded in favor of the sophisticated, educated person, and that those persons, who come from a kind of family background where English skills are not as good as other backgrounds, do not do as well in the written tests; so I find myself facing great difficulty in saying the written test doesn't discriminate, but the oral interview does.

For example, let's take a field of social work or a field of probation where you have, say, a heavy weight on a written test, the field of police work, the field of fire work Research on written tests indicates they favor the person with high memory, high recall, high verbal skills Our work in written tests is not developed to the point of science where we know exactly what we do tell from written tests, and I submit that if I happen to have high memory skills, high verbal recall skills, I will do better on written tests but I may not know any more about the subject matter of the field, and I think this is a significant point to remember.

The oral interview, too, I submit, neither creates nor eliminates bias I mean it's one person sitting in judgment of another, and if those doing interviewing are biased to begin with then there is going to be bias The oral interview to me does not necessarily create bias because we do have one person sitting in judgment of another I do believe that the individual interview creates a greater opportunity for the exercise of bias or prejudice than some other interviewing techniques, and I think this is why some jurisdictions are moving to a different kind of interviewing technique than the individual interviewer I come before the three of you and I try to make a good impression but I am dependent on this kind of a situation which is a quite different kind of interview technique than if it is what we call a group interview or a leader of this discussion where the people sit around the table and we observe them over a period of time, so I think the technique of interviewing is an important one to look at.

NORMAN E. WOODBURY, *Executive Director, California Municipal Utilities Association:*

At our first receipt of your notice, we felt that the subject matter might be a little more general than it has turned out to be, so I am going to be rather brief and just make some general observations.

I represent a management organization. It is composed of some 55 cities and special districts such as public utility districts, municipal utility districts, and the managers or the local authorities representing these agencies are members of my association. I think, by and large, that we have not found that there is a better system yet devised than the selective process usually found in your competitive examinations, including your oral interviews and then permitting management to have its selection of either one or more of those who basically have qualified on the basis of the civil service system I am sure you are aware there are systems which force the employer to take the single man as the top man on the list I think probably the prevailing practice is the choice of three—one out of three. There are other systems that say, "Here is a list of employees or persons who have passed an examination and we say these persons are qualified, and you then make your selection from however many might be on that list; you can choose the bottom man, if you want to " So, it is rather a wide gamut as to the ability of management to select, and we have no particular recommendations to make.

Some of our agencies are located in large cities such as the City of Los Angeles, we have also very small cities where the city council acts as the personnel board and, in probably too many instances, the selection committee as well We have municipal utility districts—some large and some small—also the public utility districts Generally, our feeling is that the local elected representatives of these districts do have the foresight and the interest of the general program there to do the best selecting they can of their employees They authorize the general manager then to set up a personnel selection system. This may be through examination If it's a very small district, it's merely publicizing to the effect that a position will be open and asking those persons who might be interested to apply This may be solely on the interview basis, but I do want to leave the point with this committee that generally

our people who are in charge of these utility operations are satisfied that the selective civil service process or the selective process has been doing a good job. We are, of course, interested in your interest in improving it. We do feel any discrimination on the basis of race, ancestry, national origin or politics certainly has no place in the public employment field.

I might also make this observation: I'm not without some experience in the field of public personnel management, having been the chief examiner for the City of Glendale, also having been personnel officer for some of the large state departments and having worked with the State Personnel Board in many examination processes I merely point this out: If you have the rule of three and you appoint one, there are always going to be two disappointed people who are going to, in their own minds, try to rationalize how come they were discriminated against. To management, this is always a tough part of having three rather well-qualified employees appearing before the one man who makes the final decision, and he may want to be in a position to say, "I would like to employ you all," but he has to choose one.

CARLOS BORJAS, *President, Council of Mexican-American Affairs:*

I am chairman of the Los Angeles County Mexican-American Ad Hoc Committee on Employment This ad hoc committee was brought together by the Los Angeles County Commission on Human Relations primarily to look into these problems of employment, not only in the area of civil service but also in private employment Our ad hoc committee has been working in the area of civil service in trying to determine the number of Spanish surname people working with civil service In the early part of 1963, we requested government agencies at all levels to take a census and to obtain statistics so that we could be able to determine the reasons why there was such a small number of Mexican Americans in civil service. We did not have any statistics at the time, but, going from agency to agency, we could see that there were a very small number of people who spoke Spanish in these various agencies Now the purpose of obtaining the opinion of these statistics was to try to initiate positive programs so that we could get more Spanish surname people to participate in running their own government Now, we wrote to the City of Los Angeles to obtain this type of statistics Unfortunately at that time, we did not receive any cooperation whatsoever. We have written to the County of Los Angeles and here we have had a wonderful response Through the county commission on human relations, the county has made many positive action programs. I will only tell you of one program which has been carried out; it is the program in which we have been able to obtain the cooperation of the Spanish language news media, the radio and the television As you know, unfortunately many of our people do not have excellence in English required to be able to read the English newspapers so they concentrate primarily on T V. programs, especially KMEX KMEX was kind enough to donate one-half hour of their time for a series of 13 programs with the backing of the county And I don't only mean backing by moral support, they actually backed us with money so that we could help buy some of the sets and what have you. The county donated some money for this and we think it's an excellent program

This series of 13 television programs was developed to encourage Mexican Americans and other Spanish-speaking persons to apply for available jobs and to familiarize themselves with civil service policy methods We've had wonderful results from this television series with the County of Los Angeles Now, at the state level, we have had excellent cooperation as well from the State of California A census was made for all minority group people at the state level and this proved to be quite a tremendous job Now the results of these findings in 1963 were that out of this total of a little over 100,000 state employees, 5,467 were Negroes; 3,190 were Orientals, 720 other nonwhites; and 2,209 were Mexican Americans. Our Governor lauded the census and requested a four-point program I might say that the four-point program was a result of the census primarily because it was found that the minority-group people working for State Civil Service were found, of course, in what we call the "blue collar" jobs, in the low-paying jobs—the menial jobs And Governor Brown wanted to know why this was so Was it because of lack of education, or was it because of discriminatory practices within various agencies? Governor Brown, on November 27, 1963, requested a four-point program. In this four-point program, he asked for an implementation of a positive program to eliminate discrimination He called for a conference of university, college, and public school educators to make a thoroughgoing study of educational practices as they pertain to both state and private employment Governor Brown asked for and ordered a study of applications for state employment to determine whether minorities are failing to apply for existing jobs and where minority applicants did not exist, why they were not making their applications The third point was that he asked the State Personnel Board to recommend new programs of in-service training The last point was that Governor Brown directed the then Director of Administration of Health and Welfare, and the Chairman of the Cabinet Committee on Equal Employment Opportunity to examine the feasibility of using existing personnel analysts in the State Personnel Board for auditing all department recruitment, placement and promotion activities so as to affirmatively support the merit system's goal of opportunity. Now this is a wonderful four-point program In the opinion of the ad hoc committee, this program has not been implemented although it is now almost a year since the four-point program was suggested The reason for this we do not know, but we hope that the four-point program will be carried out at the state level.

Now there is a very positive solution as to what can be done on an action-type program. There is one agency that has done an excellent job and that is the Department of Employment They have gone out on a limb, you might say, and sought to obtain people who not only know Spanish but who also know many of the cultural backgrounds and factors and idiosyncracies of our people Thy have tried to obtain people, for instance, the employment security trainee, who have knowledge of both English and Spanish. Not only are they looking for all of the requirements that are needed for an employment security trainee, but they are also looking for this other facet, this knowledge of the peculiar language and cultural things that are needed for our large percentage of Spanish surname people We hope that more state agencies can be prevailed upon to carry on this type of program.

Now I would like to recommend, in closing, that positive steps be taken to encourage minority group people to participate and make applications with the State Personnel Board at the state level I would recommend the type of pamphlets which the Federal Government, for instance, is doing The federal government, the U S Treasury Department, put out a beautiful pamphlet called, "A View of Your Future," in which it shows minority-group people at work and doing work with the Treasury Department It is also being done by private agencies. The Community Relations Conference, the Employment Committee, recently put out this excellent pamphlet in which they said race, creed, color, or national origin need not be a bar for better jobs, it's up to you I can see no reason why the same thing cannot also be done at the state level

In finishing my recommendations, I would recommend that persons of Mexican American descent should be trained as recruitment specialists and be given responsible positions with civil service jurisdictions Such a specialist should be given sufficient freedom from specific duties to be able to devote time to development of new programs In addition, expense funds should be allocated for surveys and new programs so that they can see how Spanish surname people may be brought into state service We would recommend that the Civil Service jurisdictions which have not made a survey of their pattern of employment as to Mexican Americans and other minority-group people be requested to do so by a responsible official body to highlight areas of discrimination or possible discrimination We would recommend there be a more extensive use of adult schools in the Mexican-American communities to be made available for teaching of specific Civil Service classes We would especially recommend that there be no fees in these adult schools, as there are no fees in being able to obtain citizenship or in the classes for English language for foreigners Finally, we would recommend that the Civil Service jurisdictions include questions in their examinations that would determine the fitness of individuals being examined to deal sensitively with the problems stemming from persons with Mexican-American cultural background.

JOSEPH W. WALKER, *Urban League Job Development and Employment Director:*

The function of civil service is to insure honesty and efficiency in government and the placement of properly qualified individuals With this in mind, an evaluation of (1) use and places of the oral interview, (2) the rule of three, and (3) in-service training programs, as possible deterrents in the administration of civil service justice is now in order.

The oral interview is generally justified as a means of measuring certain qualities which are important to a specific examination and yet which cannot readily be treated by other means It should be limited precisely to this function It is generally conceded that the higher the job level, the greater the validity in the use of the oral This also means, parenthetically, that the lower level jobs do not require the use of the oral A probationary period can more adequately give the evaluation required It therefore follows that the oral should be used more on high level entry jobs and on executive promotional opportunities than at any other levels

Civil service career specialists have been quoted as saying that management is better able to pick the best candidates for promotional positions, completely discounting the bias factors which often make for a perpetuation of the good and the bad of past policies and practices and also too often making for the exclusion of minorities from management positions It is to be remembered that, exclusive of the oral interview, management will still have its controls This includes the probationary period

It is therefore highly recommended that civil service commissions hire permanent, qualified oral interviewers, men and women especially trained to conduct oral interviews This should be a new classification of government employees who would not be subject to the control and jurisdiction of staff or top management And if management-controlled staff is allowed to participate in the oral in any way, as a result of a necessary compromise, they should constitute a minority in the decision making

Under present regulations, the rule of three, it is possible for an applicant to be number one on a Los Angeles City examination list and yet never be selected for a job To compound this issue, the applicant may have gone through a series of oral interviews in the course of his rejections Then we must add a third dramatic touch Another examination could not be given and the list combined, and due to stiffer competition our target applicant could not be moved out of a job contention rating The potential racial implications are exceedingly clear Here again, we must note the exceptions The city fire department has made a remarkable about-face in democratizing its selection procedures The problem now is stimulating the recruitment process We of the Urban League, along with community citizens, are doing something about this Another exceptional example, the employment service exhausts its old list before it starts using the new list These exceptions, gentlemen, are not the rule

It is strongly recommended that the State Legislature require the Civil Service Commission of the state, county and city take immediate steps to eliminate this kind of an injustice These problems have been known for a long time and unless the State Legislature, in cooperation with the executive branch of the government, takes action, we of the Urban League see no hope for a brighter future

Reference has already been made to the concentration of Negroes in lower skill jobs Various departments of all three civil service installations engage in informal in-service training programs Few Negroes participate in the promotional plans, but supposing the programs were formalized and made known, many a worker, now reluctant, would come forth requesting to be considered for promotional jobs And if this is not sufficient, our agency's efforts combined with others, could serve as a stimulant to the employees to take advantage of the in-service training programs. We could also seek out persons in the community who would be properly motivated to take in-service training at the point of entry

The State Legislature is urged to establish a proper committee to analyze the proposal of formalizing in-service training programs and to prepare guidelines to be followed by the various departments of civil service in the implementation content and procedure

WILLIAM GREENE, *Local 347, Los Angeles City Employees Union, AFL-CIO:*

Historically, it has been our finding that members of minority groups are in the class of the *helpless* among Los Angeles' city employees These helpless employees include those presently found in such classifications as refuse, street maintenance, recreation and parks, sewer maintenance, custodial, vehicle operator, parking lot attendant, etc Most requirements call for some degree of training or prior experience as an initial qualification for taking a written examination for a higher classified, better paying job in either one of the technical areas or at the lower grade supervisory level This is even true in the same departments in which many members of minority groups are employed Consequently, you find a situation in which members of minority groups are largely found in only certain job classifications or departments, with little or no opportunity for advancement into other job classification or possibility for upgrading within the job classification of pipe fitter

Local 347's recommendation is for the establishment of an apprenticeship training program Such a program would not only serve to alleviate the situation I have just described, but would also serve to assist in the advancement of all public employees who wish to prepare themselves for more skilled jobs with higher pay

The concept of apprenticeship training in public employment is not new in California Apprenticeship training programs are presently in operation in Los Angeles County employment, in the Los Angeles Department of Water and Power, under the Los Angeles City Board of Education, in both San Diego City and County employment, at the Long Beach Naval Shipyard, in a number of northern California jurisdictions, to say nothing of the many areas of private industry that use the apprenticeship training program to get the best and the most out of their employees.

Los Angeles County instituted its apprenticeship training program in 1946 It is set up with 14 separate state-approved programs, including the building trades and a cook's program. Training under the county's programs last from three to five years All programs have the same standards, evaluations and criteria as private industry. The Los Angeles County apprenticeship training programs have an apprenticeship board, which is made up of members of labor and management in county employment, members outside county employment, and representatives from the board of education and the State Division of Apprenticeship Standards Each program has a committee of like composition which supervises the training program for its individual job classification A similar apprenticeship training system would be very useful in Los Angeles' city employment.

For many years Local 347 has been critical of the administration of the oral part of civil service examinations In consultation with other unions throughout the country which represent civil service employees, we have found general agreement on the various points of dissatisfaction.

In 1961, the California State Legislature saw fit to enact A B 2375, which added Chapter 10 (commencing with Section 3500) to Division 4 of Title 1 of the Government Code, giving public employees the right

to representation in all matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, and other terms and conditions of employment.

In view of an opinion by the city attorney, we are prevented from representing our members in many areas and in many relations with management in which they need counseling and guidance It is our opinion that this was the original intent of this section of the Government Code.

Local 347 recommends an amendment to Chapter 10, Section 3504 of the Government Code to include language which would clearly spell out a public employee's right to representation on the job. We recommend language similar to that found in the work rules of the Department of Water and Power, as pertains to its clarity and outline of procedure.

Tied directly to Local 347's two foregoing recommendations for an apprenticeship training program and oral examinations is the lack of a seniority system in Los Angeles' city employment. Many of the problems I have described earlier are also attributable to the lack of a seniority system Rule Five, Section 5 21 of the Rules of the Board of Civil Service Commissioners of the City of Los Angeles, as amended to October 10, 1963, state, and I quote "Seniority as used in Section 5 19 relates only to seniority for civil service purposes, namely layoff and displacement, and does not affect any department policy related to vacation, salary, reemployment, or placement on a seniority basis"; end of quotes

Once again, the seniority system is not uncommon to a number of jurisdictions in northern California The seniority system has been found to work well in federal employment and is cherished in private industry. We can see no reason why it would not work equally well as a means of advancing employees after long years of competent, loyal service who have qualified themselves in other areas.

One of the avowed objectives of a civil service system is to insure that advancement is based on merit and ability rather than bias or favoritism The rule-of-one helps to insure the furtherance of this admirable principle. Los Angeles civil service still retains the rule-of-three, which has been replaced in some other jurisdictions, where it has been found to be unfair and outmoded Public jurisdictions provide for a six-month probationary period. Only applicants who have established prior experience, acknowledged skills and other predetermined factors are permitted to take advancement examinations Only the number one person who has placed himself as number one on the eligible list by virtue of the highest score, both in written and oral examinations, should receive the job appointment resulting from such examinations under the present system. We recommend legislation introducing the rule-of-one into civil service, as an important guarantee of a true merit system.

CHARLES A HENDERSON, *Regional Director, Local 411, Union of State Employees:*

For many of the years that we have been in existence as the Union of State Employees, our organization certainly has been dissatisfied with the administration of the oral part of the civil service examination. In

consultation with our other sister organization and unions throughout the country which represent the civil service employees, we have found that they are in general agreement with us on various points of dissatisfaction. Number one would be that each test, written or oral, conducted by the public agencies, shall conform to a measure of forced standards which are sufficiently objective to be capable of being challenged and reviewed and shall be recorded in a manner and a degree sufficient for this purpose.

Number two, we firmly think that no applicant for public employment shall be questioned as to his political views, religious beliefs, labor affiliations, or racial extraction.

Number three, that any member of an oral examining board who personally knows an applicant shall disqualify himself from questioning or rating the applicant and the staff members of the agency or personnel board cannot participate in the oral examination

Number four, that weight given to any oral examination shall not be more than 15 percent of the total examination score. We oftentimes believe it should only be 10 percent or less, or no oral examination at all. The original rating sheets as marked by the oral board accompanied by written statements as to how each examiner arrived at his rating of the applicant, shall be a public record available for examination by the applicant or his representative, and all examination scores showing the details from all types of tests shall be published upon the completion of the grading process The right to direct an unqualified appeal from an oral examination shall be granted to all employees Uniform oral examinations shall be given to all applicants

Number five, that members of the minority groups shall be included on all board examinations or board panels and this should be encouraged by the state, and the applicant as represented should have the right to challenge members of the oral board panels We also believe that the rule-of-one, rather than the rule-of-three, should be practiced throughout the state employment These people have passed the examination and have placed themselves in a position where they should be given the chance if they are number one on the list, to have a chance at the job that they have passed the examination for.

KENNETH R. KNIGHT, *Assistant Superintendent for Personnel Operations, Los Angeles City Schools:*

I should say in opening, that the city school districts are a little unusual because under state law we have two types of employees; two services, each one with its own separate body of rules and regulations In Los Angeles we have about 35,000 employees who come under the certificated service. These are the teachers, the principals, the doctors, nurses, and the supervisors The rules and regulations for this group are governed primarily by our local board of education The state law does not provide how they are to be selected, but merely restricts us from using discrimination because of age, race, religion, sex, and marital status The other major group of employees are the classified employees These are the custodians, the clerks, the technicians, and the Education Code is rather specific in how these people are to be selected In fact, we have our own separate personnel commission, which prepares the rules and regulations for these groups.

I mention this because you may wonder why we handle the same problem in two different ways; it's because we have two different groups In connection with the examination procedures for certificated employees, we give a three-part examination We're trying to find out three things How much does the person know about the area in which he is to be employed. This is a written examination and we give it a weight of 30 percent Then we attempt to determine how valuable is the training and experience this person has had in relation to his job This is a training and experience evaluation done by a committee, however, they do not see the applicant, so it's not an interview This counts 40 percent. Finally, we attempt to discover certain personal qualifications of the employee and this is done by an oral committee and this counts 30 percent. This question was asked yesterday, I think, what was intended to be discovered by the oral committee?

Our oral committee is asked to evaluate the applicant on these nine items: voice, appearance, manner alertness, ability to present ideas, ability to get along with others, maturity of judgment, reaction to criticism, health and vitality We consider these items extremely difficult to get in any other way The mortality rate for this type of selection process goes something like this Out of every 100 applicants there are about 20 who fail the written examination Of the remaining 80, 10 do not qualify in training experience Of the remaining 70, 3 do not qualify under personal fitness Of the remaining 67, 7 fail to qualify on an average of parts On the average of parts, I think it is characteristic of our procedures and I think of other public jurisdictions, a person is required to pass all three parts of the examination and then to reach a certain cutoff score And the cutoff score is determined by looking at a graph of the distribution of the examination and setting the cutoff at a point where sufficient eligibles will be provided In other words, if only 50 people are needed on the list, there is no point for us to put 150 on It can never be below, of course, the former cutoffs, but it can be above.

For the classified service, we have a two-part examination Roughly, a 50 percent weight on the written and a 50 percent weight on the oral The mortality in this type of examination, of course, varies tremendously according to the field, but, in general, out of every 100 people who take the exam, 50 will fail the written examination Of the 50 who go on, about 20 will fail the oral examination and 10 will fail the average of parts Now there's an important distinction between these two. Actually, our purpose for the classified service in the oral examination is the same as it is for the certificated service in both the training and experience in the oral In other words, in the certificated service the oral committee is only responsible for determining such things as speech, appearance, and so on But in the classified service, we have experimented in using the three-part examination that we use with the certificated service The difficulty in applying this at the lower levels has been that frequently the applicant is not able to explain in detail enough for a committee to determine his evaluation of his training and experience without questioning him So one of the important missions of the oral committee is to find out from the employee just what kind of work this was he has done which he feels is applicable to the job at hand

The second area in which we have discussed here is the matter of selection This is the rules under which the appointing authority selects the names of the persons to be given the job

With the certificated service, we operate under a rule-of-five with a pass-over limit In other words, the appointing authority may select anybody who is within the top five on the eligible list, but once a person's name reaches the top of the list, it may not be passed over more than four times.

The next area is the area of transfer which was mentioned Our policy in the certificated service on transfer is that anyone who wishes to transfer, and this is primarily teachers because, of course, 90 percent of all our certificated employees are all in the class of teachers Any teacher who wishes a transfer makes application to either the elementary or the secondary division, and the principals are required to interview all people who have requested a transfer to that particular school However, the principal may choose anyone he wishes until the name of this person has been on the list for three years At that time we have what we call a negotiated transfer, which is another way of saying that the central office places the employees At the present time, there are no names left that have been on that list All the names that have been on that list for three years have been placed.

HOWARD ZUCK, *Chief Personnel Analyst, Civil Service Department, City of Los Angeles:*

Originally, during the summer, we received a letter from this committee inviting information, asking some specific questions, and inviting an appearance here today We did our best to answer this letter as specifically as we could In our reply we pointed out that it is the policy of the board of civil service commissioners that the weight of the interview portion of examinations for positions not involving supervision or an appreciable amount of public contact, shall not exceed 30 percent For classes involving a moderate amount of supervision or public contact, the interview may be weighted up to 40 percent and for classes predominantly supervisory, executive, administrative or dealing mainly in public relations, the interview may be weighted as high as 50 percent.

I might point out that this determination was made by this commission after a protracted period of hearings, approximately three years ago in September, I believe it was, of 1961, this was a new commission which was appointed following the last election and they were very much concerned with this particular phase of civil service examinations Over a long period of time they conducted separate hearings apart from commission meetings, during which they provided an opportunity for members of all interested groups, labor, management, minority groups, community relations organizations, to submit presentations and come in and make personal appearances. They heard all these people out and as a result came up with this general policy to apply in future examinations Whenever examination announcements are proposed in the City of Los Angeles they are finally reviewed and approved by the Board of Civil Service Commissioners and they are always examined pretty closely for adherence to this policy.

The letter asked for statistics showing comparative percentages of successful and other examinees with specific references to those who may pass the written but may fail the oral examinations We had no statistics ready to hand for this purpose, but we made a survey of a random sample of 100 examinations that were given over a one-year period here within the last several years which included something like 6,740 applications Now, of this group, 2,820 were called for interview on the basis of having obtained a written test score of 65 percent or higher, which is provided by the Los Angeles city charter, and 2,650 of these 2,800 appeared for interview There is a certain loss there of people who passed the written and just don't show up for the next stage of the examination A total of 2,400 or 91 percent of the candidates interviewed, received passing scores in the entire examination and were placed on our eligible list There were 2,380, or 90 percent of the candidates interviewed, who received interview scores that were at the minimum satisfactory level of 70 percent or above The remainder is accounted for by 276 candidates, or 10 percent with interview scores below 80 percent We then went a step further to try to show what happens here, into a little greater relief and tried to make some estimate of the difference in performance between written tests and interviews, and this may be of interest In a random selection of 45 of these 100 examinations, representing 3,180 candidates, the average range of scores on the written test was 38 percent, that is, by range I mean the difference between the high score and the low score was 38 percent on the written test compared to 25 percent on the interview The average of the high scores on the interview was 90 percent—take all the high scores and average them—was 90 percent compared to 81 percent for the written test The average of the low scores on the interview was 65 percent, necessarily, because we don't interview anybody with less than 65 on the written, compared to 44 percent on the written What this demonstrates is a feeling, that we all had for many, many years that interviews are far less discriminating than one would have anticipated The range of scores is more restricted, the scores given are higher They, in effect, tend to help people in a respect rather than to hurt them. Now, as far as the relationship between the placement of minority groups and the oral examinations, we do not have that information primarily because we have no means of obtaining such data

I might point out that in addition to the hearings that were held three years ago on the subject of examination weights, the civil service commission at that time made a very extensive investigation of the whole problem of the oral examination as it was used and as it was to be used in city service and the same procedure was followed and that they provided opportunities for representatives of all interested groups to appear before them and to present their arguments, at the conclusion of which they drafted a series of comprehensive policies affecting the use of interviews, which we follow pretty strictly They felt, at that time, and I believe they still do, that an interview is a valid and important part of any examination; that it needs to be given a sufficient weighting so that it bears some result in the outcome of the examination and that its use should be continued They realize that

there are difficulties with the use of the interview as a procedure but this should not necessarily invalidate its use There are difficulties with almost any technique that one can propose We have many, many protests against written tests but we don't, as a result, decide to rule out the use of written tests

I would like to clear up one point on the subject of the rule of three There is a misconception, I think, which is generally prevalent about the rule of three One would think that an operating supervisor can always consider and appoint any one of three people and this is simply not so We certify two more than the number of vacancies, so if an operating department is making one appointment, then it is true, he does have three people to consider If he is making two appointments, he gets four people If he is making three appointments, he gets five people It's not a real rule of three, it's two more than the number of vacancies and he keeps getting back the same people He cannot reject the people who are certified to him and then go down the list and pick up others

OSCAR YORK, *Chairman, Civil Service Subcommittee, Committee for Representative Government:*

We have been concerned, primarily, with the hiring and promotional opportunities in the Bureau of Public Assistance and our information came from rejected applicants as well as certain supervisors on the job and employees who work in clerical positions in this agency, primarily We have had the help of labor organizations and, of course, the Los Angeles Employees Association has members who have given us information

We have found, for instance, that it is arbitrary in the Bureau of Public Assistance in the initial hiring stage that the agency has arbitrarily controlled who shall be acceptable for employment and on what terms; at what specific facility they shall be assigned, how evaluations shall be made of these new personnel and whether or not such evaluations shall remain secret; whether an applicant shall be informed as to why he is not acceptable and the reasons for which an employee may be discharged or pressured to resign in lieu of discharge We consider that such discretions being left to agency officials is inviting of personal whims as well as prejudices which may remain submerged until an opportunity presents itself for overt expression thereof We have found that, over a period of time, various officials in the BPA have established a pattern of hiring practices which reflect bias rather than good judgment.

In the postprobationary period, in addition to the foregoing listed items, the agency determines who shall evaluate an employee, even if the official has no knowledge of the employee's traits and the weight of such an appraisal of promotability For instance, while a supervisor may evaluate an employee, say, rather highly—around 80-something—this supervisor's immediate superior could downgrade this evaluation with no discussion whatever with the supervisor who made the evaluation or with the employee This is done frequently

We find the greatest stumblingblock to applicants for promotion exists in the oral interview I think this is the main crux of our presentation.

We say that an oral interview serves no useful purpose for a promotional examination We say a man who has been working on the job for 10 years with an excellent record has shown that, in that time, he knows his job If in 10 years he is too stupid to prepare himself for a higher position, that's on him, but a man who takes the trouble to prepare himself professionally for a higher position, who has these years of experience, and who passes the examination, should not be overly weighted on an oral interview Specifically, we actually state that we believe the only obvious purpose of all interviews, in lieu of objective examination material, is to study the color of the skin of the applicant, possibly to determine the Semitic curve of his nose or a Latin complexion or even the epicanthic eyefold of the Oriental Certainly, educated applicants with excellent records over a period of years can be properly selected on the basis of qualification with the probationary period on the new job being the determining factor rather than overweighted oral examination

We make only two recommendations to the committee at this time That the Los Angeles County Civil Service Commission be encouraged at the earliest opportunity to implement its duties under Section 34 of the county charter which states that they do have the authority and responsibility to prescribe and amend and enforce regulations in the classified service which shall have the effect of law

We think, particularly, the oral interview is one main evil in the civil service commission, and we are violently opposed to it for the reasons I have stated.

JOHN T LONG, *Personnel Analyst, Los Angeles County Employees' Association:*

Specifically, we would recommend to this committee that they take a long hard look at orals, appraisals of promotability and the employment interviews to the end of changing or eliminating some phases of them Partial resolution may be found in a few of the questions that we have raised here What standards are utilized to guide oral panels? What type criteria are used in the assignment of weights to various parts of examinations? Can appraisals of promotability be based on accumulated data rather than on an instant opinion? What is the value of an appraisal of promotability when a position applied for is in a totally different occupation or profession? Why is a detailed breakdown of the oral score and the appraisal score, in the County of Los Angeles, not made available to the candidate as the information about the written part of the examination?

We have much to do in widening the scope of the advantages of the merit system A survey made in 1963 showed that in 26 local jurisdictions in California reporting, 26 percent offered no recourse to suspended public employees and that one-fourth of these jurisdictions were not covered by any merit system program, 16 percent did not keep complete records of oral examinations and that only about one-half required panel members to be responsible to explain how they assigned scores.

In summation, we are raising questions that I think plunge to the heart of the process of providing ways and means of selecting and promoting public servants To this end we recommend that some of the present roadblocks be removed For example We recommend that the oral panel be excluded when a candidate is applying for promotion within the same group or series of classifications, that the appraisal of promotability be eliminated when a candidate is applying for a position which is totally a different occupation or profession from his current assignment; and that a breakdown of all portions of the examination process be made available to any candidate, upon request, just as he may receive this information regarding his written score or his medical examination

CHAPTER 7

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

The Subcommittee on Economic Opportunity was appointed in November 1964 in accordance with permission granted by the Assembly Rules Committee to investigate the provisions of House Resolution 197 (1964 First Extraordinary Session of Legislature) Assemblyman Mervyn M. Dymally was appointed chairman Others appointed to the committee were Assemblymen Clair W. Burgener, John Francis Foran, Walter W Powers, and Alfred H Song.

This new subcommittee continued the studies initiated by the Special Assembly Subcommittee on Economic Development and Automation of the Assembly Industrial Relations Committee, which conducted hearings and studies during the 1961–1962 interim legislative period and whose activities were productive of constructive results. This subcommittee's work assisted in the establishment of the California Commission on Manpower, Automation and Technology. It was felt in addition that the new subcommittee could act as an agency through which members of the general public could manifest interest and concerns regarding unemployment, equal employment opportunities, and economic problems of California and thereby serve an important function in providing valuable information to the Legislature

The subcommittee undertook a thorough study of President Johnson's War on Poverty program as embraced by the provisions of S 2642, 88th Congress, Second Session, entitled the Economic Opportunity Act It engaged in hearings with three prime purposes· (1) to assist in expediting the utilization of the act; (2) the gathering of information designed to be useful to the Legislature; (3) the delineation of the state's role with particular reference to any legislative action required of the Legislature

The subcommittee appreciates very much the cooperation and assistance of Dr Paul O'Rourke, special assistant for antipoverty planning, in performing his work.

The subcommittee held hearings at the following times and places November 13, 1964, Sacramento; November 18, 1964, Los Angeles; December 8, 1964, San Francisco; December 14, 1964, San Diego, and December 18, 1964, in Fresno.

FINDINGS

California stands to benefit substantially from the various programs projected under the several titles of the Economic Act of 1964 enacted by the 88th Congress of the United States.

These benefits will extend to vocational training, work experience and education for young men and women; antipoverty programs developed by local communities, loans to low-income rural families and assistance to migrant farm workers; loans to small businesses; and work-experience training for unemployed fathers and needy persons

The full implementation of the overall program in California will call upon the cooperation and initiative of numerous agencies, including the Departments of Education, Employment, Finance, and Social Welfare on the state level, and county boards of supervisors, city councils and nonprofit private organizations on local urban and rural levels

In order to insure the full and prompt development of the various programs as they apply in California, the Legislature will need to give close attention in the 1965 session to the possibility of enabling legislation that may be required for participation on all these levels where clarification or revision of present state law is deemed necessary and desirable to conform with federal specifications

RECOMMENDATIONS

(1) That the state commit itself to the full support of this act and to the prompt expedition of its implementation in California in every feasible manner

(2) That an emergency appropriation bill be considered in the event such an appropriation may be necessary to provide matching funds for those provided by the federal government

(3) That the need be promptly determined for legislation clarifying the eligibility of recipients of categorical aid to participate in the pertinent phases of the program without loss of benefits under state law

(4) That present law relating to the functions and powers of local school districts be examined to determine whether or not additional legislation may be needed to permit their participation in the educational phases of the act

(5) That legislation be considered providing for the creation of an Office of Economic Opportunity to administer the state's participation in the antipoverty program (The subcommittee will submit a proposal providing for the structure, powers, and duties of such an agency, including a state interagency advisory committee, in its supplemental report.)

The following is a brief summary of the Economic Opportunity Act of 1964:

Fiscal 1965 Authorization: $947.5 Million

The Economic Opportunity Act of 1964 establishes an Office of Economic Opportunity in the executive office of the President. The OEO is headed by a director with a planning and coordinating staff. This staff is responsible for coordinating the poverty-related programs of all government agencies.

Within the OEO, separate staffs will operate a Job Corps, a program for Volunteers in Service to America (VISTA), a Community Action Program, and special programs for migrant workers. In addition, the OEO will distribute funds to existing agencies to operate a variety of programs authorized under the bill: work-training programs to be administered through the Labor Department, work-study programs through HEW, adult basic education through HEW, special rural antipoverty programs through Agriculture, small business loans

through the Small Business Administration, and community work and training projects for welfare recipients through HEW.

Following is a summary of the programs available under the Economic Opportunity Act of 1964

Title I—Youth Programs: $412.5 million

Part A — Establishes a *Job Corps* to provide education, work experience, and vocational training in conservation camps and residential training centers, to enroll 40,000 young men and women, aged 16–21, this year, 100,000 next year Administered by Office of Economic Opportunity Total cost, $190 million

Part B — Establishes a *Work-training Program* under which the Director of the Office of Economic Opportunity can enter into agreements with state and local governments or nonprofit organizations to pay part of the cost of full- or part-time employment to enable young men and women, 16–21 to continue or resume their education or to increase their employability, expected to involve 200,000 young adults Administered by Labor Department Total cost, $150 million.

Part C — Establishes a *Work-study Program* under which the Director of OEO will enter into agreements with institutions of higher learning to pay part of the costs of part-time employment for undergraduate or graduate students from low-income families to permit them to enter upon or continue university-level education, expected to involve 140,000 youths the first year Administered by Department of Health, Education, and Welfare Total cost, $71 7 million

Title II—Community Action Programs: $340 million

Part A — Authorizes the Director of OEO to pay up to 90 percent of the total costs of financing antipoverty programs planned and carried out at the community level Programs will be administered by the communities and will coordinate poverty-related programs of various federal agencies Total cost, $315 million

Part B—Authorizes the OEO Director to make grants to states to provide basic education and literacy training to adults Administered by the Department of Health, Education, and Welfare Total cost, $25 million

Part C—Voluntary assistance program for needy children

Title III—Programs to Combat Poverty in Rural Areas· $35 million

Part A—Authorizes loans up to $2,500 to very low-income rural families where such loans are likely to produce a permanent increase in the income of such families or by financing nonagricultural, income-producing enterprises for the same purpose The Director of OEO also may provide assistance to nonprofit corporations, and cooperatives of low-income rural families Administered by Department of Agriculture

Part B—Sets up a program of assistance to establish and operate housing, sanitation, education, and child day-care programs for migrant farm workers and their families Total cost, not more than $15 million

Part C—Indemnities to dairy farmers

Title IV—Employment and Investment Incentives

The OEO would be authorized to make, participate in, or guarantee loans to small businesses of up to $15,000 on more liberal terms than the regular loan provisions of the Small Business Administration Administered by the Small Business Administration Would use $25 million of SBA's regular spending authority.

Title V—Work-experience Programs: $150 million

Authorizes the Director of OEO to transfer funds to HEW to pay costs of experimental, pilot, or demonstration projects designed to stimulate the adoption in the states of programs of providing constructive work experience or training for unemployed fathers and needy persons.

Title VI—Administration and Coordination: $10 million

Authorizes the Director of OEO to recruit and train an estimated 5,000 VISTA volunteers to serve in specified mental health, migrant, Indian, and other federal programs including the Job Corps, as well as in state and community antipoverty programs

Title VII—Treatment of Income for Certain Public Assistance Purposes

Exempts first $85 plus one-half of excess over $85 of monthly payments under Title I or II as income or resources in determining need of recipient or any other individual No payments made to any person for any month shall be regarded as income or resources of any other individual in determining need of such other individual No grant made to any family under Title III shall be regarded as income or resources of such family in determining need of any member thereof under state approved plans.

APPENDICES

AMENDED IN ASSEMBLY APRIL 29, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1710

Introduced by Messrs. Burton, Elliott, Stanton, Knox, Beilenson, Dymally, Ferrell, Greene, Kennick, McMillan, Rumford, and Warren

March 6, 1963

REFERRED TO COMMITTEE ON GOVERNMENT ORGANIZATION

An act to amend Sections 1411, 1412, 1419, 1420, and 1431 of the Labor Code, relating to fair employment practices.

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

SECTION 1. Section 1411 of the Labor Code is amended to read:

1411 It is hereby declared as the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, or age

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons, foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interests of employees, employers, and the public in general

This part shall be deemed an exercise of the police power of the State for the protection of the public welfare, prosperity, health, and peace of the people of the State of California

SEC 2. Section 1412 of said code is amended to read:

1412 The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, or age is hereby recognized as and declared to be a civil right.

SEC 3 Section 1419 of said code is amended to read

1419 The commission shall have the following functions, powers and duties.

(a) To establish and maintain a principal office and such other offices within the State as the Legislature authorizes.

(b) To meet and function at any place within the State.

(c) To appoint an attorney, and such clerks and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties

(d) To obtain upon request and utilize the services of all governmental departments and agencies

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this part

(f) To receive, investigate and pass upon complaints alleging discrimination in employment because of race, religious creed, color, national origin, ancestry, or age

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission

(h) To create such advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religious creed, color, national origin, ancestry, or age, and to foster through community effort or otherwise good will, co-operation, and conciliation among the groups and elements of the population of the State and to make recommendations to the commission for the development of policies and procedures in general Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay

(i) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religious creed, color, national origin, ancestry, or age

(j) To render annually to the Governor and biennially to the Legislature a written report of its activities and of its recommendations.

SEC 4 Section 1420 of said code is amended to read

1420 It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, ~~color, national origin, ancestry, or age of any person, to~~ *color, national origin, or ancestry of any person or because of*

the age of any person over 40, to refuse to hire or employ him or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For a labor organization, because of the race, religious ~~creed, color, national origin, ancestry,~~ or ~~age of any person to exclude, expel or restrict from its membership such~~ *creed, color, national origin, or ancestry of any person or because of the age of any person over 40, to exclude, expel, or restrict from its membership such* person, or to provide only second-class or segregated membership or to discriminate in any way against any of its members or against any employer or against any person employed by an employer

(c) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religious creed, color, national origin, ancestry, or age or any intent to make any such limitation, specification or discrimination

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this part.

(e) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so

SEC 5 Section 1431 of said code is amended to read·

1431 The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this State relating to discrimination because of race, religious creed, color, national origin, ancestry, or age

Nothing contained in this act shall be deemed to repeal or affect the provisions of any ordinance relating to such discrimination in effect in any city, city and county, or county at the time this act becomes effective, insofar as proceedings theretofore commenced under such ordinance or ordinances remain pending and undetermined The respective administrative bodies then vested with the power and authority to enforce such ordinance or ordinances shall continue to have such power and authority, with no ouster or impairment of jurisdiction, until such pending proceedings are completed, but in no event beyond one year after the effective date of this act

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

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March 6, 1963

REFERRED TO COMMITTEE ON GOVERNMENT ORGANIZATION

An act to amend Sections 1411, 1412, 1419, 1420, and 1431 of the Labor Code, relating to fair employment practices

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

SECTION 1. Section 1411 of the Labor Code is amended to read:

1411. It is hereby declared as the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ~~or~~ ancestry, *or age*

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons, foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interests of employees, employers, and the public in general.

This part shall be deemed an exercise of the police power of the State for the protection of the public welfare, prosperity, health, and peace of the people of the State of California

SEC 2. Section 1412 of said code is amended to read:

1412 The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ~~or~~ ancestry, *or age* is hereby recognized as and declared to be a civil right

LEGISLATIVE COUNSEL'S DIGEST

A B 1710, as introduced, Burton (G O.). California Fair Employment Practice Act

Amends various secs, Lab C

Makes California Fair Employment Practice Act applicable to discrimination on account of age.

SEC 3 Section 1419 of said code is amended to read

1419 The commission shall have the following functions, powers and duties:

(a) To establish and maintain a principal office and such other offices within the State as the Legislature authorizes

(b) To meet and function at any place within the State

(c) To appoint an attorney, and such clerks and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties

(d) To obtain upon request and utilize the services of all governmental departments and agencies

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this part

(f) To receive, investigate and pass upon complaints alleging discrimination in employment because of race, religious creed, color, national origin, ~~or~~ ancestry, *or age*.

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(h) To create such advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religious creed, color, national origin, ~~or~~ ancestry, *or age*, and to foster through community effort or otherwise good will, co-operation, and conciliation among the groups and elements of the population of the State and to make recommendations to the commission for the development of policies and procedures in general Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(i) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religious creed, color, national origin, ~~or~~ ancestry, *or age*

(j) To render annually to the Governor and biennially to the Legislature a written report of its activities and of its recommendations

SEC 4 Section 1420 of said code is amended to read·

1420 It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ~~or~~ ancestry, *or age* of any person, to

refuse to hire or employ him or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For a labor organization, because of the race, religious creed, color, national origin, ~~or~~ ancestry, *or age* of any person to exclude, expel or restrict from its membership such person, or to provide only second-class or segregated membership or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religious creed, color, national origin, ~~or~~ ancestry, *or age* or any intent to make any such limitation, specification or discrimination

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this part.

(e) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

SEC. 5. Section 1431 of said code is amended to read.

1431. The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this State relating to discrimination because of race, religious creed, color, national origin, ~~or~~ ancestry, *or age*.

Nothing contained in this act shall be deemed to repeal or affect the provisions of any ordinance relating to such discrimination in effect in any city, city and county, or county at the time this act becomes effective, insofar as proceedings theretofore commenced under such ordinance or ordinances remain pending and undetermined. The respective administrative bodies then vested with the power and authority to enforce such ordinance or ordinances shall continue to have such power and authority, with no ouster or impairment of jurisdiction, until such pending proceedings are completed, but in no event beyond one year after the effective date of this act

CHAPTER 1

Witnesses who testified were as follows:

Los Angeles, September 19 and 20, 1963:

William D Bechill, executive secretary, Citizens' Advisory Committee on Aging, State of California
W J Fitzgerald, state secretary, Fraternal Order of Eagles
John Anson Ford, Chairman, California Fair Employment Practice Commission
Richard Cartwright, National Council of Senior Citizens, and the United Auto Workers Union
Lawrence T Peyton, Forty-Plus of Southern California
Lorenzo Traylor, assistant program development director, Youth Opportunities Board of Greater Los Angeles
Z L Gulledge, district supervisor, Van Nuys Vocational Rehabilitation, State Department of Education
Miss Eleanor Fait, state supervisor of the Older Worker Program, California State Employment Service
Don Vial, director of research and education, California Labor Federation, AFL-CIO
William Torres, assistant business manager, Monrovia Unified School District
Frank McCarthy, senior deputy, office of the State Fire Marshal, Los Angeles District
Robert E Depue, fire chief, Los Angeles County Fire Department
Clair L Eatough, Bureau of School Planning, State Department of Education
Richard Lawrence, Los Angeles City Board of Education
John W Schaefer, maintenance and operating manager, Business Division, Los Angeles City Schools

San Francisco, October 24, 1963:

Everett Corten, counsel for the Department of Industrial Relations
Edward Howden, Chief of the Division of Fair Employment Practices
Maurice Gershenson, Chief, Division of Labor Law Statistics, Department of Industrial Relations
Dr Edward Goldman, assistant superintendent, Adult and Vocational Education, San Francisco Unified School District
Richard Parino, representative, Division of Apprenticeship Standards, San Francisco
Gerald Parrish, regional director, United States Employment Service, U.S. Department of Labor
Charles Rosenthal, executive director, Careers Unlimited for Women
William Smith, executive vice president, Federated Employers of the Bay Area, California Conference of Employer Associations
Orville Luster, executive director, Youth for Service, San Francisco
Mrs. Vera Haile, administrative assistant, Youth for Service
Herbert P O'Connell, individual, Oakland
Harold Baker, individual, Sunnyvale

Sacramento, December 2, 1963:

Dr Wesley P. Smith, Director, Vocational Education, State Department of Education
John O Longaker, Sr, labor relations consultant, Walnut Creek
Robert D Calkins, deputy director, State Department of Conservation
Kenneth McGilvray, attorney, Fraternal Order of Eagles
Leonard Haidle, field director, Office of Manpower Development and Training, U S Department of Labor
Robert Hill, supervisor, youth employment, State Department of Employment
Charles F Hanna, Chief, Division of Apprenticeship Standards, State Department of Industrial Relations

San Diego, January 17, 1964:

Walter Christian, San Diego manager, State Department of Employment
Lee Ralston, director, Division of Practical Arts Education, office of Los Angeles County Superintendent of Schools
Miss Althea T L Simmons, field secretary, West Coast region, National Association for the Advancement of Colored People
Vernon W Hughes, representative, San Diego County Labor Council, AFL-CIO
Dr F. R Gorton, president, San Diego City College
Dr. Harmon Kurtz, *coordinator of junior employment*, San Diego City Schools
William Steinberg, specialist, practical arts and vocational education, San Diego City Schools
John A Collins, business representative, International Association of Machinists, District 50, City of San Diego
Louis M Harper, executive secretary, Hospital Council of San Diego County

AMENDED IN ASSEMBLY JUNE 9, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1202

Introduced by Messrs. Lanterman and Flournoy

February 12, 1963

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 15815 to the Education Code, relating to proper ventilation of heaters in classrooms.

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

SECTION 1. Section 15815 is added to the Education Code, to read:

15815 The governing board of every school district shall provide that any *gas* heater or other mechanical means of providing heat ~~located in, or providing~~ *by combusted fuel located in, or providing such* heat to, any classroom is vented in a manner to protect the health, safety and comfort of pupils and district personnel.

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1202

Introduced by Messrs. Lanterman and Flournoy

February 12, 1963

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 15815 to the Education Code, relating to proper ventilation of heaters in classrooms.

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

SECTION 1. Section 15815 is added to the Education Code, to read:

15815 The governing board of every school district shall provide that any heater or other mechanical means of providing heat located in, or providing heat to, any classroom is vented in a manner to protect the health, safety and comfort of pupils and district personnel.

LEGISLATIVE COUNSEL'S DIGEST

A B 1202, as introduced, Lanterman (Ed). Ventilation of classroom heaters

Adds Sec 15815, Ed C

Requires the governing board of every school district to provide proper ventilation for classroom heaters.

AMENDED IN ASSEMBLY MAY 31, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2896

Introduced by Mr. Foran

April 26, 1963

REFERRED TO COMMITTEE ON INDUSTRIAL RELATIONS

An act to amend Sections 7621, 7625, 7770, 7771, and the heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of the Labor Code, relating to tanks and boilers

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

SECTION 1. Section 7621 of the Labor Code is amended to read

7621. "Boiler" as used in this part means·

(a) Any fired or unfired pressure vessel used to generate steam pressure by the application of heat (power boiler).

(b) Any fired or unfired pressure vessel used to heat water at pressures exceeding 160 psi or temperatures exceeding 250 degrees Fahrenheit (high-temperature water boilers).

(c) Any fired or unfired pressure vessel operating at steam pressure or steam safety valve setting of 15 psi or less, or at 250 degrees Fahrenheit or less, or at water pressure less than 160 psi (low-pressure boilers). *This subdivision is not intended to include domestic type water heaters of 120 gallons capacity or less used exclusively to heat potable water.*

SEC. 2. Section 7625 of said code is amended to read:

7625. The following steam boilers are not subject to this part:

(a) Boilers under the jurisdiction or inspection of the United States government, and all other boilers operated by employers not subject to Division 4 of this code.

(b) Automobile boilers and boilers on road motor vehicles

SEC. 3. The heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of said code is amended to read:

CHAPTER 6 MANAGEMENT OF BOILERS

SEC. 4 Section 7770 of said code is amended to read

7770. Every engineer or other person having charge of any boiler, ~~engine, or other~~ *steam engine, or* apparatus for generating or employing steam, used in any *school buildings or buildings of public assembly or in any* manufactory, railway, or other mechanical works, who willfully, or from ignorance or from gross neglect, creates, or allows to be created, such an undue ~~quantity of steam~~ *internal pressure* as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby human life is endangered, is guilty of a felony.

SEC. 5 Section 7771 of said code is amended to read:

7771 Every person having charge of any boiler, ~~engine, or other~~ *steam engine, or* apparatus for generating or employing steam, used in any manufactory, railroad, vessel, or other mechanical works, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue ~~quantity of steam~~ *internal pressure* as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is caused, is punishable by imprisonment in the state prison for not less than 1 nor more than 10 years.

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2896

Introduced by Mr. Foran

April 26, 1963

REFERRED TO COMMITTEE ON INDUSTRIAL RELATIONS

An act to amend Sections 7621, 7625, 7770, 7771, and the heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of the Labor Code, relating to tanks and boilers

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

SECTION 1. Section 7621 of the Labor Code is amended to read:

7621. "Boiler" as used in this part means ~~any fired or unfired pressure vessel used to generate steam pressure by the application of heat subject to this part.~~ :

(a) Any fired or unfired pressure vessel used to generate steam pressure by the application of heat (power boiler).

(b) Any fired or unfired pressure vessel used to heat water at pressures exceeding 160 psi or temperatures exceeding 250 degrees Fahrenheit (high-temperature water boilers).

(c) Any fired or unfired pressure vessel operating at steam pressure or steam safety valve setting of 15 psi or less, or at 250 degrees Fahrenheit or less, or at water pressure less than 160 psi (low-pressure boilers).

SEC. 2 Section 7625 of said code is amended to read:

7625 The following steam boilers are not subject to this part.

(a) Boilers under the jurisdiction or inspection of the United States government, and all other boilers operated by employers not subject to Division 4 of this code.

LEGISLATIVE COUNSEL'S DIGEST

A B 2896, as introduced, Foran (Ind R) Tanks and boilers safety

Amends Secs 7621, 7625, 7770, 7771, and the heading of Ch 6 (commencing with Sec 7770), Pt 6, Div 5, Lab C

Includes certain boilers which are not presently covered within provisions governing safety in employment with respect to tanks and boilers

~~(b) Boilers on which the pressure does not exceed 15 pounds per square inch.~~

~~(c)~~ *(b)* Automobile boilers and boilers on road motor vehicles

SEC 3 The heading of Chapter 6 (commencing with Section 7770) of Part 6 of Division 5 of said code is amended to read

CHAPTER 6 MISMANAGEMENT OF ~~STEAM~~ BOILERS

SEC 4 Section 7770 of said code is amended to read:

7770 Every engineer or other person having charge of any ~~steam~~ boiler, ~~steam~~ engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance or from gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby human life is endangered, is guilty of a felony.

SEC 5 Section 7771 of said code is amended to read.

7771 Every person having charge of any ~~steam~~ boiler, ~~steam~~ engine, or other apparatus for generating or employing steam, used in any manufactory, railroad, vessel, or other mechanical works, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is caused, is punishable by imprisonment in the state prison for not less than 1 nor more than 10 years.

AMENDED IN ASSEMBLY MAY 13, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2364

Introduced by Messrs. Alquist, Gaffney, Ryan, Dymally, and Meyers

April 11, 1963

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

An act to add Chapter 21 (commencing with Section 9900) to Division 3 of the Business and Professions Code, relating to the licensing and regulation of persons operating or maintaining stationary power plants and making an appropriation therefor.

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

SECTION 1. Chapter 21 (commencing with Section 9900) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 21. OPERATING ENGINEERS

Article 1 General Provisions

9900 This chapter may be known and cited as the Operating Engineers Act.

9901. An "operating engineer," as used in this chapter, means a person who operates or maintains a stationary power plant

9902. A "stationary powerplant," as used in this chapter, includes a heating plant, a power or generating plant, or a refrigeration unit

9903 "Major mechanical and electrical equipment," as used in this chapter, means boilers, steam engines and turbines, pumps, refrigeration machines, air compressors, electric motors and circuits, air-conditioning equipment, and other similar equipment used in stationary powerplants

Article 2 Regulation

9910 The Department of Professional and Vocational ~~Standards shall be in charge of the administration of this chapter.~~ *Standards shall be empowered to issue licenses to persons attending or operating boilers upon application by such persons after they shall have been shown to be duly qualified to attend or operate said equipment*

The policing of this act may be delegated to other state agencies at the discretion of the Department of Professional and Vocational Standards

9911 The department may adopt such regulations as may be necessary to enable it to carry out the provisions of this chapter Such regulations shall be adopted in accordance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

9912 The department may employ such additional help as it deems necessary to enable it to carry out the provisions of this chapter

9913 The department shall select a *qualified* chief examiner and ~~two~~ district examiners, each of whom shall ~~be qualified to hold a grade A license issued pursuant to this chapter,~~ *have at least seven years of practical experience as a stationary steam engineer, or the equivalent in technical training, and other pertinent experience.*

9914 The chief examiner shall maintain his office in Sacramento; ~~one~~ *and at least one* district examiner shall be in San Francisco, and ~~one in~~ *at least one district examiner shall be in* Los Angeles. ~~The three~~ *; the* examiners shall compose the Board of Examiners for Licensing ~~Operating~~ *Stationary Steam* Engineers, which board is hereby created

9915 The board shall examine each applicant for a license as an operating engineer Such examinations shall be held at least 12 times each year at such times and places as the board may determine

9916. The examination shall be in writing and shall test the applicant's knowledge of the practical construction, care, operation and maintenance of boilers, ~~steam engines and turbines, pumps, refrigeration machines, air compressors, electric motors and circuits, and air conditioning equipment.~~ *appurtenances, and systems.*

9917 Each applicant for a license as an operating engineer shall make application to an examiner on a form prescribed by the board and shall set forth his name, age, place of residence, the nature and extent of his experience, and the class of license applied for Each application shall be accompanied by the fee specified in Section 9947

9918 Each applicant for a license shall be of good moral character and temperate habits, which shall be vouched for in writing by at least two operating engineers or shall be verified

under oath by the applicant when required by the board Each applicant shall be at least ~~10~~ *21* years of age and shall possess the experience specified as follows for the grade of license applied for·

~~(a) An applicant for a grade A engineer's license shall have at least five years' experience in the operation or maintenance of major mechanical and electrical equipment and shall offer proof satisfactory to the board that he is qualified to have direct charge of or operate such equipment.~~

~~(b) An applicant for a grade B engineer's license shall have at least three years' experience in the operation or maintenance of major mechanical and electrical equipment.~~

(a) Stationary Steam Engineer An applicant for a stationary steam engineer's license shall be a person having at least four (4) years of experience in the attendance and operation of any boiler, other than low-pressure boiler, having more than 500 square feet of heating surface; or a person having a combination of formal education, technical training, practical experience equal to four (4) years practical experience within the criteria established by the board; or a person who has held a valid boiler operator's license (as provided for in this chapter) for a period of four (4) years or more; or a person who has completed a four (4) year state-indentured apprenticeship program for stationary engineers

(b) Boiler Operator An applicant for boiler operator's license shall be a person having at least two (2) years experience in the attendance and operation of boilers or a person having a combination of formal education, technical training, practical experience equal to two (2) years practical experience within the criteria established by the board; or a person who has completed a four (4) year state-indentured apprenticeship program for stationary engineers

(c) An applicant for a grade C license shall have at least one year's experience in the operation or maintenance of major mechanical and electrical equipment or have completed a four-year apprentice training course

9919 The board shall issue a license in the grade applied for to each applicant who has the qualifications required by this chapter and who successfully passes the examination therefor given by the board

~~9920 The board shall issue a license in the grade applied for, without examination, to each applicant who was employed as an operating engineer on the effective date of this chapter or who has had at least one year's experience in the operation or maintenance of major mechanical and electrical equipment prior to the effective date of this chapter and who makes application therefor on a form prescribed by the board within six months from the effective date of this chapter.~~

9920 The board may issue a license in the class applied for without examination to each applicant who was employed

as a stationary steam engineer or a boiler operator on the effective date of this chapter; or to each applicant who has had at least one (1) year's recent experience in the attendance and operation of boilers, appurtenances and systems prior to the effective date of this chapter; or any applicant holding a valid license from a city or county of the State of California; provided, such applicants make application, therefor, on a form prescribed by the board within six (6) months from the effective date of this chapter

Article 3 Disciplinary Proceedings

9930. The board may suspend or revoke a license issued pursuant to this chapter for the following causes

(a) Fraud or deceit upon the board in obtaining the license

(b) Use of any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any alcoholic beverage to an extent or in a manner dangerous to himself, any other person, or the public, or to an extent that such use impairs his ability to perform the work authorized by his license with safety to the public

(c) Incompetency or other just cause

9931 The adjudication of insanity or mental illness, or the voluntary commitment or admission to a state hospital of any licensee for a mental illness shall operate as a suspension of the right to practice of any licensee under this chapter, such suspension to continue until restoration to or declaration of sanity or mental competence The record of adjudication, judgment or order of voluntary commitment is conclusive evidence of such insanity or mental illness, and upon receipt of a certified copy of any such adjudication, judgment, voluntary commitment or order by the board it shall immediately suspend the license of the person adjudicated or committed The board shall not restore such license to good standing until it shall receive competent evidence of restoration to or declaration of sanity and until it is satisfied that, with due regard for the public interest, said person's right to practice may be safely reinstated Before reinstating such person, the board may require the person to pass an oral examination to determine his present fitness to resume his practice

9932 The proceeding under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Article 4 Revenue

9940 Licenses issued under this chapter shall expire on December 31 of each odd-numbered year, if not renewed.

To renew an unexpired license, the holder thereof, on or before December 31 of each odd-numbered year, shall apply

for a renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter

9941 A license which has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last preceding regular renewal date If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter

Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs If so renewed, the license shall continue in effect through the date provided for in Section 9940 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed

9942 A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended

9943 A revoked license is subject to expiration as provided in this article, but it may not be renewed If it is reinstated after its expiration, the holder of the license shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

9944 A license which is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the holder of the license may apply for and obtain a new license if

(a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.

(b) He pays all of the fees which would be required of him if he were then applying for a license for the first time

(c) He takes and passes the examination, which would be required of him if he were then applying for the license for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he is qualified to perform the services regulated by this chapter

9945 The board shall report each month to the State Controller the amount and source of all revenue received by it pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Operating Engineers' Fund, which fund is hereby created.

9946 The money paid into the Operating Engineers' Fund is continuously appropriated to the department for expenditure in the manner prescribed by law to defray the expenses

of the department and in carrying out and enforcing the provisions of this chapter

~~9947. The amount of the fees prescribed by this chapter is that fixed by the following schedule:~~

~~(a) The application fee for a grade A license is twenty dollars ($20).~~

~~(b) The application fee for a grade B license is fifteen dollars ($15).~~

~~(c) The application fee for a grade C license is ten dollars ($10).~~

~~(d) The renewal fee is five dollars ($5).~~

~~(e) The delinquency fee is ========.~~

9947. The amount of the fees prescribed by this chapter shall be as follows:

Fees for original licenses and application fees shall be as the department shall, from time to time, deem appropriate for compliance with the intent of the act; but in no event shall exceed a maximum of fifty dollars ($50)

Fees for renewal shall not exceed ten dollars ($10)

Fees for delinquency shall not exceed twenty-five dollars ($25) per annum

9948. It shall be unlawful for any person or persons to attend or to operate any boiler covered by this chapter, unless said person or persons holds a valid stationary steam engineer's license or a valid boiler operator's license

9949. It shall be unlawful for any person or persons to attend or to operate any boiler, other than a low-pressure boiler, having more than 500 square feet of heating surface, or any such boilers whose combined heating surface totals more than 500 square feet, unless said person or persons hold a valid stationary steam engineer's license

9950. It shall be unlawful for any owner or user of any boilers covered by this chapter to cause any boilers covered by this chapter, to be attended or operated by any person or persons not holding a valid license as provided for in this chapter

9951. The following boilers are not subject to the provisions of this chapter and do not require a licensed engineer or operator:

(1) Low-pressure boilers having a combined boiler input less than 400,000 BTU per hour.

(2) Miniature boilers.

Any person holding a valid boiler operator's license shall be entitled to operate any low-pressure boiler, and any other boiler or boilers, having a total heating surface of 500 square feet or less

Any person holding a valid stationary steam engineer's license shall be entitled to operate any and all boilers covered by this chapter.

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2364

Introduced by Messrs. Alquist, Gaffney, Ryan, Dymally, and Meyers

April 11, 1963

REFERRED TO COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

An act to add Chapter 21 (commencing with Section 9900) to Division 3 of the Business and Professions Code, relating to the licensing and regulation of persons operating or maintaining stationary powerplants and making an appropriation therefor.

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

SECTION 1. Chapter 21 (commencing with Section 9900) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 21. OPERATING ENGINEERS

Article 1. General Provisions

9900. This chapter may be known and cited as the Operating Engineers Act.

9901. An "operating engineer," as used in this chapter, means a person who operates or maintains a stationary power plant

9902 A "stationary powerplant," as used in this chapter, includes a heating plant, a power or generating plant, or a refrigeration unit.

9903. "Major mechanical and electrical equipment," as used in this chapter, means boilers, steam engines and turbines,

LEGISLATIVE COUNSEL'S DIGEST

A B 2364, as introduced, Alquist (G E. & E) Operating engineers.

Adds Ch 21 (commencing with Sec. 9900), DIV. 3, B & P.C.

Provides for the licensing of operating engineers, defines as persons who operate or maintain stationary power plants Specifies the qualifications for licensing and the grounds upon which a license may be suspended or revoked

Vests authority to administer law in the Department of Professional and Vocational Standards Authorizes department to appoint 3 examiners who are to comprise the Board of Examiners for Licensing Operating Engineers. Gives board authority to examine applicants for licenses.

pumps, refrigeration machines, air compressors, electric motors and circuits, air-conditioning equipment, and other similar equipment used in stationary powerplants.

Article 2 Regulation

9910. The Department of Professional and Vocational Standards shall be in charge of the administration of this chapter.

9911. The department may adopt such regulations as may be necessary to enable it to carry out the provisions of this chapter. Such regulations shall be adopted in accordance with Chapter 4 5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code

9912 The department may employ such additional help as it deems necessary to enable it to carry out the provisions of this chapter.

9913 The department shall select a chief examiner and two district examiners, each of whom shall be qualified to hold a grade A license issued pursuant to this chapter

9914 The chief examiner shall maintain his office in Sacramento, one district examiner shall be in San Francisco, and one in Los Angeles. The three examiners shall compose the Board of Examiners for Licensing Operating Engineers, which board is hereby created

9915. The board shall examine each applicant for a license as an operating engineer Such examinations shall be held at least 12 times each year at such times and places as the board may determine

9916 The examination shall be in writing and shall test the applicant's knowledge of the practical construction, care, operation and maintenance of boilers, steam engines and turbines, pumps, refrigeration machines, air compressors, electric motors and circuits, and air-conditioning equipment

9917 Each applicant for a license as an operating engineer shall make application to an examiner on a form prescribed by the board and shall set forth his name, age, place of residence, the nature and extent of his experience, and the class of license applied for Each application shall be accompanied by the fee specified in Section 9947

9918 Each applicant for a license shall be of good moral character and temperate habits, which shall be vouched for in writing by at least two operating engineers or shall be verified under oath by the applicant when required by the board Each applicant shall be at least 19 years of age and shall possess the experience specified as follows for the grade of license applied for:

(a) An applicant for a grade A engineer's license shall have at least five years' experience in the operation or maintenance of major mechanical and electrical equipment and shall offer

proof satisfactory to the board that he is qualified to have direct charge of or operate such equipment

(b) An applicant for a grade B engineer's license shall have at least three years' experience in the operation or maintenance of major mechanical and electrical equipment

(c) An applicant for a grade C license shall have at least one year's experience in the operation or maintenance of major mechanical and electrical equipment or have completed a four-year apprentice training course

9919 The board shall issue a license in the grade applied for to each applicant who has the qualifications required by this chapter and who successfully passes the examination therefor given by the board

9920 The board shall issue a license in the grade applied for, without examination, to each applicant who was employed as an operating engineer on the effective date of this chapter or who has had at least one year's experience in the operation or maintenance of major mechanical and electrical equipment prior to the effective date of this chapter and who makes application therefor on a form prescribed by the board within six months from the effective date of this chapter

Article 3 Disciplinary Proceedings

9930 The board may suspend or revoke a license issued pursuant to this chapter for the following causes:

(a) Fraud or deceit upon the board in obtaining the license.

(b) Use of any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any alcoholic beverage to an extent or in a manner dangerous to himself, any other person, or the public, or to an extent that such use impairs his ability to perform the work authorized by his license with safety to the public

9931. The adjudication of insanity or mental illness, or the voluntary commitment or admission to a state hospital of any licensee for a mental illness shall operate as a suspension of the right to practice of any licensee under this chapter, such suspension to continue until restoration to or declaration of sanity or mental competence The record of adjudication, judgment or order of voluntary commitment is conclusive evidence of such insanity or mental illness, and upon receipt of a certified copy of any such adjudication, judgment, voluntary commitment or order by the board it shall immediately suspend the license of the person adjudicated or committed The board shall not restore such license to good standing until it shall receive competent evidence of restoration to or declaration of sanity and until it is satisfied that, with due regard for the public interest, said person's right to practice may be safely reinstated. Before reinstating such person, the board may re-

quire the person to pass an oral examination to determine his present fitness to resume his practice.

9932 The proceeding under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code

Article 4 Revenue

9940. Licenses issued under this chapter shall expire on December 31 of each odd-numbered year, if not renewed

To renew an unexpired license, the holder thereof, on or before December 31 of each odd-numbered year, shall apply for a renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter

9941 A license which has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last preceding regular renewal date If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter

Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs If so renewed, the license shall continue in effect through the date provided for in Section 9940 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed

9942 A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

9943 A revoked license is subject to expiration as provided in this article, but it may not be renewed If it is reinstated after its expiration, the holder of the license shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation

9944 A license which is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the holder of the license may apply for and obtain a new license if.

(a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.

(b) He pays all of the fees which would be required of him if he were then applying for a license for the first time

(c) He takes and passes the examination, which would be required of him if he were then applying for the license for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he is qualified to perform the services regulated by this chapter

9945 The board shall report each month to the State Controller the amount and source of all revenue received by it pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Operating Engineers' Fund, which fund is hereby created.

9946 The money paid into the Operating Engineers' Fund is continuously appropriated to the department for expenditure in the manner prescribed by law to defray the expenses of the department and in carrying out and enforcing the provisions of this chapter

9947 The amount of the fees prescribed by this chapter is that fixed by the following schedule

(a) The application fee for a grade A license is twenty dollars ($20)

(b) The application fee for a grade B license is fifteen dollars ($15)

(c) The application fee for a grade C license is ten dollars ($10).

(d) The renewal fee is five dollars ($5).

(e) The delinquency fee is _____.

CHAPTER 2

AB 2896

Witnesses who testified at the two hearings on this bill were as follows:

Hearing in San Francisco—October 25, 1963

Albert G. Boardman, director of education and research, California Conference of Operating Engineers
John Edson, boiler inspector, City and County of San Francisco
Robert H Fox, assistant business manager, International Union of Operating Engineers, Local 501, Los Angeles
John Gerhard, chief, Fire Prevention Bureau, City of San Jose
J. D Mack, representative, Plumbing, Heating, and Cooling Contractors of California
Joseph McBride, supervisor, heating and ventilation, Board of Education of San Francisco
Daniel Molles, international representative, International Union of Operating Engineers
William A Nelder, representative of the San Francisco Fire Department, dual fire prevention and investigation
Robert J Owens, safety engineer, P G & E Company
Eric Salo, supervising steam generation engineer, P G & E Company
Arthur I Snyder, supervising engineer, pressure vessels, Division of Industrial Safety, Department of Industrial Relations
Ormond B Stull, associate fire prevention engineer of explosives, State Fire Marshal

Hearing in Los Angeles—August 13, 1964

Albert G Boardman, director of education and research, California Conference of Operating Engineers
Francis L. Cherney, business representative, Air Conditioning and Refrigeration Fitters Division of Local 250
Arthur G Clark, Mechanical Bureau, Department of Building and Safety, City of Los Angeles
Burton A Currie, assistant electrical engineer in charge of operations, Department of Water and Power, City of Los Angeles
Henry B Ely, representative, California Council of Air Conditioning and Refrigeration Contractors of California
Robert H Fox, assistant business manager, International Union of Operating Engineers, Local 501, Los Angeles
Owen H Held, senior inspector, Los Angeles Fire Department
J W. Schaefer, building and grounds services administrator, Los Angeles City School Districts
Arthur I. Snyder, supervising engineer, Division of Industrial Safety, Department of Industrial Relations
Raymond D Stover, operations director, Los Angeles City School Districts

AB 2364

Witnesses who testified on this bill were as follows:

Hearing in Sacramento—October 19, 1964

Albert G. Boardman, representative, California State Conference of Operating Engineers, San Francisco
Frank Corbett, executive vice president, California State Builders' Exchange, Sacramento
Sid E Danenhauer, representing Sid E Parker Boiler Manufacturing Company, Inc, Los Angeles

Richard T Dixon, representing Dixon Boiler Works, Los Angeles
Robert T Durbrow, executive secretary, Irrigation Districts Association of California, San Francisco
William H Enomoto, California State Florists Association
R H Fox, assistant business manager, International Union of Operating Engineers, Local 501, Los Angeles
W L Gerssert, representative, Union Oil Company
Ivan Gennis, representative, California Society of Professional Engineers, Sacramento
Richard Gerbes, Gerbes & Todd, Consulting Engineers, San Jose
Robert Hanley, legislative representative, California Farm Bureau Federation, Berkeley
Messrs Charles Kershaw, E E Adams, and Phil Titsworth, representatives, Imperial County Farm Bureau
Keith Kirstein, executive secretary, California Grain and Feed Assn
Richard McDougal, representative, California Cattle Feeders Assn.
A L Miller, president, Laars Engineers, Inc
Leslie W Miller, legislative representative, Construction Industry Legislative Council, Sacramento
Messrs W Merle Miller and William Clayton, Jr, representatives, Clayton Manufacturing Company, El Monte
Daniel Molloy, representative, International Union of Operating Engineers
J W Schaefer, building and grounds administrator, Los Angeles School District
Karl Schulze, supervising safety engineer, Western Oil and Gas Association, San Francisco
Arthur I Snyder, supervising industrial engineer, Division of Industrial Safety, Department of Industrial Relations
H J Stone, representative, California Employers' Safety Committee

CHAPTER 4

Hearing in Salinas, September 30 and October 1, 1963

SAFETY IN RAILWAY CROSSINGS

Witnesses who testified at this hearing were as follows:

James K Gibson, representative, Public Utilities Commission of California
Walter Swope, investigator, representing Sigmund Arywitz, State Labor Commissioner of California
Captain Francis Summons, California Highway Patrol, Salinas
Randolph Karr, general attorney, Southern Pacific Railroad
Officer Ralph Weston, Jr., California Highway Patrol, Salinas
William A Ingram, counsel for Southern Pacific Railroad
Robert Cripe, engineer, Southern Pacific Railroad
James Walter Cady, fireman, Southern Pacific Railroad
Jack Bias, executive vice president, Growers Farm Labor Association of Salinas
Arden P Jacobsen, supervising driver improvement analyst, Division of Drivers' Licenses, Sacramento
Jesse Lopez, Drivers' License Examiner, San Leandro
George A Sherman, Chief, Division of Industrial Safety, Department of Industrial Relations
Sam C Carrillo, representative, U S Department of Labor
Albert J Reyff, supervising deputy labor commissioner, Salinas
M J Kosty, court reporter, Salinas

AMENDED IN ASSEMBLY MAY 31, 1963

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2783

Introduced by Messrs. Gaffney, Elliott, Foran, and Dymally

April 25, 1963

REFERRED TO COMMITTEE ON INDUSTRIAL RELATIONS

An act to add Part 8 (commencing with Section 7850) to Division 5 of the Labor Code, relating to safety in employment

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

SECTION 1 Part 8 (commencing with Section 7850) is added to Division 5 of the Labor Code, to read

PART 8. HIGH VOLTAGE ELECTRICAL WIRES

7850 No employer shall require or permit any employee to perform any function in proximity to overhead high voltage lines, to enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair or other operations, or to erect, install, operate or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house moving, well drilling, pile driving or hoisting equipment, unless and until danger from accidental contact with said overhead high voltage lines has been effectively guarded against in the manner prescribed in this part. Violation of this section shall be a misdemeanor

7851 The operation, erection or transportation of any tools, machinery or equipment, or any part thereof capable of vertical, lateral, or swinging motion; the handling, transportation, or storage of any supplies, materials or apparatus, or the moving of any house or other building, or any part thereof, under, over, by or near overhead high voltage lines, shall not be undertaken if at any time during such operation, transportation or other manipulation it is possible to bring such equipment, tools, materials, building or any part thereof within six feet of overhead high voltage lines, except where such high voltage lines

have been effectively guarded against danger from accidental contact, by one of the following methods

(a) The erection of mechanical barriers whose adequacy to prevent physical contact with high voltage conductors is approved in writing by the division

(b) De-energizing the high voltage conductors and grounding where necessary.

The provisions of this section shall not be applicable to tools, machinery, or equipment personally used or operated by qualified electrical workers engaged in the construction, reconstruction, operation and maintenance of overhead electrical circuits and conductors and the supporting structures and associated equipment thereof

7852 In addition, in cases coming under Section 7851 there shall be installed an insulated cage-type guard or protective device, approved by the division, about the boom or arm of all equipment, except back hoes or dippers, and where the equipment includes a lifting hook device also approved by the division, all lifting lines shall be equipped with insulator links on the lift hook connection.

7853 All mechanical barriers and all insulated protective devices and links referred to herein shall be of such character and construction as are suited to the work operations, and adequate for the electrical conditions to be encountered

7854 All mechanical barriers and all insulated protective devices and links shall be maintained in such functioning condition as to meet periodic inspection by the division and to conform to the regulations of the division

~~7585~~

7855 As used in this part·

(a) "High voltage" means a voltage in excess of ~~440~~ *600* volts, measured between conductors, or measured between the conductor and the ground

(b) "Mechanical barrier" means temporary devices for separating and preventing contact between material or equipment and overhead electrical conductors, such as.

(1) A series of poles or the equivalent

(2) Nonconductive enclosures around conductors

(c) "De-energizing" means removing the voltage from electrical conductors

(d) "Qualified electrical worker" means a person who:

(1) Has completed a state-indentured apprenticeship program for electricians or linemen or

(2) Has had a minimum of four years' training and experience under the instruction and direction of a qualified electrical worker and is familiar with the hazards involved.

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

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PART 8 HIGH VOLTAGE ELECTRICAL WIRES

7850. No employer shall require or permit any employee to perform any function in proximity to overhead high voltage lines, to enter upon any land, building, or other premises, and there to engage in any excavation, demolition, construction, repair or other operations, to to erect, install, operate or store in or upon such premises any tools, machinery, equipment, materials, or structures, including house moving, well drilling, pile driving or hoisting equipment, unless and until danger from accidental contact with said overhead high voltage lines has been effectively guarded against in the manner prescribed in this part Violation of this section shall be a misdemeanor.

7851 The operation, erection or transportation of any tools, machinery or equipment, or any part thereof capable of vertical, lateral, or swinging motion; the handling, transportation, or storage of any supplies, materials or apparatus, or the moving of any house or other building, or any part thereof, under, over, by or near overhead high voltage lines, shall not be undertaken if at any time during such operation, transportation or

LEGISLATIVE COUNSEL'S DIGEST

A B 2783, as introduced, Gaffney (Ind R) Safety in employment.

Adds Pt 8 (commencing with Sec. 7850), Div 5, Lab C.

Makes it a misdemeanor for an employer to require or permit an employee to perform work near high voltage lines unless prescribed safeguards have been taken.

other manipulation it is possible to bring such equipment, tools, materials, building or any part thereof within six feet of overhead high voltage lines, except where such high voltage lines have been effectively guarded against danger from accidental contact, by one of the following methods.

(a) The erection of mechanical barriers whose adequacy to prevent physical contact with high voltage conductors is approved in writing by the division

(b) De-energizing the high voltage conductors and grounding where necessary.

7852. In addition, in cases coming under Section 7851 there shall be installed an insulated cage-type guard or protective device, approved by the division, about the boom or arm of all equipment, except back hoes or dippers; and where the equipment includes a lifting hook device also approved by the division, all lifting lines shall be equipped with insulator links on the lift hook connection

7853. All mechanical barriers and all insulated protective devices and links referred to herein shall be of such character and construction as are suited to the work operations, and adequate for the electrical conditions to be encountered.

7854 All mechanical barriers and all insulated protective devices and links shall be maintained in such functioning condition as to meet periodic inspection by the division and to conform to the regulations of the division.

7585 As used in this part·

(a) "High voltage" means a voltage in excess of 440 volts, measured between conductors, or measured between the conductor and the ground

(b) "Mechanical barrier" means temporary devices for separating and preventing contact between material or equipment and overhead electrical conductors, such as.

(1) A series of poles or the equivalent

(2) Nonconductive enclosures around conductors

(c) "De-energizing" means removing the voltage from electrical conductors

By Assemblyman Gaffney.

House Resolution No. 525

Relative to a study of safety in employment

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to assign to the appropriate interim committee for study the subject matter of Assembly Bill No 2783, relating to employers requiring or permitting employees to perform work near high voltage lines without prescribed safeguards, and to direct the committee to report its findings and recommendations thereon to the Legislature not later than the fifth calendar day of the 1965 Regular Session

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

By Assemblyman Gaffney:

House Resolution No. 526

Relative to the creation of the Assembly Interim Subcommittee on Industrial Safety

Resolved by the Assembly of the State of California as follows

1 The Assembly Interim Subcommittee on Industrial Safety is hereby created and authorized and directed to ascertain, study and analyze all facts relating to industrial safety, including but not limited to the drastic economic and social hardship caused by industrial injuries, the need for undertaking concerted efforts to develop and improve means and methods for enhancing the effectiveness of safety measures against personal injury in all industrial or commercial establishments in the State, and the methods and procedures by which adequate industrial safety programs can be developed

2. The subcommittee shall consist of five members who are also members of the Interim Committee on Industrial Relations The chairman of the Interim Committee on Industrial Relations shall appoint the chairman and the other four members thereof Further reference in this resolution to "committee" means by the subcommittee created by this resolution

3 The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1965 Regular Session, with authority to file its final report not later than the 10th legislative day of that session

4 The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5 The committee has the following additional powers and duties

(a) To select a vice chairman from its membership

(b) To contract with such other agencies, individuals, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created

(c) To co-operate with and secure the co-operation of county, city and county and other local law enforcement agencies in investigating any matters within the scope of this resolution and to direct the sheriff of any county to serve subpenas, orders, and other process issued by the county

(d) To report its findings and recommendations to the Legislature and to the people from time to time, and at any time, not later than herein provided

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties and accomplish the objects and purposes of this resolution

The sum of three thousand five hundred dollars ($3,500) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Assembly for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution, to be paid from the said Contingent Fund and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules

CHAPTER 4

Employees' Safety in Work Near High Voltage Wires—AB 2783

Witnesses who testified before the subcommittee on this subject at the Los Angeles and San Francisco hearings were as follows:

September 14, 1964, Los Angeles

John E Dowd, business manager, International Union of Elevator Constructors, Local 18, Los Angeles
James E Busher, district engineer, Elevator Section, Division of Industrial Safety, Department of Industrial Relations, L A
Inman S Reid, district engineer, Division of Industrial Safety, Department of Industrial Relations, L A
Charles G Seurich, Steel Form Contracting Company and A G C Safety Committee
John Witte, representative, Associated General Contractors of America
C V Holder, Building and Contractors Association in California
Albert G Boardman, director of education and research, California State Conference of Operating Engineers
Jack Greenstreet, safety engineer, Local 12, International Union of Operating Engineers
Floyd A Goss, Los Angeles Department of Water and Power
Edward V Muller, district engineer, State Division of Industrial Safety
George W Smith, business manager, Local 8, I B E W
M A Walters, assistant business manager, I B E W, Local Union 1245, Oakland
W. A Ungles, individual

September 21, 1964, San Francisco

Thomas E Fitzgerald, international vice president and regional business agent, Elevator Constructors International
Bryan P Deavers, president, State Building and Construction Trades Council of California, San Francisco
Vincent L White, assistant chief, Division of Industrial Safety
Jack Valov, supervisor, Construction Section, Division of Industrial Safety
Raymond Rodriguez, supervising engineer, Elevator Section, Division of Industrial Safety
William E Stock, safety engineer, Construction Section, Division of Industrial Safety
Charles G Seurich, Steel Form Contracting Company and A G C. Safety Committee
Albert G Boardman, representative, California State Conference of Operating Engineers, San Francisco
Norman Woodbury, representative, California Municipal Utilities Association
Joe Roberts, labor liaison representative, Division of Industrial Safety
E E Carlton, supervisor, Electrical Section, Division of Industrial Safety

Hearing in Eureka, September 28, 1964

SAFETY IN LUMBERING AND RELATED INDUSTRIES

Witnesses who testified before the subcommittee on this subject at the Eureka hearing were:

Frank E Gordon, representative, International Woodworkers of America, AFL-CIO, Local 98
Ralph Talvola, chief inspector, Redwood Inspection Service
G D Hartman, Loggers Local Union 3006
Leonard Cahill, secretary-treasurer, Redwood District Council, Lumber and Sawmill Workers, AFL-CIO
Thomas Batterton, safety engineer, Division of Industrial Safety, Eureka
E. S. Mackins, Simpson Timber Company
Verne Allen, personnel manager, Weyerhaeuser Company, Arcata
Clarence E Startt, general superintendent, Lorenz Lumber Company, Burney
Alder Thurman, safety supervisor, Union Lumber Company, president, C L A P A
D R Mitchell, Georgia-Pacific Corporation, Samoa
Mrs. Frank Lee (Ruth Wells Harper Lee), individual
Edward A Brubaker, supervising engineer, Division of Industrial Safety

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 604

Introduced by Messrs. Dymally and Elliott

January 30, 1963

REFERRED TO COMMITTEE ON INDUSTRIAL RELATIONS

An Act to amend Sections 1775 and 1777.5 of the Labor Code, relating to public works

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

SECTION 1. Section 1775 of the Labor Code is amended to read

1775. The contractor shall, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit ten dollars ($10) for each calendar day, or portion thereof, for each workman paid less than the stipulated prevailing rates for any public work done under the contract by him or by any subcontractor under him, and the body awarding the contract shall cause to be inserted in the contract a stipulation to this effect.

LEGISLATIVE COUNSEL'S DIGEST

A B 604, as introduced, Dymally (Ind R). Public works: apprentices

Amends Secs 1775 and 1777.5, Lab C

Requires contractor or subcontractor performing under public works contract or subcontract who employs workmen in an apprenticeable craft or trade to apply for a certificate approving the contractor or subcontractor under the apprenticeship standards for the area of the site of the public work and fixing ratio of apprentices to journeymen to be employed on the public work.

Unless different ratio has been set by a joint apprenticeship committee administering apprenticeship standards of the craft or trade in the area of the site of the public work or by a bona fide collective bargaining agreement, requires the approval certificate to fix ratio of one apprentice for each five journeymen regularly employed in the craft or trade on the public work.

Requires contractor or subcontractor to employ apprentices in number or ratio fixed by the certificate

Provides for penalty of $10 per day for wrongful failure to apply for or comply with such a certificate of approval

Requires such a contractor or subcontractor, if not contributing to a fund for administration of apprenticeship program in a craft or trade in the area of site of the public work to which other contractors in area are contributing, to contribute to the fund in each craft or trade in which he employs journeymen or apprentices on the public work to same extent as other contractors do.

Authorizes Division of Labor Law Enforcement, in certain cases, to bring a court action to recover penalties for wrongful failure to employ apprentices upon public works.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited in accordance with this section, or in accordance with Section *s 1777 5 and* 1815 of this chapter, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body or the Division of Labor Law Enforcement may maintain an action in any court of competent jurisdiction to recover the penalties provided for herein, and either the awarding body or the Division of Labor Law Enforcement may join as party plaintiff in any such action brought by the other Such action shall be commenced not later than 90 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 90 days after acceptance of such public work, whichever last occurs No issue other than that of the liability of the contractor for the penalties allegedly forfeited shall be determined in such action, and the burden shall be upon the contractor to establish that the penalties demanded in such action are not due.

SEC 2 Section 1777 5 of said code is amended to read.

1777.5. Nothing in this chapter shall prevent the employment of properly indentured apprentices upon public works

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the *craft or* trade at which he is employed, and shall be employed only at the work of the *craft or* trade to which he is indentured

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), Division 3, of the Labor Code, ~~shall~~ *are eligible to* be employed on public works ~~and their~~ *The* employment *and training of each apprentice* shall be in accordance with the provisions of ~~such~~ *the* apprenticeship standards and apprentice agreements *under which he is training*.

When the contractor to whom the contract is awarded by the State or any political subdivision, or any subcontractor under him, in performing any of the work under the contract or subcontract, employs workmen in any apprenticeable craft or trade, the contractor and subcontractor shall apply in each such case to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work, or in the event such a joint apprenticeship committee does not exist in a craft or trade in the area of the site of the public work, to the Division of Apprenticeship Standards, for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of the site of the public work. If an approval certificate is issued, the committee or division, as the case may be, shall fix the

number of apprentices or the ratio of apprentices to journeymen who shall be employed in the craft or trade on the public work. The ratio shall not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates.

In the event a joint apprenticeship committee does not exist in a craft or trade in the area of the site of the public work and in the absence of a bona fide collective bargaining agreement covering the craft or trade in the area of the site of the public work establishing some other ratio, the Division of Apprenticeship Standards shall provide in the approval certificate issued by it a ratio of one apprentice for each five journeymen regularly employed in the craft or trade on the public work.

The contractor or subcontractor, if he is covered by this section, shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeymen fixed in the certificate issued by either the joint apprenticeship committee or the Division of Apprenticeship Standards.

The contractor shall, as a penalty to the State or political subdivision on whose behalf the contract is made or awarded, forfeit ten dollars ($10) for each calendar day or portion thereof during the time journeymen in a craft are employed, that he, or any subcontractor under him, fails to apply for the certificate in the craft or trade or fails to employ apprentices under an approval certificate issued to him as provided in this section.

A contractor to whom the contract is awarded, or any subcontractor under him, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do. The contractor or subcontractor may add the amount of such contributions in computing his bid for the contract. The Division of Labor Law Enforcement is authorized to enforce the payment of, and collect, such contributions to the fund or funds and for that purpose may take assignments of claims and exercise all powers provided in Chapter 1 (commencing with Section 79) of Division 1.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

RESOLUTIONS

The following resolution was offered:

By Mr. Foran:

House Resolution No. 160

Relative to apprenticeship training

WHEREAS, There is in this State a great, steadily increasing need for skilled labor which is not being fulfilled by the present labor force, and

WHEREAS, This presents a serious problem which demands immediate attention; and

WHEREAS, This problem can, in part, be met by effective, well-planned apprenticeship type and other training programs designed to meet present needs and to anticipate needs which will arise in the future; and

WHEREAS, Such a program should be designed to induce maximum participation and co-operation of management and labor, and

WHEREAS, There is need for expansion of the State's present apprenticeship training program in this regard; now, therefore, be it

Resolved by the Assembly of the State of California, That it is appropriate at this time that a study be undertaken of the operation, administration, and effectiveness of the State's present apprenticeship training program, and be it further

Resolved, That the Assembly Rules Committee is directed to assign the subject matter of this resolution to an appropriate interim committee for study and to direct the interim committee to report its findings thereon, together with its suggestions for proposed legislation, to the Assembly not later than the fifth legislative day of the 1965 Regular Session of the Legislature.

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

CHAPTER 5

SUBCOMMITTEE ON APPRENTICESHIP TRAINING

Witnesses at July 21, 1964 hearing:

Edward J Hibbert, California Apprenticeship Council, San Francisco
Charles F. Hanna, chief, Division of Apprenticeship Standards, Department of Industrial Relations, San Francisco
Professor Lewis Davis, Department of Industrial Engineering University of California
Ernest G Kramer, chief, Industrial Education, State Department of Education, Sacramento
George L Rosencrans, supervisor, Apprenticeship Training, Department of Education, Oakland
Henry Ely, executive secretary, California Council Air-Conditioning and Refrigeration Contractors and Construction Industry Legislative Council
Ray Carey, executive manager, Los Angeles Chapter, International Electrical Contractors Association
Henry Gunderson, coordinator, Electrical Construction Industry, Santa Clara, San Benito Counties
Kilvin Young, chairman, Statewide Electrical Joint Apprenticeship Committee for the Electrical Industry
Gene Connell, plastering contractor, San Francisco, and secretary, Plastering Industry JAC, San Francisco
E A. Brown, director for the 42 Counties Carpenters Joint Apprenticeship and Training Committee
George A Harter, San Francisco Electrical Contractors Association
Robert Hill, state supervisor of Service for Youth, Department of Employment, Sacramento
Otto F Weber, San Francisco Joint Apprenticeship and Training Trust

Witnesses at September 15, 1964 hearing:

Joseph W Walker, program director, Job Development and Employment, Los Angeles Urban League
Eddy Feldman, executive secretary, Furniture Manufacturers' Association of Los Angeles
Richard Lane, representative, Associated General Contractors of Southern California
Vincent Sloane, international representative, Skill Trade Department, United Auto Workers, AFL-CIO, Los Angeles
Henry Ely, executive secretary, California Council Air-Conditioning and Refrigeration Contractors and Construction Industry Legislative Council
Charles F Hanna, chief, Division of Apprenticeship Standards, Department of Industrial Relations, San Francisco
Joe Maldonado, executive director, Youth Opportunities Board, Los Angeles
George A Harter, executive manager, San Francisco Electrical Contractors Association
Clyde S Bell, managing director, California Lathing and Plastering Contractors Association, and chairman of the Construction Industry Legislative Counsel
Joseph C Kiefer, training coordinator, Joint Drywall Training Committee of California, Los Angeles
Seymour Lebrer, president, Commercial Tool & Dye Co , Los Angeles
Lee Ralston, director, Division of Practical Arts Education in Los Angeles County Superintendent of School's Office
A J Imm, assistant personnel director, Los Angeles City Department of Water and Power
Harry Simonds supervisor, Apprenticeship Training Program, Los Angeles City School System.

Witnesses at October 21, 1964 hearing:

Charles F Hanna, chief, Division of Apprenticeship Standards, Department of Industrial Relations, San Francisco
Douglas Baker, administrative assistant to Lieutenant Governor Glenn M Anderson Sacramento
Ernest G. Kramer, chief, Bureau of Industrial Education, Oakland
Dr. Wayman Williams, director of publications, Department of Education, Sacramento
John Walsh, representative, California Manufacturers' Association, Aerospace Group, Los Angeles
William A Stamper, personnel manager, McCulloch Corporation, Los Angeles
Floyd L Pierce, intergroup relations coordinator, Division of Apprenticeship Standards, Department of Industrial Relations
Ernest G Kramm, public relations director, National Electrical Contractors' Association, Hayward
Matt Gallagher, San Mateo
Thomas G Yerby, chairman, California Automotive Services Association of California
Robert Schleh, representative, California Conference of Employers Association, Sacramento

CHAPTER 6

SUBCOMMITTEE ON SPECIAL EMPLOYMENT PROBLEMS

January 10, 1964, Los Angeles

Witnesses who testified at this hearing were as follows:

J. J. Rodriguez, Los Angeles Community Service Organization
Mrs Georgiana Hardy, California School Boards Association, Los Angeles
William Acosta, community services coordinator, Youth Opportunities Board, Los Angeles
William Gutierrez, consultant, Los Angeles County Commission on Human Relations
Albert Hernandez, business representative, Teamsters Local 420, Joint Council 42, Teamsters of Southern California
Sam Hamerman, administrator of urban affairs, Board of Education, City of Los Angeles
Dionicio Morales, executive director, Equal Opportunity Foundation and Representative of the Amalgamated Clothing Workers of America
Dr George Borrell, chairman, Equal Opportunity Foundation, Los Angeles
Richard Tafoya, representative, Council of Mexican-American Affairs, Los Angeles
Marion J Woods, state supervisor, Minority Employment Program, California Employment Service, Sacramento
Rafael Vega, consultant, State Fair Employment Practices Commission, Los Angeles
Joel Leidner, Institute of Industrial Relations, U C L A.

PROBLEMS IN PUBLIC EMPLOYMENT

October 8, 1964, Los Angeles

Witnesses who testified at these hearings were as follows:

Fernando Del Rio, job development consultant, Youth Opportunities Board, Los Angeles
Mrs. Carmen Warschaw, former chairman, FEPC, Los Angeles
Roger P Kuhn, chairman, Personnel Practices Commission, American Federation of Teachers, AFL-CIO, Los Angeles
Harold Jaeger, business representative, Local Union No 11, International Brotherhood of Electrical Workers, AFL-CIO
Arthur E Green, business representative, Los Angeles County Employes Union, Local 434

Mrs Nesta Gallas, faculty member, U S C School of Public Administration
Norman E Woodbury, executive director, California Municipal Utilities Association, Sacramento
Miss Velma J. Mundy, field secretary, Social Workers Union, Local 535, Los Angeles

October 9, 1964, Los Angeles

Carlos F. Borjas, president, Council of Mexican-American Affairs Office of California Attorney General, Los Angeles
Paul Ortiz, maintenance laborer, Los Angeles County Housing Authority, Maravilla Housing Project
Roger Segure, chairman of grievance committee, American Federation of Teachers
Joseph W Walker, program director, Urban League Job Development and Employment, Los Angeles
William Green, representative, Local 347, Los Angeles City Employees Union
Charles A Henderson, regional director, Local 411, Union of State Employees, Los Angeles
Kenneth Knight, assistant superintendent, Personnel Operations, Los Angeles City Schools
Howard Zuck, chief personnel analyst, City Civil Service Department
Sam Hunegs, director of Council 20, American Federation of State, County and Municipal Employees, AFL-CIO, Los Angeles
David Novogrodsky, representative, Council 20, American Federation of State, County, Municipal Employees, AFL-CIO
Oscar York, chairman, Civil Service Subcommittee, Committee for Representative Government, Los Angeles
John T Long, personnel analyst, Los Angeles County Employees' Association

By Assemblyman Dymally 1964 First Extraordinary Session.

House Resolution No. 197

Relative to a study of employment opportunities, economic problems and unemployment

WHEREAS, There exist in the State of California vast and complex economic problems arising out of existing employment opportunities and unemployment, now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is hereby directed to assign the subject of employment opportunities, economic problems and unemployment to an appropriate interim committee for study and to direct such committee to report to the Assembly no later than the fifth legislative day of the 1965 Regular Session of the Legislature

CHAPTER 7

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

Witnesses appearing at November 13 hearing:

Kirke Wilson, representative for Dr Paul O'Rourke, Governor's Office, Sacramento
Dr Paul O'Rourke, special assistant, Anti-Poverty Planning Program, Governor's Office
Charles W Stewart, associate budget analyst, Department of Finance, Sacramento
A. Alan Post, Legislative Analyst, Sacramento
Frank Mesple, legislative secretary to Governor Edmund G Brown, Sacramento
William Redmond, representative, Albert B Tieburg's Office, Department of Employment, Sacramento
Wilson Riles, chief, Bureau of Intergroup Relations, Sacramento
Lee Nichols, chief consultant to the Assembly, Sacramento
J. M. Wedemeyer, Director, Department of Social Welfare, Sacramento
James Harvey Brown, councilman, City of Los Angeles

Witnesses appearing at November 18 hearing:

Dr. Paul O'Rourke, special assistant, Anti-Poverty Planning Program, Governor's Office
Joe Wyatt, chairman, Los Angeles County Federation of Economic Opportunity
E J Franklin, United Civil Rights Committee, Los Angeles
Dr. Christopher Taylor, N A A C P , Los Angeles
Arthur Morgan, area manager, Division of Public Employment Offices and Benefit Payments, Department of Employment, Los Angeles
Mrs. Lloyd C. Cook, Los Angeles County Federation of Community Coordinating Councils
Honorable F. Douglas Ferrell, Assemblyman, 55th District, Los Angeles
Walt Parker, Youth Opportunities Board of Greater Los Angeles
James Harvey Brown, councilman, City of Los Angeles
Otton J Bloum, president, Unity Society, Los Angeles
Timothy J Sampson, Avalon-Carver Community Center
Victor Oliver, chairman, Avalon-Carver Community Sounding Board
Donahue Ervin, representative, Council of the Unemployed, Los Angeles
Alfred Elmore, representative, Council of the Unemployed, Los Angeles
Mrs Margaret Allen, secretary, Wrigley Field Citizens' Committee, Los Angeles
Joe Walker, regional office, National Urban League
Mrs Cernoria Johnson director, Washington Bureau, National Urban League, Washington, D.C.
Henry Talbert, western regional director, National Urban League
Clinton Benton, president, United Services, Inc , Los Angeles
Arthur Jackson, Youth Musical Opportunity Clinic
Johnny Otis, representative for William J. Williams, chief director, office of Congressman Hawkins, Los Angeles
Phyllis Seldon, director, Civic Research Action Group, Hollywood
Mrs Lucinda E Benge, Committee for Basic Education, Los Angeles
David Novogrodsky, Council No 20, American Federation of State, County and Municipal Employees, AFL-CIO, Los Angeles
Daniel M. Lund, Emergency Committee to Aid Farm Workers, Los Angeles
Percy Moore, staff assistant to the director, Department of Social Welfare, Sacramento
Ramon L Ponce, Social Workers Union, Los Angeles County, Local 535, AFL-CIO
Waunita M Brown, individual
Mrs Joseph C Williams, individual
Mr James A Passow, executive director, Citizens United Responsibility Enterprise, Los Angeles

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963–1965
Volume 3 Number 12

FINAL REPORT
of the
ASSEMBLY INTERIM COMMITTEE ON TRANSPORTATION AND COMMERCE

(House Resolution 500.22, 1963)

Members of the Committee

Tom Carrell, *Chairman*
Joe A. Gonsalves, *Vice Chairman*

Frank P. Belotti
Charles E. Chapel
Gordon Cologne
William E. Dannemeyer
Richard J. Donovan
John Francis Foran
Joseph M. Kennick
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Lester A. McMillan
Charles W. Meyers
Philip M. Soto
Tom Waite
Charles Warren
Pearce Young

Lisa Barrigan, *Secretary*

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OF THE STATE OF CALIFORNIA

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Speaker

Hon. Carlos Bee
Speaker Pro Tempore

Hon. Jerome R. Waldie
Majority Floor Leader

Hon. Robert Monagan
Minority Floor Leader

James D. Driscoll
Chief Clerk

LETTER OF TRANSMITTAL

Sacramento, January 4, 1965

HONORABLE JESSE M. UNRUH
Speaker of the Assembly, and

Honorable Members of the Assembly
State Capitol, Sacramento

Gentlemen:

In accordance with the provisions of House Resolution 500 22 of the 1963 General Session, your committee has investigated various aspects of transportation and commerce in California and herewith submits the final report of its activities during the interim following the close of the 1963 session.

Contained herein are narratives of the committee's hearings, reviews of testimony received at those hearings and committee findings and recommendations.

Respectfully submitted,

TOM CARRELL, *Chairman*
JOE A. GONSALVES, *Vice Chairman*

FRANK P. BELOTTI
CHARLES E CHAPEL
GORDON COLOGNE
WILLIAM E. DANNEMEYER
RICHARD J DONOVAN
JOHN FRANCIS FORAN
JOSEPH M. KENNICK
FRANK LANTERMAN
LESTER A. MCMILLAN
CHARLES W. MEYERS
PHILIP M. SOTO
TOM WAITE
CHARLES WARREN
PEARCE YOUNG

By Assemblyman Bane:

HOUSE RESOLUTION NO. 500

Relative to Constituting Certain Standing Committees of the Assembly as Interim Committees

Resolved by the Assembly of the State of California, as follows:

1 The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly, (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative

. . . . .

(v) The Committee on Transportation and Commerce is assigned the subject matter of the Vehicle Code, the Streets and Highways Code, uncodified laws relating thereto, and other matters relating to transportation and commerce.

4 Except as otherwise provided above, each committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1965 Regular Session, with authority to file its final report not later that the fifth calendar day of that session All reports shall be printed out of the funds allocated to said committee and shall be in the form prescribed by the Rules of the Assembly and the Committee on Rules

5. Each committee and its members shall have and exercise all the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly and of the Standing Rules of the Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members

6 Each committee has the following additional powers and duties.

(a) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created

(b) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to service subpoenas, orders and other process issued by the committee.

(c) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided

(d) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution

7 No subcommittee chairman shall be appointed by the chairman of any interim committee or otherwise except upon prior written consent of the Committee on Rules or the Speaker

8 No consultants, staff members, or other employees may be employed by any interim committee except upon prior written approval of the Committee on Rules or the Speaker

9 No contracts for goods or services or otherwise may be negotiated or entered into by any interim committee without the prior written approval of the Committee on Rules

10 No committee or any member or employee thereof may travel outside the State on committee business without the prior written consent of the Committee on Rules or the Speaker in each case

. . . . .

12 In order to prevent duplication and overlapping of interim studies between the various interim committees herein created, no committee shall commence the study of any subject or matter not specifically authorized herein or assigned to it unless and until prior written approval thereof has been obtained from the Committee on Rules or the Speaker

13 Each interim committee shall file with the Assembly a brief general preliminary or progress report of its activities on or before the 5th legislative day of the 1964 Budget Session of the Legislature

14 Each interim committee shall file its final report with the Assembly on or before the fifth legislative day of the 1965 Regular Session of the Legislature

PREFACE

Members of the Assembly Committee on Transportation and Commerce wish to express gratitude to all of those who participated in the work of the committee. Invaluable assistance in the course of preparation for hearings and in testimony presented was given by capable representatives of state agencies and departments; city and county officials, judges, representatives of business, industry and labor, law enforcement agencies, and by citizens offering the viewpoint of the general public

Also, on behalf of the committee members, the chairman wishes to express sincere appreciation for the careful and diligent work and considerable accomplishment of the committee staff Thanks go to Lisa Barrigan for her efficient secretarial and administrative assistance; to William F Scheuermann, Jr, who served most capably as consultant until the end of July, 1964, to Russell FitzPatrick for his difficult task in helping compile data for the final report and to Eva Rutland for her fine secretarial help

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AVIATION STUDY

Sitting in joint hearings with the Senate Factfinding Committee on Transportation and Public Utilities, the Assembly Interim Committee on Transportation and Commerce participated in 11 statewide meetings to make a full assessment of California aviation's present status and projected future needs.

Testimony was presented by airport managers, commercial airlines, general aviation interests, aircraft manufacturers, federal and state aviation officials and others interested in the fields of commercial, executive and private aviation.

Testimony related to the present and future status of the California Division of Aeronautics, airport land availability, airport protection and zoning requirements, the need for assistance to privately operated and small publicly owned airports, intrastate and interstate airline operations and other related matters

Legislation has been prepared and will be submitted to the 1965 General Session of the Legislature by both committees.

HELIPORT FACILITIES IN THE SAN FRANCISCO BAY AREA

This hearing by the Assembly Interim Committee on Transportation and Commerce was called to consider testimony relating to various subject matters referred for interim study by the Assembly Rules Committee following the 1963 General Session, and at the special request of Assemblyman Foran, to receive testimony on the facilities in the San Francisco Bay area. Fourteen witnesses offered testimony.

In his preliminary statement to the committee, Mr Foran pointed out that there at present exists no downtown San Francisco heliport Adding that there is a need for such service between the San Francisco International Aiport and central San Francisco, Mr. Foran also stated that there is a need for a downtown heliport to facilitate transbay traffic to the Oakland Airport and to downtown Oakland and Berkeley, both of which cities have heliport facilities

Subsequent testimony narrowed consideration down to a location on the roof of the Trans-Bay Terminal Building

A proposal by the aviation section, San Francisco Chamber of Commerce, and the board of directors of the chamber made the following recommendations.

1 That the City and County of San Francisco lease the roof of the Trans-Bay Terminal from the state for a consideration of $1 a year,

2. That the city then proceed immediately to construct as a phase of a permanent heliport, a platform for the takeoff and landing of single-engine helicopters;

3 The Division of Bay Toll Crossings be requested to install an elevator to the terminal roof, which would be used by helicopter passengers as well as by bus passengers,

4 Negotiations for federal funds for the project be instituted with the Federal Aviation Agency;

5. That anticipated revenues from the heliport operation, as well as airport revenues, be utilized to finance that portion of the project not receiving federal funds, the heliport should be considered a necessary extension of the airport proper, and

6 The loan be amortized over a longer period of time than the 20-year period previously contemplated

Because state, city, county divisions of toll crossings and San Francisco Airport all share a degree of involvement in the overall problem of locating and developing a downtown San Francisco heliport, it was suggested that enabling legislation may be required

In this connection, Mr. Foran commented, "The importance of developing this testimony before this committee is that, one way or another we will probably have to have some type of legislation, so that if and when I introduce a bill, you will know what I'm talking about"

In conclusion, he added, "I think that the array of witnesses who have appeared before the committee have demonstrated that a heliport facility in San Francisco would do a great deal toward alleviating the congestion on our highways, both with respect to transporting people to and from our airports, and in the intercity operation It's an integrated problem within the total transportation picture of the bay area

It was the consensus of the members present that legislation of the nature indicated by Mr Foran would receive favorable consideration by the committee, upon its presentation in bill form

It is recommended that suitable enabling legislation be presented during the 1965 General Session which will facilitate the development of a downtown heliport facility in San Francisco

LOS ANGELES METROPOLITAN AREA RAPID TRANSIT

Pursuant to the terms of House Resolution 183 (1963), and in response to an invitation by the Los Angeles County Board of Supervisors, the Assembly Interim Committee on Transportation and Commerce held public hearings in Los Angeles October 28–29, 1963, December 10, 1963 and February 17–18, 1964

HR 183 called for a study of the "subject of financing and establishing a jurisdictional authority which will implement and coordinate a transportation system for Los Angeles metropolitan and southland areas"

Prior to the hearings, in response to an invitation by the Los Angeles County Board of Supervisors, the committee chairman met with representatives of the Legislature, the City and County of Los Angeles, the League of California Cities, officials and directors of the Metropolitan Transit Authority and representatives of southern California business and civic groups The purpose of this meeting was to discuss the scope of the forthcoming hearings and to reach a general agreement on the development of a hearing agenda

Although consideration of routes and the suitability of the type of equipment to be used in the development of a rapid transit system lay outside the scope of HR 183, it was deemed advisable in the public interest to hear testimony relating to these subjects This decision was taken because of widespread public interest in varied and conflicting proposals which had previously been given much prominence in southern California news media

During the hearings, testimony was presented by 73 witnesses It ran to over 400 pages of edited and condensed transcript

After hearing proponents of varied methods of organizing, financing, routing and equipping the proposed system, the committee reached the following general conclusions

1 Monorail train operation has been limited primarily to amusement parks and to a short urban run (as in Seattle), where such "rides" have been regarded more as public entertainment than as a means of providing high-speed, reliable mass rapid transit It was evident that explanations of monorail systems were based on theoretical projections rather than on practical, day-to-day mass rapid transit operating experience.

2. It was not demonstrated that an adequate system could be developed and constructed without some form of subsidy According to an overwhelming preponderance of testimony, so-called "farebox financing" has not been achieved anywhere in the United States

3 Testimony indicated that "private financing" through the sale of revenue bonds would be impossible, unless such bonds could be provided with some form of tax-based guarantee It was further indicated that, because of lower interest rates, general obligation bonds would best meet the financing needs of the projected system

4. Testimony indicated that the best corridors for initial rapid transit development (with the highest load factor potentials) would be

San Gabriel Valley—Los Angeles
Orange County—Los Angeles
Long Beach—Los Angeles
Los Angeles—Santa Monica
Los Angeles—San Fernando Valley

5 It was a general consensus that no tax should be levied for rapid transit purposes unless and until the voters in the affected area give their express consent at the polls to a bond issue proposal

6 Testimony by both public officials and community leaders from throughout the Los Angeles metropolitan area urged strongly that the Metropolitan Transit Authority be disbanded and replaced by a new agency whose directorate should be named by elected representatives of the principally affected communities It was urged that such a board would be more responsive to area needs than was the board of MTA as it was then constituted

Pursuant to a prior indication, Governor Edmund G Brown placed Senate Bill 42 (Rees-Carrell) on special call for the 1964 Budget Session of the California Legislature The bill was passed April 28, 1964, and signed into law by the Governor on May 13, 1964

The bill called for the creation of a Southern California Rapid Transit District and set forth a means of financing and developing a rapid transit system by means of a bonding proposal which will be submitted to the voters of the district It also set forth the powers and duties of a newly constituted board of directors

Makeup of the directorate of the newly created agency is as follows Five members appointed by the Los Angeles County Board of Supervisors; two appointed by the Mayor of the City of Los Angeles, subject to city council approval, four named by a panel representing the League of California Cities.

MINORITY REPORT TO THE FINAL REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON TRANSPORTATION AND COMMERCE ON THE SUBJECT OF LOS ANGELES METROPOLITAN AREA RAPID TRANSIT

By Assemblyman William Dannemeyer

Reasonable men may differ on the conclusion that I state, however, based upon the testimony before our committee, it is entirely possible that a rapid transit system in the southern California area can be built and operated and financed out of fare-box revenue exclusively This would, of necessity require bold and imaginative steps with respect to a design for the system It would probably require that the entire system be above ground This would mean that the "sacred" finger scheduled for Wilshire Boulevard would *not* go underground It is my hope that the residents of southern California will not permit themselves to subsidize the preservation of the beauty of Wilshire Boulevard by adopting a rapid transit system that will place the Wilshire Boulevard finger underground and the balance of the entire system above ground There is no question that placing a portion of the system underground greatly increases the cost It is this increase in cost caused by placing a portion of the system underground that causes the projections of income and expense to go beyond the point of financial retirement of the system bonds and operating expenses out of fare-box revenue alone

If the people who live and have businesses along Wilshire Boulevard desire that portion of the system to be underground, then they should be willing to form a special district in their area to pay for the extra cost of installing it underground

To suggest that the other residents of southern California should pay for this extra expense for the preservation of beauty in the area of the Wilshire Boulevard finger is just a brazen attempt to transfer the responsibility for an increase in cost

ANTISMOG DEVICES

(HR 503—Carrell)

The committee held two hearings on this subject—in Los Angeles and Norwalk.

Assemblyman Lanterman repeated previously voiced sharp criticisms of the basic engineering principle of the now state-approved crankcase blow-by devices.

His criticism was echoed by the proprietor of a Los Angles automotive service who qualified his testimony by declaring that he has "been a specialist in carburetion for 30 years."

Device manufacturers and the State Pollution Control Board spokesman contended that problems result only when installations are improperly made or the vehicle operator fails to have his unit maintained at regular intervals.

Asserting that Motor Vehicle Pollution Control Board contentions that mechanics who install the devices are at fault when malfunctions occur are not based on solid fact, it was charged by various witnesses that when these devices are installed on used cars serious damage can result.

A representative of Assemblyman Flournoy, in a communication, voiced a similar complaint regarding the state approved devices.

Further review of existing regulations relating to anti-smog device installations on used cars was strongly indicated.

The following statement of policy sets forth the MVPCB views:

State Standards

A. Legislation should be provided to give the Motor Vehicle Pollution Control Board authority to determine the effective date of State Department of Public Health standards based on engineering ability to achieve those standards. Such law change should insure that target dates would be permissible to maintain progress as an integral part of auto smog control. Change of standards would not have a retroactive effect on vehicles already equipped.

B. Legislative consideration should be given to control of oxides of nitrogen emitted from the exhaust. The board should be permitted to implement standards for this contaminate (if and when they are adopted) without jeopardizing the ongoing program for control of hydrocarbons and carbon monoxide emitted from the exhaust.

Other Legislative Policies

A. Continued Compliance. The law should provide that once a vehicle is required to be equipped with a pollution control device, it should from that date forward be subject to continued compliance. This would apply primarily to 1963 and later model vehicles.

B. Transferred Vehicles. The board now has authority to establish schedules for application of devices on used cars which remain in the

owner's name. That same authority should be granted in respect to transferred vehicles.

Registration Enforcement

The "affidavit under penalty of perjury" in respect to installation and operation of a smog device which now must be signed by the vehicle owner should be eliminated as soon as a satisfactory means of registration enforcement can be established

Statewide Stickers

Inspection stickers should be required statewide for 1963 and subsequent models of motor vehicles This should be displayed on the front license plate A sticker would be used to designate even exempt vehicles Effective date for stickers and annual inspection statewide would probably be the 1967 annual registration.

Inspection Stations

Installation and inspection stations also should be statewide and not restricted to air pollution counties

Fleet Operation

Fleet operators should be covered by a specific section providing for officials status as "installation-inspection stations"

California Highway Patrol

Legislation should give the California Highway Patrol more authority for strict rules and regulations for installation and inspection stations, but no state agency should have the right to fix price ceilings

The committee indicated that the inclusion of the MVPCB policy statement in this report does not reflect committee endorsement of the legislative proposals contained therein

CONTROL OF POLLUTANT EMISSIONS ON VEHICLES USED INSIDE WAREHOUSES AND OTHER CLOSED BUILDINGS

(HR 606 and AB 2748—Carrell)

At a hearing in Los Angeles in July 1964, testimony was presented regarding the problems of pollutants, emitted by internal combustion engine vehicles, such as forklifts, towlifts, and other loading vehicles operated within buildings, which are injurious to workmen operating the vehicles

Testimony was given by representatives of a branch of the aircraft industry, a firm which distributes power trucks, the International Longshoremen's and Warehousemen's Union, State Motor Vehicle Pollution Control Board, the State Department of Industrial Relations, Division of Industrial Safety, State Department of Public Health Vehicle Pollution Control Laboratory, and the California Manufacturers' Association.

Statements by these representatives and ensuing discussion revealed a general agreement that antismog devices on the vehicles used in closed areas was desirable for the protection of the workmen. However, it was clearly shown that present code provisions, administered by the State Department of Industrial Relations and enforceable by the Division of Industrial Safety, are sufficient to enable the division to require such devices

It was brought out that any failure on the part of the division to adequately inspect and report conditions detrimental to the health of workmen has been due to lack of adequate personnel Any legislation proposed to correct the situation would simply require the Division of Industrial Safety to enforce existing code provisions and should supply any means necessary for them to do so The committee makes no specific recommendations

POLLUTANTS EMITTED BY BUS AND TRUCK EXHAUSTS

(Feasibility of Extending Exhaust Pipes to the Rooftop Level of Such Vehicles) (HR 81 (1964)—Young)

Under the authorization of HR 81 the committee discussed the problems created by exhaust pollutants emitted by gasoline engine buses and trucks and by diesel-powered trucks

Testimony was presented by representatives of the State Motor Vehicle Pollution Control Board, Western Greyhound Lines Safety Division, Greyhound Bus Company Shop Maintenance Division; General Motors Corporation Motor Coach Division, Los Angeles Metropolitan Transit Authority, Santa Monica Municipal Bus Lines; and City of Montebello Municipal Bus Lines

The feasibility of extending exhaust pipes to the top of buses was discussed at length The responses to a questionnaire circulated by the American Transit Association to member companies in major U S cities confirmed the testimony and revealed that roof level exhaust pipes had been used experimentally in many cities with conclusively negative results for the following reasons

1 Exhaust emittants from roof level showered pedestrians and vehicles with soot and condensed dirty water

2 Since exhaust gases are heavier than air, they fall through the breathing level of the air

3 Passengers and pedestrians were burned by the heated pipe rising at the back of the bus

4 Jacketing the exhaust pipe created a fire hazard and extended the allowable length of the bus in some cases

5. The extra-length tailpipe required created undesirable backpressure

6 Soot emissions soiled cargo loaded on trucks carrying food products, livestock and merchandise

A film, exhibited to the committee to show such experimentation, graphically confirmed the foregoing results

Diesel-powered trucks emit contaminants which are not laden with hydrocarbons and require different methods of control. They emit visible and odorous contaminants for which there are at present no standards The State Motor Vehicle Pollution Control Board has requested the State Department of Public Health to establish a standard for odor and for smoke (visible emittants), to use as criteria

There is also an indication of some effort on the part of device manufacturers to develop controls for diesel engine emissions and research is currently going on in other parts of the country as to these devices' effectiveness

The concensus of committee opinion is that no remedial legislation is required at this time or recommended as a result of investigation into this subject

LEAD ADDITIVES IN GASOLINE

(AB 2163—Danielson)

Principal proponents of this measure, which would prohibit the use f lead additives (ethyl compounds) in the gasoline refining process ere spokesmen for "United Patriotic People," a student organization, a retired physician and a representative of the "National Health Foundation."

It was their contention that the lead additives were a major factor in the composition of smog and cited one Midwest oil company's product (sold under the trade name "Amoco") as an example of a non-smog-producing internal combustion engine fuel.

This contention was challenged by a spokesman for the Detroit Research Laboratories of Ethyl Corporation and by the Director of the Department of Preventive Medicine and Industrial Health, College of Medicine, University of Cincinnati

Their testimony, backed by research statistics and findings, contended that the amount of the lead particles discharged through an automotive tailpipe is practically negligible.

It was further testified that even these minute particles do not become a significant component of the substances, which, when exposed to sunlight (even sunlight diffused by overcast), produce the photochemical effect that causes eye irritation and other discomforts associated with smog

After hearing lengthy testimony and recalling that this same subject has been submitted for previous legislative inquiry, committee consensus was that no new significant evidence of the smog producing effect of lead compounds in gasoline was adduced It was recommended that no legislative action is indicated at present

ADDENDUM TO THE TRANSPORTATION AND COMMERCE COMMITTEE REPORT ON INTERIM HEARINGS ON THE SUBJECT OF LEAD ADDITIVES TO GASOLINE—AB 2163—DANIELSON

By Assemblyman William Dannemeyer

I cannot challenge the technical data presented by certain representatives who appeared before this committee in connection with the hearing on this matter. My primary reason for saying this is that I lack knowledge in the specialty in which they are employed and are engaged. However, it does appear to me that research in this area has not been conducted to a degree that it should be. I have come to the conclusion that further research in this area by specialists and knowledgeable persons may well produce the conclusion that lead does in fact operate as something other than a minimal factor in the formation of smog.

Since this subject is of such great significance in our state today, it seems to me that the state government should invite proposals from different research organizations in order to determine the extent to which lead contributes to the smog problem.

MISDEMEANOR OFFENSES CLASSIFICATION

(HR 61—Deukmejian)

The Hon Raymond Roberts, Judge of the Municipal Court, Los Angeles Judicial District, represented Mr Deukmejian in support of the provisions of HR 61

Pointing out that traffic violations are now classed as misdemeanors (crimes), Judge Roberts advocated reclassification to "infraction" (as is the case in New York) or "public offense," (as is the case in New Jersey).

His proposal would except such offenses as driving with a license under suspension or revocation, reckless driving, misdemeanor hit-run, and other similar aggravated offenses

He also advocated a broadening of the power of a traffic court magistrate to mete out license suspensions, in cases of repeated infractions, based upon the magistrate's on-the-spot observation of the defendant and evaluation of the seriousness of the offense He argued that the delay between the time a judge recommends suspension or revocation to the Department of Motor Vehicles and the time when the DMV takes action, tends to dull the punitive impact of the penalty.

Conceding that this approach to traffic law enforcement may require later amendment and legislative refinement, he argued that "a start" should be made in (a) removing the "criminal" stigma from persons found guilty of infrequent, minor infractions and (b) streamlining the penalty process by enabling traffic court magistrates to make revocations or suspensions immediately effective.

A representative of the DMV spoke in cautious support of this approach to traffic law enforcement Two spokesmen for automobile clubs advised a "go slow" approach, contending that they wanted to further evaluate all the potential effects of the granting of more latitude in judicial discretion

A spokesman for a group of permitted (privately owned commercial) carriers supported the proposal He argued that the change from Public Utilities Commission inspection and enforcement of fleet maintenance practices to California Highway Patrol enforcement, has had the effect of changing a "violation" to a "crime" He asserted that maintenance practices "are largely a matter of opinion"

It was finally suggested that both the Penal Code Revision Commission and the Assembly Committee on Judiciary should logically be included in a consideration of this proposal.

Committee members present assented to this approach.

Legislation is in process of preparation for introduction in the 1965 General Session and will include the provisions of Mr Deukmejian's HR 61 and Judge Roberts' proposals for reclassification of certain traffic violations based on findings of the committee as a result of testimony presented at hearings after the measure has been introduced

BAIL PROCEDURES

(HR 305—Dannemeyer)

Mr Dannemeyer, speaking on his resolution, pointed out that the posting and/or forfeiture of bail in traffic cases works a hardship on the average breadwinner, while it is a matter of little concern to the wealthy. He urged that more persons "fixed and established in the community" be released on their own recognizance when entering not guilty pleas to traffic offenses

A spokesman for the bail bondsmen, indicating that they do not like it generally, had no objection to the proposal if it was confined to run-of-the-mill traffic offenses He indicated that bondsmen are seldom called upon in such cases.

Mr. Donovan urged that, because of its bearing on the whole area of criminal justice, this question needs a "sweeping study in depth" He related the problem to a need for revision of the Vehicle Code to the Penal Code Revision Commission study currently in progress

Committee members present were in general agreement with this approach.

TRAFFIC CITATION TRIALS

(HR 477—Dannemeyer)

NIGHT TRAFFIC COURTS

(HR 581—Dannemeyer)

For the purpose of this report, both of these resolutions are treated together because they relate to the same general problem, i e , the "hardship" imposed upon a traffic court defendant who wishes to enter a not guilty plea but must appear on separate occasions for arraignment and trial

HR 477 aims at providing that such a defendant would be permitted to enter a plea upon arraignment and stand immediate trial

A discussion of this elicited the suggestion that a provision for entering a not guilty plea by mail might be substituted for a personal appearance on arraignment Upon entry of such a mailed plea the defendant would then be notified as to the time and date set for his trial (The question of bail did not arise in this suggestion)

HR 581 attacks the same asserted "hardship." It would provide for the creation of night traffic courts This study stemmed from a proposal contained in AB 2208, Dannemeyer, introduced during the 1963 General Session of the Legislature.

In a prepared statement supporting his position, Mr Dannemeyer declared that the effect of his bill "would change the presently permissive night court statute relating to all criminal cases, so that, as to those criminal cases arising out of traffic violations, pleas of guilty

or not guilty must be accepted one night each week in populous areas ''
He added that statutes presently permit judges in a judicial district with three or more judges, to schedule night court for any criminal matters—including arraignment, trial and sentencing

Mr. Dannemeyer's argument was summed up in the following paragraph of his statement. "A system which penalizes a worker an additional amount (his day's wages), just for entering his plea and having a later trial date set, encourages the payment of fines when the defendant is not in fact guilty Often he can earn more that day than the fine he would save by proving himself innocent And a system which encourages payment of fines by the innocent merely to avoid collateral and additional loss of wages, implants a belief that the law itself is 'crooked,' 'unfair,' and 'discriminatory' It defeats the American tradition that a man is entitled to his day in court ''

Strong support of the night court proposal was expressed in a prepared statement by Senator Thomas M Rees (38th District, Los Angeles County).

Another prepared statement by the Hon Thomas L Foley, Judge of the Municipal Court, San Leandro-Hayward Judicial District, supported the proposal.

Judge Foley's statement pointed out that he held night traffic court in Hayward for nine years—for arraignment purposes only

This entailed gratis service from his bailiff and clerk, who served two hours every Tuesday night, in addition to their regular day shifts, due to the fact that the Alameda County Board of Supervisors made no provisions for paying overtime for this service

Judge Foley's statement concluded with the following paragraph: "Many offenders came in and posted bail evenings I think your committee should give some consideration to a traffic court evenings so that offenders can post bail or sign a written "not guilty" plea and be given a trial date. Everybody in this community was enthusiastic over the night court *The only criticism I received was from judges in adjoining jurisdictions, who did not want the idea to spread* If your committee recommends legislation establishing night court, (provide for) a clerk and bailiff in your bill and be sure to provide for their compensation."

A prepared statement by John Francis Foran, Assistant General Counsel, Farmers Insurance Group, was also presented It supported the night court proposal.

Mr Foran's statement said in part, "The lack of immediate decision by a hearing judge is so discouraging that I would say in 9 out of 10 cases, or probably 99 out of 100, rather than take time off from work, possibly losing salary and incurring the displeasure of their supervisors, they simply post bail and forfeit it ''

He also cited possible effect upon the insurance rates of innocent persons who cannot afford the time and expense of defending themselves in traffic court. He stated that many insurance companies raise premiums when their assureds are convicted of moving violations

Another prepared statement by Mr C R Greenlee, a citizen, strongly supported the night court proposal.

The Hon. Gosco O. Farley, Judge, Los Angeles Municipal Court, Chairman of the Committee on Legislation of the Municipal Court

Judges Association of Los Angeles County, appeared in general opposition to night courts—even if they were opened up for arraignments only.

As an alternative, he suggested that a defendant might be permitted to enter a not guilty plea by mailing his bail and expressing his desire to so plead in a letter He could then be notified by mail as to the time and place set for his trial

Spokesmen for the automobile clubs expressed support of an experimental approach and, in a prepared statement, a representative of San Diego County raised the question of cost

The San Diego presentation was summarized as follows

1 Insuring that a night traffic court program is instituted only after it is determined that a demonstrated need exists

2 If the decision is made to undertake such a program, cost factors should be of substantial importance in devising the system to be instituted (Advocates that board of supervisors be accorded a role in devising the system.)

3 Counties to receive a larger percentage of fines and forfeitures, in rder to minimize the gap between court costs and revenues

During the taking of testimony, it was pointed out that the courts now have the authority to establish night courts and that the effect of any affirmative legislative action would make the establishment of such courts mandatory in judicial districts having three or more courts

Committeemen present indicated that a reintroduction of a bill containing the substance of AB 2208 (1963) would meet with favorable response

DRIVERS' LICENSE SUSPENSION, REVOCATION AND PENALTIES

(HR 415—Donovan)

This proposal would provide that, when a defendant is convicted of a felony (making his driver's license subject to automatic suspension), and when the trial judge, in the exercise of his judicial discretion, sentences the defendant to a penalty applicable to misdemeanor cases, the Department of Motor Vehicles should be permitted to invoke the right to suspend because of the nature of the (felony) charge, rather than on the basis of the sentence

Department spokesmen explained that suspensions are ordered on the basis of trial court abstracts, which are forwarded to the DMV Sacramento office, following the conclusion of trials

This procedure came under attack based on the premise that the court's findings, arrived at after hearing witnesses in the case, evaluating recommendations by parole authorities, and weighing the evidence, should not be disregarded by an agency of the State

Assemblymen Dannemeyer and Kennick took sharp exception to a DMV contention that the department should be permitted, in effect, to render further and additional judgment, based on the reading of an abstract

Mr Dannemeyer expressed the following, representing a consensus of committee members, and recommended that: "Driver's licenses should be suspended only on direction of judges passing adjudication on convicted felons, rather (as is present practice) permitting Department of Motor Vehicles revocation of a license, based on receipt of an abstract from the court"

MINORS' LICENSES AND INSTRUCTION PERMITS

(HR 121, AB 2645 and Preprint Bill 7—Donovan)

Assemblyman Carrell stated the purpose of this public hearing was to obtain citizen reaction to proposed legislation to the issuance of driver's licenses to minors Under specific consideration was legislation proposed by Assemblyman Richard J Donovan which, in summary, provides that minors between ages 16 and 18 who have satisfactorily completed driver education and driver training courses in a secondary school, or have received specified comparable training, may apply for a driver's license, sets age brackets for instruction permits and raises to 18 the licensing age for juveniles not in the specifically defined trained category.

Assemblyman Carrell invited comments from citizens present, including some 50 persons representing a cross-section of statewide civic leadership Spokesmen for the insurance industry and from volunteer safety groups gave endorsement to the proposed legislation, coupled with endorsement and support of driver education as a vital function of the state's secondary school system

The positions taken by the insurance industry and the volunteer safety movement were enthusiastically endorsed by representatives of the Department of Motor Vehicles who were in attendance

Statistical data presented by the representatives of the Department of Motor Vehicles showed the driving records of minors in the 16-to-18 age bracket are generally excellent

Citizens present expressed the opinion that the establishment of driving privileges under provisions of the proposed legislation would materially assist in curbing the statewide school dropout problem It was stressed that many students inclined to leave school before graduation might well be impelled to remain in school in order to receive their driver education and obtain driving privileges

Throughout citizen remarks during the hearing there was a continuing thread of comments endorsing driver education and calling for improvement and expansion of driver education and driver training.

It was cited repeatedly that in educating a student for life, the schools should also train the student in skills that could save his life

DEMONSTRATED ABILITY TO DRIVE VEHICLE TYPES
(HR 524—Bane)

This resolution directed itself primarily to "undue hardship to drivers applying for other than class D licenses."

It was pointed out that a driver required to demonstrate his ability to drive vehicles in the combination of vehicle class or large motor trucks and tractors, an applicant must borrow, rent or lease such vehicles at his risk and expense. It was further asserted that some drivers have been denied continued employment because of unavailability of renting or leasing or inability to meet the cost.

It was generally conceded that "hardship" possibilities exist in this area of driver licensing and that an effort, preferably administrative, should be made to alleviate it.

In the absence of any presentation of a specific solution to the problem cited, the committee consensus was to view with careful and sympathetic attention any measure introduced at the next general session of the Legislature, designed to assist drivers in the categories mentioned in HR 524.

DRIVERS' LICENSE EXAMINATION EVERY TEN YEARS
(HR 136 and AB 161—Marks)

The committee generally supported the idea that every driver should be required to take the examination given to original applicants at least once in every 10-year period.

Spokesmen supporting the proposal stressed that many changes in physical, mental and visual abilities can change to a marked degree with the passing of years and that, in the interest of public safety, such examinations as proposed should be made mandatory.

Committee consensus was in agreement.

STAGGERED PERIODS OF VEHICLE REGISTRATION
(HR 21—Knox)

Presented in an effort to reduce the "enormous administrative and personnel burden" in the relatively short period of time currently available for annual registration, HR 21 called for study of a proposal to stagger registration deadlines, in order to develop and maintain a steady flow of registration traffic in Department of Motor Vehicle offices

As set forth in a prepared statement by Mr Knox, "Such a proposal is not without initial appeal"

Witnesses appearing on behalf of the DMV were unanimous, however, in their contention that staggering registration periods would create problems of enforcement and administration that would far outweigh any advantage that might be obtained by creating a steady, drawn-out, flow of registration transactions

It was their contention that the present method is more efficient and economical than could be developed through adoption of a staggered period plan

It was further pointed out that, at present, law enforcement officers can spot an unregistered vehicle at a glance and that, in the event the issuance of new registration tabs did not meet a uniform, statewide deadline, considerable confusion would result

After listening to department spokesmen, and in view of the fact that only one witness appeared in support of the proposal, committee consensus was that no change in present methods is warranted

REFLECTORIZED LICENSE PLATES

Testimony presented to the committee submitted that reflectorized license plates have many safety advantages over nonreflectorized plates now used in California They are more readily seen at night for law enforcement identification, as the numbers can be read, oncoming vehicles can identify whether it is an automobile or motorcycle, etc, in case of headlight or taillight failure In case car is parked at side of road in emergency situations, license plate is visible from every angle

Statewide safety groups and women's organizations urge the adoption of reflectorized license plates as a safety measure

STEEL VERSUS ALUMINUM PLATES

Steel is the material now used in plate production, steel costs 45 percent less than aluminum Reflective bead spheres or sheeting can be applied to either steel or aluminum

PRODUCTION AND COST

Department of Corrections recommends bead spheres being used rather than reflectorized sheeting, because very little time and equipment change over present production would be required Converting equipment to use of sheeting would be more costly and take more time

Increased cost, projected by Corrections· 3 cents to 4 cents per plate if only numerals and state name reflectorized with bead spheres 7 cents per plate if background also reflectorized Corrections projected an increased cost of 29 cents to 43 cents per plate if "Scotchlite"-type sheeting were used, however reflectorized material manufacturers' representative states the figure would be 28 cents to 29 cents maximum increase over present cost

Effectiveness: Bead spheres lose reflectibility when wet in rain or fog, sheeting retains full reflectibility under all conditions Life expectancy of bead spheres is 3 to 5 years For reflective sheeting, from 5 to 10 years.

Black numerals, name or background on plate cannot be reflectorized

Department of Corrections, after sending out a questionnaire to manufacturers of reflectorized materials, reported that only one firm, 3-M makes reflectorized sheeting, however, 3-M representative states that other companies do produce this

Legislation to adopt reflectorized plates should specify term of plate issue, i e, 5-year or 10-year Deadline for start of production is July in a year five years prior to the year of issue

Legislation should also propose adoption of blue and gold color combination on California plates, since black cannot be reflectorized, and because blue and gold are California state colors, therefore would be most appropriate.

HIGHWAY ROUTING

The Assembly Interim Committee on Transportation and Commerce conducted a hearing on the general subject of highway land acquisition and routing, pinpointing its survey by making a study of Interstate Highway Route 210 and State Route 167.

Spokesmen for the Highway Commission and the Department of Public Works explained to the committee the methods used to determine routes selected to serve as links between certain key areas.

It was stressed that it is the duty of the Department of Public Works and of the Highway Division to locate routes in a manner that will afford a maximum amount of public benefit at the lowest possible cost While this admittedly causes some inconveniences and dislocations in some areas, it was asserted, the heavy traffic flow, over already established routes, indicates that a very large segment of the population is served at the expense of possible injury to a much smaller segment.

Outlining the heavily populated areas to be linked by the routes under specific committee study and delineating the need for such linkage, spokesmen for the state testified that the criteria generally applied to route selection, had been followed in this instance.

It was explained that public hearings are held in order to permit citizens to voice protests to proposed routes and that it is a general practice to prepare alternates wherever practical In this regard, topography, cost factors and the best means of making direct linkages are all weighed. It was pointed out that "the greatest good for the greatest number of people" must be the governing factor.

It is the opinion of the majority of the committee members that the Highway Commission, in the performance of its public duties, has conformed well both with the letter of the law and with the legislative intent which is expressed in existing statutes

Because this hearing was primarily held to instruct the committee and because no specific legislative proposals were involved, no committee recommendations were indicated.

Mr Lanterman requested permission to submit a supplemental report for committee consideration It was granted

Mr. Lanterman's report not having been received, the Chairman has ruled that it can be made at a later date

SANDBLASTING AND BLOWING ON A RESTRICTED STATE HIGHWAY AREA

The committee met in Palm Springs, November 20, 1963, for the purpose of making a study of problems set forth in House Resolution No. 402 (1963—Cologne)

This was a joint meeting with the Senate Fact-finding Committee on Transportation and Public Utilities, under the chairmanship of Senator Randolph Collier

The meeting was convened following a morning field trip along Interstate Highway 10, where there exists a six-mile stretch described as an area of very serious sandblast damage

Testimony indicated that the sandblast damage in this area became very acute following the opening of a new freeway, completed in 1956, on a broad, alluvial, windswept fan with coarse-textured soil and sparse desert vegetation In this particular area, frequent, low-velocity winds pick up small quantities of very hard and sharp sand High-velocity winds pick up large volumes of this material The low-, intermediate-, and high-velocity winds all cause damage to automobile glass and paint, in direct proportion to the wind velocities encountered

Testimony indicated that high-velocity winds cause the highway to be closed to all traffic—but not until considerable damage has already been sustained.

It was brought out that the Division of Highways, in an attempt to alleviate the situation, had expended some $80,000 on the construction of a dike running parallel to the highway, which was designed to serve as a windbreak. This effort was conceded to have proved ineffective

Pinpointing the serious nature of the problem in the sandblast area, testimony indicated that the diversion of traffic from Highway 10 through the City of Palm Springs had been necessary on 129 occasions in a year's time.

Captain Lloyd Watson, California Highway Patrol, estimated that approximately $1,600,000 per day in terms of property damage is done during those days when wind velocities are high He projected his estimate by 50 (the average number of days per year when an acute condition exists) and arrived at an annual estimated loss of $80 million

He further testified that the CHP has 12 patrol cars operating in the area and that they avoid running into heavy sandsweep unless it is absolutely necessary. Despite the best possible precautions, he said, the CHP annual repairs due to sand damage amounts to about $8,000

This testimony was bolstered by a representative of the Farmer's Insurance Group. He cited an instance where one day's loss in the area under discussion amounted to slightly less than $54,000 Setting forth the idea that only about 50 percent of the cars traversing the area are covered by comprehensive coverage, adding that his company insures only approximately 9 percent of the cars on California highways, this

witness declared that his company's statisticians estimate a one day's loss from windstorm at about $1,496,000 Basing his estimates on a 1956 figure, this witness indicated that, because of the numerical increase of vehicles subsequent to that estimate, current losses could now approximate close to $2 million per storm day

He further testified that this is "the worst and almost catastrophe area" in the state

He added that, with the exception of a stretch between Colton and Ontario, the area in question contributes all of what he termed "catastrophe" loss conditions

The pinpointing of the area was confirmed by a deputy state highway engineer of operations, a representative of Allstate Insurance Company, and a representative of the Imperial County Insurance Agents Association It was further pointed out that the residents of Imperial County pay three times the comprehensive rate charged those living in San Diego County—primarily because of wind damage

A representative of the Palm Springs Independent Insurance Agents Association declared that, "We cannot write full coverage comprehensive for people in Desert Hot Springs who work in Indio or Palm Springs" He added that they can write $50 deductible, "if we can write them at all . . ."

A consensus of suggested solutions to the problem stressed the need for adequate planting to divert the wind patterns, trap shifting sand and provide "storage areas" where sand can be deposited before it reaches the highway in any substantial quantity

Several alternative methods were suggested by agriculturalists, who have learned to protect their croplands by planting protective barriers and cover, and by representatives of the U S Department of Agriculture and the Coachella Valley Soil Conservation District

It became evident that, because of the damage sustained, not only by area residents, but by interstate travelers, a possible responsibility to remedy the hazard potential rests with the State of California This was underscored by testimony which indicated that the problem only became acute subsequent to the opening of the new freeway route in 1956

(Mr Dannemeyer objected to the term, "possible responsibility," in the preceding paragraph, declaring that it should be, "a clear responsibility" Chairman Carrell declared that Mr. Dannemeyer's objection should be noted in this report)

Following the November 1963 hearings, the Division of Highways has embarked upon a planting program designed to reduce the losses sustained by vehicle operators traversing the area in question It is the consensus of the committee to applaud the initiation of this program by the Division of Highways The committee feels further that if legislation is needed to support and accelerate this project, such needed legislation should receive full committee support

In this connection, the committee recognized and took cognizance of the costs of installing and maintaining such plantings versus the cost of constructing other controls It was recommended that a full determination of what costs are involved and what allocation of state highway funds would be necessary effectively to cure this particular problem in the limited section of state highway affected in order that such

allocation may be "specifically made and included in any propsosed legislation."

It was recognized that this condition is unique and that legislative action in this instance need not necessarily establish a precedent for similar protective action in other areas where this peculiar condition does not exist

The committee called attention to the fact that state highway funds are currently being expended for snow removal on state highways, and that such funds could be expended for similar "acts of God" in the case of sandblasting.

Finally, it must be stressed that the conditions studied during this hearing did not include such circumstances as wind-carried dust which may create a traffic hazard because of reduced visibility The committee hearings were confined to consideration of the property damage created in a narrowly restricted area by a unique combination of highway location, the peculiar nature of the sharp sand in the area and prevailing desert winds.

HIGHWAY MEDIAN OR DIVIDER STRIPS

(HR 509—Unruh)

In a prepared statement, Mr Unruh, referring to HR 509 and HR 403, declared that the resolutions were offered to "stimulate discussion by the committee, the engineers of the State Highway Division, experts from public and private safety agencies and the public, of these two causes of head-on collisions Hopefully, from these discussions, can come lifesaving suggestions for reducing this type of accident" (HR 403 directs itself to the problem of wrong-way entries to freeways HR 509 calls attention to head-on collisions across median strips)

A discussion of the effectiveness of painted double line median separators on state highways, which also happen to be the main streets of cities pointed up the fact that, because speeds are low on such traffic arteries, the head-on collision hazard is not great

On freeways, however, where fixed barriers have not been erected, head-on collisions frequently result in fatalities

Spokesmen for the Division of Highways explained to the committee the research program which has resulted in the development of the flexible, cable, chain link median barrier, which has proved to be highly successful in preventing head-on freeway collisions

The division presentation included the showing of a motion picture, illustrating tests of various types of median barrier

It was explained that barriers are now included in budgeting on high-traffic-density highways and freeways

EMERGENCY FREEWAY CALLBOX DEVICES

(HR 51—Waldie)

This hearing related to the study of results of a pilot installation of roadside emergency callboxes on freeways in the Los Angeles area and a proposal that this pilot study be continued by means of extending the facilities to other freeway stretches

It was revealed that the callboxes previously installed on certain stretches of the Hollywood, Harbor, San Bernardino and Santa Ana Freeways had received a limited public use and acceptance

Reasons for this limited use were outlined as (a) the boxes are not at present adequately designated by large enough signs, (b) the freeway stretches at present supplied with callboxes are subject to very frequent patrol by the Los Angeles Police Department, and motorists are usually contacted by a patrolman before they can go to a callbox; (c) many motorists have indicated that they did not use the callbox because they were uncertain as to what it might cost them—they chose to seek help by other means; (d) it was suggested that the word "emergency" inhibits people from using the callboxes when only minor assistance is needed and further suggested that the word "assistance" be substituted.

It was proposed that callboxes be installed along the Golden State Freeway between Burbank and the intersection with the San Diego Freeway on Highway 99, and on the San Diego Freeway between Mulholland Drive and the intersection with the Golden State Freeway. It was argued that these sections of the freeway system are not so heavily patrolled and that, with proper signing, might present a better test of these facilities than they are now receiving

A presentation was made by a representative of the Hoffman Electronics Corporation, the company which installed the test system

A representative of Pacific Telephone, in a prepared statement, urged that such a study should be made on a comparative basis before a final determination on an expansion of the present system is made

This comparison would call for the installation of leased Pacific Telephone lines providing two-way voice communication, as contrasted to the present push button electronics device

FREEWAY EXIT RAMP BARRIERS

(HR 403—Unruh, AB 2602—Carrell)

Spokesmen for the Division of Highways explained to the committee the research project now under way in an attempt to halt wrong way freeway or expressway entries

A suggestion that spikes similar to those used on some self service parking lots may prove effective, was found to be not feasible because of speeds involved, and the fact that the heavy traffic over the ramps would create a very large maintenance problem

Some of the methods now under study include the erection of "wrong way" activated signs, equipped with flashing red lights and signal horns or bells designed to warn the wrong-way driver, larger "Do not enter" signs, with white on red lettering, and other warning devices

It was indicated that a fuller report on the efficacy of these warning devices can be made to the committee during the 1965 General Session of the Legislature

MAXIMUM AND PRIMA FACIE SPEED LIMITS

(AB 1730—Deukmejian)

The effect of this bill, according to a prepared statement by Mr Deukmejian, would be to eliminate the "gray area" in enforcement of prima facie speed limits.

Contending that the basic distinction between a prima facie and a maximum speed law is one of evidence, Mr Deukmejian pointed out that in establishing a violation of a maximum speed law, the prosecution need only prove that the defendant was traveling at a speed in excess of such a limit, without regard to the condition of traffic, visibility or the roadway.

The effect of AB 1730 would be to change all prima facie speed limits to maximum limits

Prepared statements by two municipal court judges were in support of the bill

An automobile club spokesman's testimony can be summed up in the following quote "From the record to date, we believe that California's prima facie speed limits in the lower ranges have worked well over the years We submit that this record can be maintained, and even improved upon with the retention of our state's prima facie speed limits"

A spokesman for the California Highway Patrol declared that, "We think that the maximum-type limit is a much clearer type speed law, and if you are going to get voluntary compliance or any type of compliance by the motorist, he must understand the law, and we think that a prima facie limit is very difficult to understand"

He pointed out that in Michigan they have retained prima facie limits in residential and business districts, but that the rest of their speed limits are maximum

A spokesman for the Department of Public Works indicated that to effect a change from prima facie to maximum speed limits would require resurveys and the changing of some 7,400 signs, and also would mean changing pavement markers It could run as high as a million dollars just on the state highway system alone"

The committee preferred not to make specific recommendation for new legislation in line with the Deukmejian bill studied, however. Mr Dannemeyer stated that he would introduce a similar measure in the 1965 legislative session (Chairman Carrell asked that this be noted in report)

SPEED SAFETY DEVICES

(AB's 214, 215, 216—Petris)

These bills call for a very complicated installation of five coded colored lights on the fronts and backs of vehicles, together with matching pushbutton controls mounted on vehicle dash panels, combined with five coded colored fluorescent paint street and highway lane striping, as a means of providing for signaling and speed control.

Because of its complicated nature and projected high cost, it was a committee consensus that legislation implementing such a system is completely inadvisable

FOG ZONES

(AB 1552—Garrigus)

Mr. Garrigus' proposal would have the Department of the California Highway Patrol set up signs limiting speeds in certain highway zones during periods of heavy fog.

Mr Garrigus pointed out in his argument supporting the measure that speed zones are now fixed for schools, hospitals, playgrounds and other similar special zones

A discussion of the problem brought out the following complications· Because fog is a vapor that comes and goes, frequently within minutes, it would be difficult to establish clearly the areas to be posted; patrolmen would have to set up and remove signs at times and in places not clearly spelled out, a manpower distribution problem would be created automatically wherever a fog condition develops

It was pointed out that the basic speed law now prohibits excessive speeds during times when visibility is reduced by heavy rain, fog, snow, or for any other reason.

A spokesman for the Division of Highways indicated that a research project relating to fog-aggravated highway accidents is in process but declared that its progress has been retarded, due to a "fog scarcity" Three test areas and test methods were described

It was indicated that the subject matter of AB 1552 is included in the research project.

One member suggested that the committee recommend that the Division of Highways explore the possibility of coordinating with studies now being conducted at the University of California Berkeley, at the university's new "fog chamber" developed for testing and experimenting under fog conditions.

The committee recommendation by majority was: "Inasmuch as adequate statutory prohibitions for driving under unsafe conditions, including conditions of heavy fog, smog, dust and rainstorms now are in force, zoning by fixed areas with signs would be unnecessary and superfluous, and that further studies would be inconclusive and an unjustified expenditure of time and funds"

MOTOR VEHICLE SAFETY INSPECTION

At a hearing in Chula Vista, California, on Friday, September 18, 1964, the Assembly Interim Committee on Transportation and Commerce heard testimony on Assemblyman Richard Donovan's proposed legislation for periodic motor vehicle safety inspection

Testimony opposing an inspection program was given by representatives of Northern California Auto Club, California Highway Patrol, Highway Carriers Association, and by a private citizen

Opposition was based on the following

Motor vehicle inspection is not a primary factor in highway accidents and fatalities, the CHP is in fact conducting an inspection program at present; statistics show that some states with an inspection program have a higher accident and fatality rate than some states without inspection, motor vehicle inspection would inflict an inconvenience upon the California motorist, and finally, a state inspection program would inflict a financial hardship on the motorist.

Support for Mr Donovan's proposed measure was given by representatives of the Automotive Wholesalers' Association, Safety Systems Corporation; California Automotive Service Association, with the arguments that there is no clear basis upon which to compare figures published by various national organizations as to the success and effectiveness of other state inspection programs, for statistics are as flexible as the conclusions they seek to establish The point was emphasized that no highway safety program can be embarked upon with any hope of success without the consideration of the automobile as a basic factor, as well as the driver and the highway

Recent new studies, it was stressed, indicate that motor vehicle inspection plays a far more important part in highway safety than has been previously conceded, and that such a safety inspection program provides not only a social and lifesaving feature, but also is an important economic saving to the motorist, in that it discovers potential mechanical ailments and recommends their repair before accidents resulting from brake failure, tire blowout, or related mishaps, can occur Testimony brought out that mechanical condition of thousands of California automobiles on the highways is deplorable, and recent conclusions do show inspection under state auspices to be an effective deterrent to highway accidents and deaths

A significant position was expressed by the representative of the California Trucking Association, and the representative of Western Greyhound Division It stated that inasmuch as the legislation proposed by Mr. Donovan did not contain any attempt to include further regulation over the existing stringent safety and maintenance requirements already in effect on commercial carriers, they no longer would oppose it, as they have in the past.

In summation of both testimony and discussion, it was resolved that due to the significance and scope of motor vehicle inspection, additional study should resolve the administrative cost factor and implementation of a state program prior to any final recommendation by the committee.

BRAKE AND HEADLIGHT INSPECTION CERTIFICATES

(AB's 2837, 2840—Gaffney)

The safety inspections called for in both of these bills are included in the scope of Assembly Preprint Bill 1 (Donovan), and it was decided that these provisions should be included in the committee study of that bill when presented during the 1965 General Session of the Legislature.

THEFT AND CONVERSION OF RENTAL EQUIPMENT AND VEHICLES

Testimony presented to the committee by representatives of the rental industry explained in detail the difficulties owners of rental vehicles and equipment have experienced in recovering stolen vehicles and equipment under existing law

California Highway Patrol testified that there is difficulty in getting district attorneys to issue complaints and recommended that Section 10855 of the Vehicle Code should be reworded to strengthen it and include a requirement that district attorneys issue complaints to law enforcement agencies.

The American Rental Association made copies of statutes from other states covering stolen property and asked the committee to revamp California statutes more in line with those of states having tighter and more effective recovery provisions

Legislation should define

1 What constitutes intent of embezzlement or theft

2. Should provide means of legal notice to recalcitrant customer that he is in violation of criminal law if he fails to return rented property within some statutory period (10 days in most states).

3 Should require district attorneys to issue complaints to law enforcement agencies.

A Legislative Counsel's opinion, requested by the committee, stated that the above suggested legislation could be drawn to broaden the scope of the present law.

The committee recommends suitable corrective and/or enabling legislation be prepared for introduction during the 1965 General Session

ABANDONED VEHICLES

(HR 172—Gonsalves)

At issue generally was the lengthy delay in obtaining title through liens on low value cars

Testimony revealed that low-value vehicles towed to garages occupy valuable space for extended periods while "red tape" is unraveled in the determination of legal ownership of such vehicles which have been abandoned

Testimony on behalf of garage owners indicated a desire on their part to cut the present mandatory 15-day hold period and to speed up appraisals so that disposition of these vehicles can be expedited

This viewpoint was expressed by three witnesses

Spokesmen for the automobile clubs concurred

A spokesman for the auto dismantlers declared that the present practice is for garages to hold a number of abandoned vehicles and then to notify the dismantler that he has purchased them He disclosed that this makes it impossible to comply with the DMV 24-hour reporting provision, as it relates to abandoned vehicles and makes it impossible to obtain waivers on fees and penalties charged against the titles to such vehicles

A spokesman for the California Highway Patrol suggested that the last owner should be held responsible for abandonment He also urged "streamlining the paperwork" involved in clearing vehicles destined to be scrapped

The problem of the vehicle designated as junk that is then sold for reconditioning and possible future use could be solved, according to a suggestion by Assemblyman Donovan. He suggested the simple expedient of using a snap form, a copy of which would go to DMV in Sacramento to be attached to the vehicle's record there In the event that this particular vehicle's title is up for a transfer at a future date, it will be automatically flagged as having been previously certified as junk.

It was generally conceded that present methods are cumbersome.

It was also agreed that anything which will contribute to removal of jalopies from the streets and highways will constitute a major contribution to public safety

It was the consensus that means should be sought to provide for faster processing of the titles of junked or abandoned vehicles.

It was stressed that the legal owner or owner's equity must be protected in any newly devised method of speeding up the processing of junked or abandoned vehicles so that a stolen car can be traced to its rightful owner and there will be no doubt that it is truly abandoned.

VEHICLE TOWING

(HR 71—Meyers)

It was the consensus that Vehicle Code Section 22952 which currently applies only to cities of over 700,000 population, should be amended so as to apply statewide because of its effectiveness in curbing so-called "quickie" towing practices in San Francisco

UNLAWFULLY PASSING SCHOOL BUSES

(AB 1032—Winton)

Mr Winton, in his presentation of AB 1032, pointed out that, "Section 22454 of the Vehicle Code provides that it is unlawful for anyone to overtake a schoolbus which is stopped for discharging or receiving schoolchildren and displaying the flashing red light and to pass that bus until the flashing signal has ceased to operate."

He further testified that when a bus driver is out of the bus assisting children and when the bus is passed by a motorist, it is frequently difficult for him to get the license number However, a license number under the present situation is not sufficient to prosecute Reason for this is that a prosecutor's first question is usually, "Can you identify the person who was driving the vehicle?"

It was explained that AB 1032 would put in the provision similar to the parking statutes wherein, if it can be proven that a particular automobile was the one that made the violation, prima facie evidence exists that the registered owner was the one who was driving Thus, the burden of proof would be shifted to the registered owner, who would have to establish that he was elsewhere when the violation took place

It was the consensus that AB 1032 should be resubmitted

PURCHASING PROCEDURES OF STATE AGENCIES

(HR 584—Carrell)

The committee met to consider whether or not there were any discrepancies in the purchasing procedures of the Department of Motor Vehicles relative to the purchasing of certain filing cabinets to be used by the department

A number of witnesses complained that they had submitted bids on the filing cabinets in question and that these bids, initially lower than the successful bidder's bid, were all rejected and a new invitation to bid was let. In the second bid opening, one of the previous bidders whose bid was second lowest was awarded the bid The lowest bidder's bid was rejected by the Purchasing Department of the State of California because the lowest bidder indicated that he was not able to meet the delivery date All other bidders save and except the successful bidder indicated that they would be unable to meet the delivery deadline called for in the specifications The successful bidder indicated that he could meet the delivery deadline

The original delivery deadline on the first bidding was November 15, 1962. The Director of the Department of Motor Vehicles testified that the department was constructing a new Headquarters Building in Sacramento The filing cabinets in question were to be placed in this building and the filing cabinets were to be particularly tailored for this building The Division of Architecture informed the Department of Motor Vehicles that the original completion date of the Headquarters Building was to be December of 1962 Based upon this completion date, the Department of Motor Vehicles set November 15 in the original bid invitation as a delivery date in order to obtain the file cabinets in advance of the 1963 license plate year

Following the original bid opening, the lowest bidder delivered to the Department of Motor Vehicles a sample file cabinet At the behest of his division chiefs, the Director of the Department of Motor Vehicles personally inspected the file cabinets He found them to be incomplete and not of the type of workmanship that the department had requested The Department of Purchasing was satisfied with the cabinets Because of the disagreement between the Department of Motor Vehicles and the Department of Purchasing, the matter was referred to the Board of Control

Based upon an informal opinion of the Attorney General of the State of California, the Board of Control declared that it did not have jurisdiction over the type of dispute involved Ultimately, the General Services Department decided that there was considerable confusion in the required specifications for the original bid and all of the first bids were discarded and a new invitation to bid was let The reason why the bids were relet by the General Services Department was because of confusion between the specifications, the drawing and the sample set forth in the invitation to bid

A second invitation to bid on the file cabinets was made and a new completion date for the Headquarters Building of the Department of Motor Vehicles had been obtained The second bid required completion dates in the specifications of 60, 90 and 120 days A portion of the units were to be completed and delivered within 60 and 90 days, respectively and the entire order was to be delivered within the 120 day period The reason for the delivery deadline was because the Division of Architecture had informed the Department of Motor Vehicles that their new building would be completed in March of 1963 Subsequently, the Division of Architecture informed the Department of Motor Vehicles that their new building would be completed May 15, 1963 Ultimately, the building was not completed nor occupied until June of 1963

At the second bid opening in January, the lowest bidder and all other bidders except the successful bidder took exception to the delivery date. The successful bidder was the second lowest bidder and the successful bidder agreed that he could make delivery within the delivery schedule set forth in the specifications in the invitation to bid The successful bidder posted a performance bond to guarantee the delivery

All units of file cabinets were offered for delivery to the Department of Motor Vehicles on the final date required by the specifications The successful bidder was late in the delivery of the units set forth in the first delivery date only

The performance bond posted by the successful bidder is still open and may be executed upon The Director of the Department of Motor Vehicles indicated that it had not been executed upon because there was no damage to the Department of Motor Vehicles because of the delayed completion of the Headquarters Building

An inspector brought in by the Purchasing Department from a different department of state government submitted a report indicating that the cabinets ultimately delivered by the successful bidder were comparable to other cabinets utilized by the department and of substantially good workmanship quality

In view of the testimony, the committee finds that a series of circumstances contributed to the creation of some confusion in the designing of specifications of the cabinets for the new building and the delayed completion dates of the Headquarters Building of the Department of Motor Vehicles It was obvious that there was unsatisfactory interdepartmental coordination in requisitioning and purchasing procedures

Chairman's comment·

I feel that the Legislature may be interested in taking note of the following excerpt from an informal opinion submitted by Paul M Joseph, Deputy Attorney General, relating to the scope of the authority of the State Board of Control

" I have previously, on a number of occasions, expressed the view, on a purely personal basis, that the State Purchasing Act contains so many ambiguities and contradictions that it should be entirely revised so that a workable and complete competitive bidding procedure for state purchases of supplies and equipment may be set forth "

CHP PRACTICE AMMUNITION PURCHASING

(HR 584—Carrell)

A San Francisco manufacturer testified that he was low bidder on an order for 1,384 M rounds of 38-caliber reloads He said that he had made an initial delivery of 700,000 rounds as scheduled and that these had been rejected He subsequently sold "400 or 500,000" rounds to another manufacturer, located in the San Joaquin Valley, at a loss, he testified

Next low bidder was a Berkeley distributor who had previously ordered 5 million rounds for shipment to Viet Nam from the San Joaquin Valley manufacturer The CHP order was also supplied by the same manufacturer

Testimony by a CHP Administrative Services Officer indicated that inspection of reloads included test firing of random samples and that, because of some bad past experience, reloads are tested very rigorously

It was unclear whether or not some of the originally rejected reloads had been reworked and found their way back to the CHP or whether they had all gone to Viet Nam

CHP spokesmen declared that the department has discontinued the use of reload practice ammunition because of its general quality instability

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TAXATION OF PROPERTY IN CALIFORNIA

A Major Tax Study

PART 5

Published by the
ASSEMBLY
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DECEMBER 1964

TAXATION OF PROPERTY IN CALIFORNIA

A Report for

The California Legislature Assembly
Interim Committee
on Revenue and Taxation
December 1964

By

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and RAYMOND R. SULLIVAN

with special sections by

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MRS. YVETTE GURLEY
BRUCE McKIM

"And it came to pass in those days,
that there went out a decree
from Caesar Augustus, that all
the world should be taxed."

—Luke 2 :1

PREFACE

All laws need periodic review to determine their adequacies and weaknesses in the light of changing times. This is particularly true of our tax laws which have such a profound effect on our lives. Property taxation is a perennial and universal problem, and many studies, often of a very critical nature, have been made of this revenue source in the past 50 years.

This examination of the property tax is the fifth of a series of reports on the entire tax structure as a part of a major tax study of the Assembly Committee on Revenue and Taxation It should be noted that it does not pretend to be an exhaustive study of all phases of property taxation. Areas of minor importance have been omitted. Even areas of major importance—such as the assessment practices of the State Board of Equalization—have not been studied in the depth that would have been most desirable. Limitations of time and money have been the primary factors in the decisions to concentrate on some areas at the expense of others. To do a complete job of studying the property tax would take several years and an expenditure many times our present budget.

In view of the need to allocate time and resources, emphasis has been placed on a broad review of the tax, on the areas of the most significant impact, on the areas of greatest weakness, and on areas which have not been as thoroughly explored in previous studies.

Our primary emphasis in this report is on the problems of the property tax—what is wrong with it This may give the impression that we have written a complete indictment of the tax, but that is not a proper conclusion. It is not necessary for us to extol the virtues of this tax, we wish to correct its deficiencies

This study is a joint effort of David R. Doerr and Raymond R. Sullivan, members of the staff of the Committee on Revenue and Taxation in consultation of Dr. Harold Somers, the committee's consulting economist.

In addition certain segments of this report have been prepared by specialists from our academic institutions. Dr. Yung-Ping Chen is responsible for the material on the old age exemptions. Dr. Guenter Conradus is responsible for the material on timber taxation The material on property tax burdens was prepared by Dr. Bruce McKim Dr Harold Somers is responsible for the material on business inventories. Mrs. Yvette Gurley has contributed a thorough study of the California bank tax, which is levied in lieu of personal property taxes on banks. And Dr. Levern Graves has contributed the section comparing property tax burdens with state tax burdens.

The recommendations in this report are those of the researchers and should not be construed as representing the views or decisions of the committee. The committee recommendations will be made in due course.

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SECTION ONE

INTRODUCTION

Storm clouds have been gathering over the property tax for a number of years. As the tax burden keeps rising, and as there is little or no effort to reform and modernize this tax, the trickle of criticism has grown to a torrent. This torrent could well sweep aside the property tax altogether. Yet the property tax is the mainstay of local government and the most prolific revenue producer in the state-local tax structure.

In this report, the property tax is examined from various standpoints· from the standpoint of who pays and how much; from the standpoint of who doesn't pay and why not; from the standpoint of administration and maladministration, from the standpoint of special problems deserving immediate attention; and from the standpoint of the burden of the property tax on our citizens

We hope that the report will be read in this light We are discussing the weaknesses of the property tax, not the strengths; we are seeking ways to improve, not destroy; we are seeking ways to reduce burdens and make the tax more equitable—not ways to increase revenue.

BACKGROUND

The ad valorem property tax is one of the oldest forms of taxation known to mankind In the Old Testament. it was decreed that the Pharaoh should have the fifth part. That form of taxation—the fifth part of production of the land—was exacted from the landowner for the privilege of holding and enjoying land.

With the development of more complex cultures, exemptions began to creep into the tax structure Roman law granted a form of veteran's exemption from property tax to retired members of the Roman legion

In Great Britain, the early taxes imposed were principally taxes in kind—usually consisting of a certain portion of the produce of the land. After the Norman conquest of England, William the Conqueror revived this form of taxation and ordered a general survey of the lands This survey was both a census and an assessment roll The results were published in 1086 as the Domesday Book.

The land tax or "danegeld" was continued under the Norman Kings as a regular impost at various rates which generally averaged two shillings per 100 acres [1] Administration and collection of the tax was the responsibility of the county sheriff The legendary battles of Robin Hood with the Sheriff of Nottingham were not over the administration of justice but over the collection of taxes

Personal property taxes were first introduced on the occasion of the Saladin tithe in 1188 King Henry ordained that all subjects were to give one-tenth of their rents and movables [2] Assessment practices came

[1] Stephen Dowell, *A History of Taxation and Taxes in England*, Longmans, Green, and Company, London, 1888, p 35
[2] *Ibid*, p 61.

to be fairly standardized. Movables were taxed at "full value." Exemptions were granted in counties to armour, riding horses, jewels, and clothes of knights and gentlemen and their vessels of gold, silver, and brass. In cities, a suit of clothes for every man and another for his wife, a bed for both of them, a ring and a buckle of silver or gold, a girdle of silk in ordinary use by them and a cup of silver or mages from which they drank were exempt. Everywhere, the goods of any person not amounting to five shillings in value were also exempt. In later years, exemptions were granted to the universities of Oxford and Cambridge and to the lands of schools and hospitals.

In practice, assessments dropped below full cash value with Sir Walter Raleigh stating in Commons that the Queen's "backs" were "not the hundred part of the wealth of some of the persons assessed "[3] governments.

In colonial America, the property tax was not widely used. Governments were supported rather by fees and fines Subsequently, in New England, where the distribution of property was fairly equal, the first taxes were levied on property In other colonies, due to economic conditions, import and excise taxes were imposed [4] However, in the 19th century, the property tax came to be universally applied throughout the country and was the main source of revenue for state and local government.

Upon entry into the union in 1850, California immediately adopted a system of property taxation to finance government services. The first Legislature adopted a statewide property tax of $0 50 per $100 of assessed value. The Revenue Act of 1850 provided for the assessment of all taxable property in each county by the county assessor between the first Monday in March and the first Monday in August.

For 60 years after statehood, the property tax continued to be the backbone of the state and local revenue systems. When the "separation of sources" plan was adopted in 1910, the state relinquished the general property tax to local government and the tax began to decline as a percentage of total state and local revenue. This tax still represents approximately one-half of the total revenue collected by state and local governments.

[3] *Ibid.*, p 157
[4] Jerome R. Hellerstein, *State and Local Taxation*, New York: Prentice Hall, 1952, p 3

SECTION TWO

WHO PAYS

I. TAXABLE PROPERTY

Section I of Article XIII of California's Constitution provides that ". . . all property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value . . ." Property is generally classified as real or personal property and also as tangible or intangible property.

The Legislature has been given the power to classify or exempt personal property and intangibles by Section 14 of Article XIII However, a two-thirds vote of both houses of the Legislature is required for such action. Exemptions cannot be granted to real property without a statewide vote of the electorate

Real property is land together with any permanently attached improvements—except telephone and telegraph lines.[1] Personal property is all other property—basically property which is movable.

Eighty-four percent of all taxable property in California is real property.

TABLE I

Gross Assessed Value of Property Subject to Tax in California: 1964

(in thousands of dollars)

	State assessed	*Locally assessed*	*Total*	*Percentage*
Land	$290,187	$11,428,392	$11,718,579	30.6
Improvements	2,501,554	18,091,555	20,593,109	53 7
Personal property	1,650,388	4,375,947	6,026,335	15.7

SOURCE: Board of Equalization, *Annual Report*, 1963–64

In 1964, Los Angeles County with a net assessed value of $13,499,-903,385 had approximately 37 percent of the total assessed value of property in the state.

II. YIELD OF THE PROPERTY TAX

Local government received the astounding total of $2,805,152,000 in revenue from property taxation in 1963–64 This amount is more than that received by the state from all state taxes combined. Of this total, 50.3 percent, more than half was spent in the support of local public schools. County levies of $868,723,000 amounted to 30.9 percent of the total with levies of cities (13 0 percent) and special districts (5 6 percent) comprising the balance.

Los Angeles County understandably leads the state in property tax collections, with $1,065,933,000 levied by governmental entities in 1963–64. However, Alameda County had the highest average[2] combined tax

[1] *Revenue and Taxation Code*, Section 105
[2] For definition of average see footnote to Table III

TABLE II

Assessed Value of Tangible Property Subject to Local Taxation in California: 1964

(In thousands of dollars)

County	Land	Improvements	Personal property*	Exemptions	Net total
Alameda	414,853	1,007,227	395,096	83,995	1,733,180
Alpine	940	1,420	251	45	2,566
Amador	9,879	32,054	6,520	739	48,314
Butte	56,645	113,004	39,980	6,549	203,170
Calaveras	13,722	18,067	6,941	940	37,791
Colusa	26,497	18,158	13 354	416	57,593
Contra Costa	267,743	756,462	147,797	38,048	1,134,954
Del Norte	12,901	11,797	6,629	981	30,346
El Dorado	65,112	54,065	15,044	3,183	131,037
Fresno	319,374	448,001	155,472	31,987	890,861
Glenn	27,147	21,427	13,703	1,083	61,194
Humboldt	64,825	109,388	36,279	7,544	191 545
Imperial	75,572	51,150	24,724	3,354	148,142
Inyo	28,001	15,053	5,937	878	48,174
Kern	392,738	325,744	120,249	22,626	816,105
Kings	55,744	65,445	29,917	4,250	146,855
Lake	17,382	25,207	7,705	1,177	49,116
Lassen	8,686	12,209	7,349	1,218	27,026
Los Angeles	4,461,229	7,572,309	2,038,159	570,793	13,490,903
Madera	39,554	61,994	21,277	2,364	120,460
Marin	141,080	210,881	41,454	16,244	377,771
Mariposa	7,508	6,105	3,885	427	17,471
Mendocino	32,669	47,188	20,456	3,358	96,955
Merced	85,560	54,962	42,915	6,223	207,213
Modoc	9,106	10,983	7,770	445	27,314
Mono	8,925	10,483	2,931	177	23,161
Monterey	119,709	279,257	73,307	14,432	454,842
Napa	34,519	63,420	22,673	8,473	111,940
Nevada	13,750	31 150	11,503	1,784	54 629
Orange	585,789	1,288,967	266,249	82,856	2,058 448
Placer	56,663	90,726	25,572	4,640	168,123
Plumas	8,525	63,984	7,285	863	78,930
Riverside	277,414	473,630	108,343	27,118	832,488
Sacramento	318,906	605,174	178,077	52,069	1,050,088
San Benito	17,996	24,004	11,212	678	52 632
San Bernardino	279,556	735,095	174,585	55,067	1,154,169
San Diego	638,117	1,035,646	318,064	108,957	1,882,871
San Francisco	392,701	946,965	390,209	88,811	1,641,064
San Joaquin	154,377	275,813	110,672	25,506	524,355
San Luis Obispo	80,275	124,400	34,261	5,599	233,338
San Mateo	300,741	606,743	207,258	50,373	1,064,368
Santa Barbara	199 525	275,070	67,434	19,044	522,584
Santa Clara	564,345	1,116 175	312,036	132,004	1,860,552
Santa Cruz	86,863	117,864	23,938	10,609	218,055
Shasta	41,904	113,721	36,760	6,210	186,315
Sierra	2,515	2,899	2,134	261	7,286
Siskiyou	20,947	37,285	20,818	2,216	76,833
Solano	80,837	120,309	25,515	10,794	222,688
Sonoma	88,409	201 846	47,889	13,244	321 779
Sta Clara	92,454	146,068	60,207	13,404	285,325
Sutter	52,793	48,565	23,061	2,627	121,791
Tehama	24,568	30,205	19 417	2,015	72,178
Trinity	6 977	5,202	5,004	450	16,823
Tulare	112,521	189,354	82,960	10,452	373 383
Tuolumne	15,132	28,358	8,170	1,387	50,274
Ventura	315,448	299,193	75,735	25,854	664,521
Yolo	69,680	73,056	33 187	5,026	170,907
Yuba	24,326	36,756	15,709	2,987	73,803
Totals	11,718,578	20,593,109	6,026,335	1,594,658	36,743,364

* Excludes private railroad cars.

SOURCE Board of Equalization, *Annual Report*, 1963–64

rate for all governmental units—$9.73 per $100 of assessed value. Enjoying the distinction of having the lowest average tax rate in the state for 1963–64 was Plumas County at $4 36 per $100 of assessed value.

Over the past 25 years, the assessed valuation of the state has increased fivefold—from approximately $7 billion in 1939 to ap-

TABLE III

1963–64 Property Tax Levies

(Levies in thousands of dollars)

County	City levies	County levies	School district levies	Other district levies[a]	Total levies[a]	Average tax rate[b] (percent)
1	2	3	4	5	6	7
Tax Levies on Tangible Property						
Alameda	35,484	40,044	71,514	12,434	159,476	9 73
Alpine	----------	79	32	----------	111	4 48
Amador	80	925	1,253	91	2,347	5 06
Butte	1,185	5,445	6,357	1,034	14,021	7 50
Calaveras	35	817	884	307	2,043	5 64
Colusa	131	1,331	1,332	224	3,018	5 34
Contra Costa	8,293	24,157	49,139	10,700	92 289	8 85
Del Norte	107	852	1,090	237	2,286	7 81
El Dorado	150	2,552	3,570	973	7,225	6 15
Fresno	7,153	21,381	28,073	2,578	59,785	6 97
Glenn	198	1,428	1,543	144	3,313	5 47
Humboldt	978	6,263	7,726	937	15,904	8 19
Imperial	1,551	3,543	5,800	477	11,171	7 88
Inyo	54	1,173	1,477	190	2,894	6 55
Kern	3,507	21,413	30,571	2,309	57,800	7 23
Kings	684	3,392	5,350	743	10,169	7 04
Lake	73	1,094	1,306	441	2,914	6 32
Lassen	79	598	821	93	1,591	6 57
Los Angeles	176,750	309,395	540,173	40,615	1,065,133	7 95
Madera	293	3,148	3,512	300	7,253	6 18
Marin	2,672	8,264	17,222	1,998	30,156	9 06
Mariposa	----------	371	301	21	753	4 62
Mendocino	338	3,120	3,240	292	6,980	7 28
Merced	1,153	5,889	7,669	603	15,315	8 20
Modoc	48	773	703	63	1,587	5 91
Mono	----------	577	501	149	1,227	4 61
Monterey	3,128	7,834	16,103	1,739	28,804	6 07
Napa	733	2,848	5,029	208	8,818	8 28
Nevada	203	1,295	1,834	128	3,260	6 73
Orange	19,451	36,331	73,267	15,353	144,402	7 03
Placer	572	3,209	5,698	963	10,411	6 78
Plumas	34	1,326	1,796	201	3,356	4 36
Riverside	5,443	16,186	28,901	7,253	57,473	7 37
Sacramento	8,805	23,527	40,789	6,534	80,015	8 22
San Benito	171	1,000	1,386	130	2 687	5 19
San Bernardino	6,203	22,254	49,164	7,486	85.107	8 09
San Diego	24,064	39,327	72,379	8,416	144,186	8 03
San Francisco	----------	99,391	40,122	1,522	141,015	8 03
San Joaquin	6,028	15,273	18,539	2,512	42,352	8 47
San Luis Obispo	1,054	5,699	7,780	1,029	15,562	7 05
San Mateo	10,815	17,406	53 835	4,998	87,054	8 77
Santa Barbara	2,798	9,811	20,052	3,207	35 868	7 40
Santa Clara	18 639	33 398	88,577	6,446	141 960	8 39
Santa Cruz	1,549	5,277	7,905	759	15,490	7 68
Shasta	633	3,974	5,240	606	10,453	6 30
Sierra	5	218	149	28	400	5 59
Siskiyou	359	1,733	2,823	132	5,017	6 71
Solano	2,216	3,947	7,999	902	14 105	6 83
Sonoma	2,116	7 812	12,283	1,381	23 822	7 80
Stanislaus	1,887	9,958	11,430	965	24 840	8 83
Sutter	421	2,167	3,141	305	6,074	5 40
Tehama	225	1,715	1,835	137	3,912	5 98
Trinity	----------	602	332	62	996	6 63
Tulare	1,451	10,213	13,693	1,346	26,723	7 36
Tuolumne	50	1,509	1,212	178	2,959	6 25
Ventura	3 259	10,872	24,489	5,835	44,455	7 04
Yolo	1,961	3,089	6,327	914	12 291	7 72
Yuba	502	1,823	2,255	214	4,794	6 05
Totals	364,883	868,723	1,412,994	159,452	2,805 152	8 00
Tax Levies on Solvent Credits						
All counties	1,290	2,038	1,810	----------	5,138	[c] 10
Grand totals	366,173	870,761	1,413,904	159,452	2,810,290	6 99

[a] Excludes special assessments levied on limited categories of property to finance activities from which owners of such properties derive special benefits. Detail may not add to totals because of rounding.

[b] Total levies divided by net total assessed values in column 6, Table 6A and/or column 4, Table 7, of the Board of Equalization's annual report for the 1962–63 fiscal year.

[c] Uniform rate throughout the State.

SOURCE: Board of Equalization, *Annual Report*, 1963–64.

proximately $37 billion in 1964. However, the revenue collected has increased almost tenfold or twice the rate of increase in assessed value. Approximately $284 million was collected in 1939–40 compared to $2.8 billion in 1963–64. During this 25-year period, the average statewide rate jumped from $4 13 per $100 of assessed value to $8 00. It must be kept in mind, however, that in the 1930's, assessed values were approximately 50 percent of market value while the present ratio is below 25 percent.

TABLE IV

Yield of the Property Tax in California: 1937–1964

Fiscal year	Net assessed value of taxable property amount ($1,000)	Annual percentage change	Taxable property tax levies amount ($1,000)	Annual percentage change	Average taxable property tax rate
1937–38	$6,900,399	----	$274,726	----	3 98%
1938–39	7,006,323	1 5	284,362	3 5	4 06
1939–40	7,093,562	1 2	293,031	3 0	4 13
1940–41	7,138,547	0 6	298,283	1 8	4 18
1941–42	7,350,712	3 0	313,155	5 0	4 26
1942–43	7,579,549	4 5	311,294	−0 6	4 05
1943–44	7,386,211	2 7	305,892	−1 4	3 99
1944–45	8,266,742	4 8	332,877	8 5	4 03
1945–46	8,541,111	3 3	367,698	10 5	4 31
1946–47	9,100,843	6 6	465,772	26 7	5 12
1947–48	10,094,647	20 8	541,439	16 9	4 95
1948–49	12,193,019	10 9	563,992	20 3	5 45
1949–50	13,237,730	8 5	719,317	8 3	5 44
1950–51	13,618,915	3 0	791,353	10 0	5 81
1951–52	14,738,439	8 2	845,780	6 9	5 74
1952–53	15,107,000	2 3	934,283	10 3	5 79
1953–54	17,170,279	6 6	1,010,966	9 8	5 94
1954–55	18,239,059	6 2	1,121,911	10 0	6 15
1955–56	19,997,440	9 7	1,254,243	11 7	6 27
1956–57	21,819 642	9 1	1,416,223	13 0	6 49
1957–58	24,308,208	11 4	1,634,412	15 4	6 72
1958–59	25,956,688	6 8	1,807,932	10 6	6 96
1959–60	27,434,577	5 7	1,990,497	10 1	7 26
1960–61	29,600,332	7 9	2,195,868	10 3	7 42
1961–62	31,549,630	6 6	2,414,017	9 5	7 62
1962–63	33,326,970	5 6	2,606,131	7 9	7 82
1963–64	35,066,088	5 2	2,805,152	7 6	8 00
1964–65	36,743,365	4 8	----	----	----

SOURCE Board of Equalization *Annual Reports*, 1954–55, 1961–62, 1962–63, and California State Controller *Annual Report of Assessed Valuation and Tax Rates*

The actual percentage of personal income of Californians which is used to pay property taxes dropped from 5 5 percent in 1939 to 2.2 percent in 1944 and rose to 5.3 percent in 1963 Since the end of World War II, the property owner has experienced a constant increase in the percent of personal income going for property taxes. As Table IV illustrates, in almost every year since World War II except for two Korean War years, the taxpayer has seen an increase in the property tax as a percentage of his personal income

The property tax paid by Californians, while increasing dramatically since World War II, is comparable to that paid in other urban-industrial states California ranked 11th among all states with respect to the percentage of personal income going for property taxes in 1962. Table V contains comparisons among all states for 1962.

TABLE V

Property Tax as a Percentage of Personal Income in California (1937–63)

(In millions)

Year	Personal income	Property tax*	Percent
1937	$5,132	$274	5 3%
1938	5,088	284	5 5
1939	5,257	293	5 5
1940	5,839	298	5 1
1941	7,331	313	4 2
1942	10,010	311	3 1
1943	13,281	306	2 3
1944	14,853	323	2 2
1945	15,104	367	2 4
1946	16,084	465	2 8
1947	16,637	544	3 2
1948	17,610	663	3 7
1949	17,835	719	4 0
1950	19,527	791	4 0
1951	22,726	845	3 7
1952	25,039	933	3 8
1953	26,642	1,019	3 8
1954	27,432	1,121	4 0
1955	30,224	1,253	4 1
1956	33,273	1,416	4 2
1957	35,582	1,634	4 5
1958	37,341	1,807	4 8
1959	40,960	1,990	4 8
1960	43,183	2,195	5 0
1961	45,776	2,414	5 2
1962	49,187	2,606	5 2
1963	52,438	2,805	5 3

* Property tax levies in all local jurisdictions in the fiscal year beginning with the year in the column on the left

SOURCE Computed from United States Department of Commerce, Office of Business Economics, and State Board of Equalization, *Annual Reports*, 1954–55, 1961–62, 1962–63

III. SPECIAL TYPES OF TAXABLE PROPERTY

A. SOLVENT CREDITS

Webster calls intangibles "those assets which are not corporeal" such as good will, a patent, the trust which goes with a brand name, stocks and bonds, etc These examples suggest the difficulty of assessing an intangible for tax purposes They are obviously of great value to an individual or a business, but it is difficult to assign them a dollar value when taxation is the purpose

The only intangible which we attempt to value for taxation in California is the solvent credit. These are amounts owing to a party from the sale of a good or service which are not secured by a mortgage, trust deed, contract or other obligation where land is pledged as a security. The value of debts of like character owed to Californians are deductible from the credits. All notes, debentures, shares of capital stock, bonds, deeds of trust, and mortgages are exempt from taxation. Solvent credits are assessed at full cash value and the statutory rate of one mill per dollar is applied as tax. While this amounts to only 10 cents per $100 of value, real and personal property are assessed at 25 percent of value so the comparable tax on solvent credits is 40 cents per $100 of assessed value. In 1963 this tax produced $5 million for local government in California (compared with a total collection from property taxes of $2.6 billion). While the assessed value of tangible personalty

TABLE VI

Property Tax as a Percentage of Personal Income by States: 1963

State	Total property tax levies as a percent of personal income	State	Local government property taxes as a percent of personal income	State	All revenues collected from state and local revenue sources percent of personal income
Kansas	6 33%	Kansas	6 15%	New Mexico	15 47%
Minnesota	6 24	South Dakota	6 15	North Dakota	15 38
Nebraska	6 23	Iowa	5 98	Louisiana	15 31
Wisconsin	6 18	Minnesota	5 92	Wyoming	14 50
South Dakota	6 14	Wisconsin	5 78	Minnesota	14 23
Montana	6 08	Montana	5 69	Wisconsin	14 10
Iowa	6 05	New Hampshire	5 67	South Dakota	14 09
New Hampshire	5 81	Massachusetts	5 62	Arizona	14 05
Wyoming	5 74	New Jersey	5 46	Mississippi	13 85
Arizona	5 71	Nebraska	5 33	Alaska	13 76
Massachusetts	5 63	North Dakota	5 32	Washington	13 54
North Dakota	5 53	Maine	5 23	Montana	13 49
New Jersey	5 48	Colorado	5 12	Kansas	13 48
CALIFORNIA*	5 39	CALIFORNIA	5 11	Hawaii	13 40
Maine	5 35	Vermont	5 07	Colorado	13 37
Colorado	5 26	Indiana	4 80	Vermont	13 14
Vermont	5 10	Wyoming	4 77	Idaho	13 05
Idaho	5 05	New York	4 75	New York	13 00
Indiana	4 89	Idaho	4 75	Iowa	12 98
New York	4 76	Arizona	4 71	CALIFORNIA	12 93
Michigan	4 75	Oregon	4 71	Oklahoma	12 89
Oregon	4 71	Rhode Island	4 63	Oregon	12 58
Rhode Island	4 63	Connecticut	4 47	Utah	12 57
Connecticut	4 47	Michigan	4 46	Michigan	12 48
Utah	4 43	Illinois	4 36	Florida	12 25
Illinois	4 36			Nevada	11 95
		US AVERAGE	4 21	Maine	11 82
US AVERAGE	4 36			Texas	11 78
		Ohio	4 08		
Ohio	4 25	Texas	3 96	US AVERAGE	11 76
Texas	4 16	Utah	3 96		
Florida	3 87	Florida	3 69	West Virginia	11 62
Maryland	3 57	Maryland	3 39	Arkansas	11 57
Missouri	3 39	Missouri	3 34	Georgia	11 53
Washington	3 38	Oklahoma	3 11	South Carolina	11 40
Oklahoma	3 10	Pennsylvania	3 01	North Carolina	11 37
Mississippi	3 10	Mississippi	2 96	Kentucky	11 15
Nevada	2.99	Tennessee	2.90	Alabama	11 14

Pennsylvania	2 95	Washington	2 81	Nebraska	11 07
Tennessee	2 90	Nevada	2 79	Massachusetts	11 00
New Mexico	2 88	Georgia	2 75	Rhode Island	10 89
Georgia	2 77	Arkansas	2 63	Tennessee	10 89
Virginia	2 71	District of Columbia	2 60	Indiana	10 75
Arkansas	2 69	West Virginia	2 59	New Hampshire	10 73
West Virginia	2 60	Virginia	2 54	Maryland	10 23
District of Columbia	2 60	Louisiana	2 30	Ohio	10 23
Kentucky	2 58	North Carolina	2 29	Pennsylvania	10 15
Louisiana	2 58	Kentucky	2 24	New Jersey	9 99
North Carolina	2 45	New Mexico	2 20	Connecticut	9 96
South Carolina	2 09	South Carolina	2 06	Illinois	9 93
Hawaii	1 84	Hawaii	1 81	Virginia	9 90
Alaska	1 78	Alaska	1 78	Delaware	9 78
Alabama	1 72	Delaware	1 50	Missouri	9 38
Delaware	1 52	Alabama	1 43	District of Columbia	8 80

* Includes state motor vehicle in lieu tax.

SOURCE. Computed from U S. Bureau of Census, *Governmental Finances in 1963*.

increased from $10 billion to $36.7 billion between 1947 and 1964, the value of solvent credits increased to only $5.1 billion from $1.8 billion. Where solvent credits were 18 percent of tangible values in 1947 they are now only 14 percent of that value.

TABLE VII

Assessed Value of Solvent Credits in California

1947–1963

	Solvent credits assessed value	*Net assessed value all tangible property*
1947	$1,864,845,384	$10,993,637,255
1948	2,090,863,120	12,193,020,000
1949	2,134,361,024	13,227,731,000
1950	2,238,452,260	13,618,915,000
1951	2,761,782,101	14,736,439,000
1952	3,094,542,999	16,107,000,000
1953	3,407,792,340	17,170,270,000
1954	3,579,795,750	18,228,961,000
1955	3,903,903,661	19,993,440,000
1956	4,437,852,940	21,819,002,000
1957	4,975,531,572	24,308,207,000
1958	5,060,685,776	25,966,688,000
1959	3,524,511,000	27,434,577,000
1960	4,029,952,000	29,600,832,000
1961	3,904,830,000	31,549,630,000
1962	4,416,543,000	33,326,914,000
1963	5,138,400,000	35,066,088,000
1964	5,190,439,000	36,743,364,000

SOURCE: Board of Equalization *Annual Reports*, 1947–48—1963–64.

Why are solvent credits taxed in California while all other forms of intangibles are exempt? The exemption of most intangibles is discriminatory with respect to tangible property, it encourages the transfer of capital into intangibles rather than into real estate and tangible goods.

The taxation of intangibles has always been a difficult problem. It was summarized by the California Tax Commission in 1929 in these words:

> "The history of taxation in this country since the Civil War is largely the history of the gradual disintegration of the general property tax. With the growth of the corporate form of organization and the development of the technique of subdividing the incidents of ownership in property with the aid of various types of paper instruments it became increasingly difficult to provide satisfactory methods of offsetting liabilities against assets and the general property tax gradually became a very unjust tax because of the large amount of double taxation necessarily involved in the efforts to include intangible property on the assessment rolls. The various evidences of ownership were easily concealed, and it proved entirely feasible for the taxpayer to escape most of the evils of double taxation by the simple process of the refusal to disclose his holdings of intangibles. In a majority of the states of the Union, the hopelessness of attempting to administer successfully the general property tax under these conditions was recognized to a greater

or less extent, and modifications were introduced in the tax systems of the states in the form of special low-rate taxes on intangibles or in the form of taxes on income In California evidences of this movement are found in such provisions as the following:

"(1) The constitutional provision adopted in 1910 exempting real estate mortgages from taxation;

"(2) The exemption of shares of stock in corporations to the extent that the property of the corporation itself is taxed in this state; and

"(3) The solvent-credits amendment to the constitution, passed in 1924, together with the legislation based upon it" [3]

In 1929, the Legislature enacted the Bank and Corporation Franchise Tax Act and a solvent credits law with the hope that a low rate would lead people to disclose their intangibles and pay the tax The rate was fixed at 1 mill to the dollar for solvent credits and 2 mills on stocks and bonds Subsequent legislation exempted stocks and bonds.

In 1933, the California Tax Research Bureau began to evaluate the results of the 1929 law. Their studies indicated that almost all of the intangibles were escaping taxation. With respect to solvent credits, they observed:

"The taxation of bank accounts and such solvent credits as book accounts, conditional contracts of sale and unsecured notes, is also productive only in small measure, the current annual tax product being only about $400,000 for the entire State *The taxation of solvent credits as a class presents no very different problem from that of taxation of intangibles generally, except the distinction between savings deposits and deposits in commercial banks*" (Emphasis in the report.)[4]

Bank deposits are not taxable as solvent credits since they do not arise from the sale of goods and services.

In addition to the difficulty of locating and assessing intangible personal property there is the problem of double taxation since property represented by mortgages and stocks is already taxed. Other types of intangibles may be reached more equitably by some other form of levy —the income tax for instance

Since most intangibles are not now taxed in California, this field of property taxation has received little attention in recent years. There are only nine states (not including Alaska where there is local option) in which all intangible property is legally part of the base for local general property taxation In Illinois and New Mexico some of the intangibles are subject to state assessing while others are left to the local assessors. There are 15 states not taxing intangibles through property taxation. Table IX shows the assessable values of intangibles in states subjecting them to general property taxation (except in Alaska, New Mexico, and Tennessee where information was not available) and also lists the states in which no property tax applies to intangibles

[3] *Final Report of the California Tax Commission*, Submitted to the Governor, March 5, 1929, California State Printing Office, pp 255–256

[4] *Summary Report*, California Tax Research Bureau, State Board of Equalization, California State Printing Office, December 1, 1932.

TABLE VIII

Assessed Value of Solvent Credits: 1964

(In thousands of dollars)

County	*Intangible property** (solvent credits)			County	Intangible property* (solvent credits)		
	State assessed	Locally assessed	Total		State assessed	Locally assessed	Total
1	2	3	4	1	2	3	4
Alameda	$51	$241,359	$244,410	Placer	$193	$3,065	$3,258
Alpine				Plumas	72	472	544
Amador	10		10	Riverside	80	38,405	38,485
Butte	18	5,218	5,236	Sacramento	41	107,480	107,521
Calaveras				San Benito			
Colusa		493	493	San Bernardino	1,007	51,503	52,510
Contra Costa	86	23,281	23,367	San Diego	5,411	125,712	131,123
Del Norte	143		143	San Francisco	26,134	620,499	646,633
El Dorado				San Joaquin	3	26,246	26,249
Fresno	13	43,643	43,656	San Luis Obispo		4,730	4,730
Glenn				San Mateo		95,137	95 137
Humboldt	1		1	Santa Barbara		17,004	17 004
Imperial	8		8	Santa Clara	456	185,683	186,139
Inyo				Santa Cruz	6	9,930	9,936
Kern	225	23,639	25,864	Shasta	195	2,043	2,238
Kings		3,410	3,410	Sierra			
Lake				Siskiyou	260	1,598	1,858
Lassen				Solano		1,271	1,271
Los Angeles	48,319	3,161,926	3,218,245	Sonoma		6,552	6,552
Madera	23	1,357	1,380	Stanislaus	116	20,961	21,077
Marin		12,407	12,407	Sutter		1,934	1,934
Mariposa	22		22	Tehama		1,802	1,802
Mendocino	135	2,834	2,969	Trinity	157		157
Merced	42	7,525	7,567	Tulare	6	10,842	10,847
Modoc	31		31	Tuolumne	14		14
Mono	9		9	Ventura		22,157	22,157
Monterey		9,437	9,437	Yolo	3	4,906	4,909
Napa		2,026	2 026	Yuba		2,148	2,148
Nevada							
Orange	8	193,477	193,485	Totals	$33,327	$5,116,113	$5,199,439

* Solvent credits are taxed at 1 mill per dollar, the proceeds are divided equally among the county, the city, and the school district if the situs of the property is within an incorporated municipality, and equally beween the county and the school district if not

SOURCE Assessment records of the board and reports of county auditors and county assessors to the board Board of Equalization, *Annual Report*, 1963–64

TABLE IX

Assessable Value of Intangibles in States Subjecting Them to General Property Taxation: 1961

(In millions of dollars)

Arkansas	15	Texas	202
Illinois	483	West Virginia	863
Louisiana	114	Wyoming	4
Montana	8		

States Where No Property Tax Applies to Intangibles

Arizona	Missouri	Vermont
Colorado	New Hampshire	Washington
Connecticut	New York	Wisconsin
Hawaii	Oregon	and District of Columbia
Idaho	South Carolina	
Massachusetts	Utah	

SOURCE U S Bureau of the Census, *Census of Governments*, 1962, Taxable Property Values, p. 6.

The other 25 states each have some complicated formula for assessing a tax on intangibles or certain classes of them

While it is a very persuasive argument that "solvent credits" should be tax exempt as it is illogical to exempt all other intangibles and tax this form, we must weigh this against a $5 million loss of revenue to local government and consequent shift of the tax base to other forms of property.

B. POSSESSORY INTERESTS

1. *Definition and Nature of Possessory Interests*

A possessory interest constitutes a private right to the possession and use of publicly owned property. In California private leases of government-held real property and improvements have been held to be assessable and taxable to the lessee. [*San Pedro R.R. Co.* v. *Los Angeles* (1914), 167 Cal. 425; *Kaiser Company, Inc.* v. *Reid* (1947), 30 Cal. 2d 610.] However, under the provisions of the Harbors and Navigation Code, possessory interests in property owned by the San Francisco Port Authority are exempt from taxation.

Section 107 of the *Revenue and Taxation Code* defines possessory interests to mean:

a. Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person.

b. Taxable improvements on tax-exempt lands.

However, there is presently no statutory authorization for taxation of possessory interests in personal property. [*General Dynamics Corporation* v. *County of Los Angeles* (1958), 51 Cal 2d 59.]

Possessory interests in California are widespread. They range from harbor leases in Los Angeles to Indian land in Palm Springs to national park and forest land in various parts of the state. Many of the most valuable possessory interests in California can be characterized as unusual property rights in real estate. A concessionnaire running the only restaurant in a national or state park can, because of the location, increase earnings due to his monopoly operation. This unique situation makes the possessory interest more valuable since competitors are not nearby.

2. *Value in California*

Possessory interests in real estate in California amounted to more than $165 million in assessed value in 1963 Of this total, $77 million was in Los Angeles County. Using the average $8 00 tax rate, possessory interests contribute approximately $13 million in tax revenue to support local government.

A breakdown of possessory interests assessment by county in 1963 is shown in Table X.

TABLE X

Possessory Interests, Assessed Values by County: 1963

Counties		*Counties*	
Alameda	$2,096,600	Orange	$5,068,450
Alpine	258,100	Placer	690,100
Amador	---	Plumas	150,720
Butte	19,010	Riverside	5,500,000
Calaveras	25,000	Sacramento	8,350,810
Colusa	500	San Benito	85,500
Contra Costa	1,059,590	San Bernardino	3,087,000
Del Norte	3,340	San Diego	23,572,130
El Dorado	2,150,000	San Francisco	6,033,000
Fresno	857,460	San Joaquin	396,000
Glenn	69,740	San Luis Obispo	460,000
Humboldt	422,040	San Mateo	4,573,020
Imperial	115,000	Santa Barbara	2,600,000
Inyo	---	Santa Clara	6,886,290
Kern	1,559,570	Santa Cruz	344,590
Kings	40,000	Shasta	477,245
Lake	8,500	Sierra	---
Lassen	40,000	Siskiyou	314,320
Los Angeles	77,275,000	Solano	7,750
Madera	158,920	Sonoma	84,290
Marin	541,070	Stanislaus	130,000
Mariposa	159,545	Sutter	None
Mendocino	25,290	Tehama	4,560
Merced	44,700	Trinity	763,880
Modoc	11,620	Tulare	700,000
Mono	2,444,550	Tuolumne	233,240
Monterey	50,000	Ventura	4,663,910
Napa	337,080	Yolo	55,197
Nevada	71,910	Yuba	40,940

GRAND TOTAL: $165,108,077

SOURCE Information supplied the Assembly Committee on Revenue and Taxation by the county assessors of California Amador, Inyo, and Sierra Counties did not respond to the Committee's questionnaire None of the tables derived from this source have entries for those three counties

3. *Method of Valuation*

The evaluation of possessory interests in government owned real property has been a continuing source of controversy since the California Supreme Court, in *DeLuz Homes, Inc.* v *San Diego County* (1955), 45 Cal. 2d 546, ruled that there can be no deductions for rental or amortization in arriving at the taxable value of the leasehold

This case overturned the earlier case of *Blinn Lumber Company* v. *County of Los Angeles* (1932), 216 Cal 474, which established the assessed value of a possessory interest as the bonus value of the lease The Blinn case held that in valuation of possessory interest in government-owned land, deductions should be made from gross income for rentals to become due under the lease and for amortization of the costs of improvements by the lessee that would revert to the lessor. In effect, the court in the Blinn case declared it to be unfair and improper to assess a leasehold on any value other than that which could be directly realized on an open market sale.

For over 25 years, possessory interests in California were assessed on a "bonus value" basis During that time, many long term leases were negotiated on publicly owned lands.

In the DeLuz case, the court overturned the Blinn case and revolutionized the method of valuing possessory interests.

The court said that in valuing a leasehold interest in exempt lands and improvements by the capitalization of income method it is improper, in computing the anticipated net income to be capitalized, to deduct from anticipated gross income the lessee's charges for rent, amortization of his investment, or payment of principal or interest on his mortgage debt. According to the manual published by the State Board of Equalization, an appraiser can determine the value of possessory interest by three methods:

1. By determining the present worth of the benefits of use of the property for the probable period of possession without deducting the rentals or other so-called "burdens"
2. By determining the present worth of the reversionary value to the public agency and subtracting that from the present full fee value of the property
3. By using sales prices of the lessee's equities in comparable possessory interests plus the present worth of the future rents

Recognizing that many owners of long-term leases would be adversely affected by the decision, the Legislature, by statute in 1957, required that possessory interests created and still operating under an unrenewed lease contracted before December 25, 1955, must continue to be assessed under the old Blinn rule.[6] In these instances, the value of the taxable interest is actually the bonus value of the lease.

In almost every legislative session since 1955, an attempt has been made to restore the Blinn rule to all possessory interests. After a favorable recommendation of the 1961–63 Interim Committee on Revenue and Taxation, AB 460 was introduced in the 1963 Legislature for that purpose. This measure passed the Assembly but failed in the Senate.

Three factors enter into the consideration of a change of method of evaluating possessory interests: equity, economic effects and constitutionality.

EQUITY

To some, it is inequitable that possessory interests are taxed at all because the fee is in public ownership even though the right to present use and possession is privately held. On this point, the California Supreme Court said in *The Texas Company* v. *County of Los Angeles*, (1959) 52 CA. 2d 55:

> "As we pointed out in the DeLuz Case, the value of a long-term possessory interest may approach the value of the fee, and even in the case of land that does not depreciate in value, the present value of a reversion that cannot be enjoyed for many years may be small compared to the present value of the use in the interim. Thus, the value of the right to use the land in perpetuity may be little greater than the value of the right to use it for the duration of a long term lease, and in such a case a purchaser of the fee of unleased land would pay or agree to pay little more than a lessee would for a long term lease. We would trifle with reality to hold that nevertheless the lessee received nothing of value whereas the purchaser received full value of the fee"

[6] *Revenue and Taxation Code*, Section 107.1.

The real dispute centers on the method of valuation, however, rather than on the question of taxability. Persons supporting a return to the Blinn rule claim that the DeLuz rule puts a tax on a liability (i.e., future rentals) and that this is highly inequitable It is argued that the value of a leasehold is worth no more than the capitalized difference, if any, between the actual rent and a fair rental value. They contend that the bonus value of the lease—the amount for which the lease could be sold—is the equitable method of taxing a possessory interest. However, if carefully evaluated, it can be seen that the DeLuz method of valuation is not inequitable compared to the treatment of like fee-owned property. The rental value of the possessory interest is an indicator of value—just as the sale price is an indicator of value of fee-owned property. If the possessory interest is very valuable, the payments for the lease will be high. Conversely, if a possessory interest is virtually worthless, it can be leased for very little.

If a person leasing a possessory interest pays a lump sum for the privilege at the outset and makes no further payments, then the market price for which he could subsequently sell his interest would reflect the value of the possessory interest If future rents are unpaid, the sales price serves only as an indication of the equity value. This can be compared to fee-owned property where the sale of the equity takes place but the total market value is the sum of the equity and the mortgage which is assumed In other words, if the concept of the old Blinn rule were to be extended to residential property owned in fee, the homeowner would pay property taxes only on his equity in the property rather than on the total value of the property, and the owner of the mortgage, if not a tax exempt entity, would pay tax on the mortgage.

This is not to say that a tax system based on the Blinn rule per se would be inequitable. If all property were to be taxed under this concept the tax might be as sensible or even better than the property tax as it exists in the United States. A net worth tax, as used in some European countries, is a tax on equity—the net assets of a person minus his liabilities. However, much more study of this system of taxation is needed before any moves toward the net worth tax are contemplated in California

ECONOMIC EFFECTS

Valuation of possessory interest under the DeLuz rather than Blinn rule will primarily affect the rentals the governmental lessors are able to secure [6] Instead of being able to charge the lessee high rentals to reflect the tax advantage, governmental units will not get more in net rentals than a private owner of a similar piece of property. Prospective tenants would be unwilling to pay a premium for being on public property Competition between government and private lessors will more nearly be equalized.

The extent of this shifting will result in the distribution of the "tax money" on a broader base—to schools, cities, counties, and special districts—rather than just to the governmental unit leasing the property.

[6] In some instances, the lessor is not a governmental body As an example, in Palm Springs, tenants of tax-exempt land held by the United States government for Indians had possessory interest assessments totaling $3,492,000 placed on their interests

Many of the possessory interests in California are in federal land. The DeLuz rule results in transfering the tax in part at least to the federal government in these instances.

Prior to the DeLuz rule, the premium rentals obtained by airports and harbors were often used to improve physical facilities to the indirect benefit of the tenants. If improvements cannot be financed out of normal operating revenues without the "tax premium," the tax rate of the district must be raised or fees charged to the users of the facilities will have to be increased, or some other type of governmental subsidy will have to be obtained For example, at the public airport, the costs could be charged against the airlines using the field. If the subsidy route were to be used, it would be a visible subsidy rather than a subsidy hidden through reduced assessments, and the public would be in a better position to evaluate the benefits received for the money expended. At this point, the question is always raised as to the equity in subsidizing one form of the transportation industry—airlines and shipping—directly or indirectly through tax preferences while not providing the same help for railroads.

CONSTITUTIONAL QUESTION

There is some question whether the Legislature can reverse the DeLuz rule by other than a constitutional amendment, although the Legislative Counsel has concluded that a basis exists for a statutory change[7] This opinion is based upon *Forster Shipbuilding Company* v. *County of Los Angeles*, (1960), 54 Cal. 2nd, 450, where the court said:

> "This method of determining value was held improper in the DeLuz case, but plaintiffs maintain that the case was based upon a construction of "full cash value" as used in the applicable statutes rather than in the Constitution. We do not, however, reach the question of whether DeLuz declared a statutory or constitutional rule."

4. Tax-exempt Possessory Interests

In 1953, Los Angles County began assessing and taxing the possessory interest in government-owned personal property in the possession of a private party, usually a defense contractor. The United States Supreme Court in 1958 upheld the constitutionality of this form of taxation.[8]

Subsequently, the California Supreme Court struck down this tax in California. In *General Dynamics Corporation* v. *County of Los Angeles* (1958), 51, Cal. 2nd 59, the court ruled that the statutes of California did not authorize such a tax. As a result, Los Angeles County had to refund over $60 million to the contractors Legislation, which was destined to become highly controversial, was introduced at the 1959 legislative session to allow this form of taxation AB 487 passed the Assembly but was killed in the Senate. This defeat was one of the reasons for the ill-fated attempt to reapportion the state Senate in 1960.

While it would appear illogical to tax possessory interests in land and improvements but not in personalty, there has been some fear that if California were to tax possessory interests in personalty we could

[7] Legislative Counsel *Opinion #18121*, dated May 15, 1963
[8] *City of Detroit* v. *Murray Corporation* (1958), 355 US 489.

not compete as effectively for the defense contract dollar. Because of the great volume of the defense contract business done in California, the question is of major concern. Recent figures show that approximately 23 percent of all prime contracts awarded by the Department of Defense and 61 percent percent of the prime contracts awarded by NASA went to California firms.[9] As a result, according to reports of the California Department of Industrial Relations, 35.3 percent of California's manufacturing workers are employed in the aircraft, missiles, and electronics fields.

Anticipated reductions in federal spending on defense contracts make the problem even more critical and interstate competition even more intense. California's share of military prime contracts for the first three months of 1964 amounted to $1,113,871,000 or 18.7 percent of the national total, compared with $1,508,376,000 or 23.4 percent of the national total for the 1963 period.

Over a longer term the decline was softer. California's share of prime contracts for the nine months through March 31, 1964, totaled $3,695,312,000 or 21 4 percent of the national total, compared with $4,149,594,000 or 23 2 percent a year earlier. This was offset, however, by a doubling in California's share of contracts of the National Aeronautics and Space Administration for the latter half of 1963, the latest statistical period available. The state's share jumped from $371,308,000 in the first half of 1963 to $717,250,000 in the second half—50% of the national total.

The net result of military and NASA contracts combined so far has been a slight sag in statewide manufacturing employment—in an ever-growing labor market—but not an acute decrease. For June, 1964, combining the four federal categories principally involved in aerospace and missiles—ordnance, electrical equipment, aircraft, and instruments—in the Los Angeles-Long Beach metropolitan area that is the industry's heart, employment slipped from 356,800 of a year before to 350,200, a drop of 1.8 percent.[10]

In 1959, New York Governor Nelson A. Rockefeller vetoed three measures which would have permitted the taxation of possessory interests in government-owned personal property in New York. In his veto message, Rockefeller said:

> "These bills by imposing an unexpected burden, may cause these firms to leave the state Many of the affected firms are large, multi-plant companies which keenly compare the cost of the operations of their several plants located in different states. They are in a position to shift production to plants in other parts of the country.
>
> "Even more drastic could be the effect of these bills on the awarding of defense contracts by the federal government. The burden which would be imposed by these bills could be a sufficient make-weight in federal decisions to cause contracts and new installations to be placed elsewhere." [11]

[9] Statement by Hon Robert W Crown, Chairman of the California Assembly Committee on Ways and Means, before the United States Senate Subcommittee on Employment and Manpower. November 7, 1963.
[10] New York Times News Service reported in the *Sacramento Bee*, August 16, 1964
[11] Quoted in Karl E Wolf, "Taxation of Contractors' Possession and Use of Government Property," *Proceedings of the National Tax Association*, 1961, Harrisburg, Pennsylvania, pp. 507-509

Philip Watson, Los Angeles County Assessor, has determined that the enactment of a possessory interest tax would add 3 1 cents per labor hour to contract costs [12]

It would be folly to argue, however, that the possessory interest in government-owned personal property is of no value to the lessee In many cases, the value to the lessee is as great as if the property were owned outright In a limited way, the tax exemption frees capital for other types of activities To the extent that these businesses compete with businesses which do not enjoy this kind of tax exemption, there is an equity.

If the Legislature were to allow local governments to tax possessory interests in government-owned personal property, the tax base in a number of areas would be broadened substantially Assessor Watson, an advocate of this plan, estimates that an additional $550,000,000 in assessed value could be placed on the tax rolls in his county.[13] Over $30,000,000 in additional tax revenue from this source would permit a property tax reduction for all other property owners The tax impact would also be great in other aerospace oriented centers such as San Diego, Sacramento, Santa Clara and Santa Barbara Counties. Revenue estimates must be hedged by the assumption that the tax impact will not cause relocation of contractors or shifting of contracts If this were to happen, potential revenues could be substantially reduced. If economic activity is not reduced, a possessory interest tax simply means that part of California's tax burden can be shifted onto the federal government or onto the defense contractor.

It has been reported that some industry opposition to a possessory interest tax has been diminished as a result of a decision by the Armed Services Board of Contract Appeals in February 1964.[14] The board upheld the government position, ruling, in effect, that personal property taxes on property owned in fee by the contractor and used for commercial businesses were not allowable as an allocable cost against defense contracts since possessory interests in government-owned personal property are not taxable under California law

The desirability of tax-exempt status for possessory interests in government-owned personal property essentially hinges on two questions·

1. Would a possessory interest tax, raising costs approximately 3 1 cents per contract hour, have any measurable impact in causing defense contracts to be shifted to states without such a tax?

If the answer to this question is no, then the possessory interest tax would be highly desirable as it would enable Californians to ·shift some of their property tax burden to the federal government. However, a categorical yes or no cannot be given to this question.

Most defense contracts are not awarded as a result of competitive bidding. The government recognizes other factors, such as plant facilities and skills of the labor force in awarding contracts.

However, the percentage of prime contracts awarded by the Department of Defense through open competition was up from 32 9 percent

[12] Letter from Philip Watson to Hon Edmund G Brown, Governor of California, April 3, 1964
[13] Letter from Philip Watson to Hon Nicholas C Petris, dated Ferbuary 11, 1964
[14] Armed Services Board of Contract Appeals, Appeals No. 6196, 6197, 6386 of Lockheed Aircraft Corporation, Decision, February 3, 1964.

in fiscal 1961 to 38 6 percent in fiscal 1964.[15] Under competitive bidding, a contractor obviously must add the cost of a possessory interest tax to his bid. This is an increase in the cost of doing business. Whether this marginal cost will be enough to influence the outcome of the bid is speculative. Procurement under noncompetitive bidding is at the whim of the buyer. Higher costs due to a possessory interest tax would not necessarily preclude a contractor from obtaining a contract even though these costs may be raised above those of a competitor. As an alternative, the defense contractor may choose to absorb this added cost rather than including it in his bid To this extent the possessory interest tax would be absorbed by the stockholders of the company.

2. Should the state, in effect, subsidize certain industries by giving tax relief?

If one accepts the universality of the property tax, then an exemption which primarily benefits one industry can be called an indirect subsidy The desirability of such an approach will depend on one's point of view. However, a decision to grant tax relief to one industry can only be justified under exceptional circumstances, most would agree. Other California industries in addition to the aerospace industry, are in competition with firms in states with no personal property taxes. The taxation of personal property, particularly business inventories, may be inequitable and economically undesirable per se. If this is the case, there is no merit in singling out possessory interests in personalty for taxation. This question will be examined in some detail in a subsequent section of this report.[16]

It should also be kept in mind that if a possessory interest tax were to be enacted, the benefits would accrue only to a very limited number of taxing jurisdictions. Not more than five or six counties and 10 or 12 school districts would receive any substantial benefit. This new revenue could be spread statewide by the elimination of the present exemption from the sales tax of sales to the United States Government Such a tax would hit approximately the same property that a possessory interest tax would hit.

C. TAXABLE PUBLIC PROPERTY

Not all publicly owned property is exempt from taxation By virtue of a constitutional amendment adopted in 1914, the property of a city, county, or municipal corporation located outside its own borders is taxable if it were taxable to its prior owner. However, only the land is taxed, none of the improvements constructed by the government owners are assessed or taxed

This clause was added to the Constitution to protect counties from one another. The mountain counties, already burdened by expanses of undeveloped acreage and much federally owned land, saw still more property taken from their rolls when it was purchased as watershed by the urban counties. In turn the urban counties were protected by sections of this amendment which limited the taxable valuation to the condition in which the land was when it was purchased. Publicly owned summer camps, dams, and bridges, for example, are assessed

[15] George C Wilson, "Cost Cutting Set as Major Industry Factor," *Aviation Week and Space Technology*, July 13, 1964, p 18.
[16] See Section Five, Part One, p 146.

as land only and in one case a modern jet airport runway and terminal building are assessed as unimproved land In fact, the airport is actually assessed as underwater land, since it has been constructed on land filled since the purchase. Without the provision for taxation of this publicly owned land the small tax base of many counties would be even further diminished by the holdings of other government units. One county could actually buy another into bankruptcy if it weren't for the clause allowing taxation of the land if it were subject to taxation at acquisition

This property is assessed by the local county assessor, but the figure is "subject to review, equalization and adjustment"[17] by the State Board of Equalization. We have found it impossible to get an accurate value of the total assessment placed on taxable public property in this state.

TABLE XI

Value of Taxable Property of Governmental Units: 1963

Alameda	$28,342,000	Orange	$9,770
Alpine	Unknown	Placer	116,760
Amador		Plumas	Unknown
Butte	Unknown	Riverside	Unknown
Calaveras	10,000	Sacramento	60,725,970
Colusa	None	San Benito	32,770
Contra Costa	900,000	San Bernardino	Unknown
Del Norte	None	San Diego	None
El Dorado	700,000	San Francisco	Unknown
Fresno	1,650,000	San Joaquin	13,100,000
Glenn	N/A	San Luis Obispo	200,000
Humboldt	None	San Mateo	10,972,000
Imperial	None	Santa Barbara	250,000
Inyo		Santa Clara	1,231,220
Kern	666,450	Santa Cruz	238,310
Kings	N/A	Shasta	Unknown
Lake	Unknown	Sierra	
Lassen	None	Siskiyou	1,077,000
Los Angeles	Unknown	Solano	433,440
Madera	37,430	Sonoma	85,160
Marin	87,210	Stanislaus	140,280
Mariposa	None	Sutter	2,000
Mendocino	546,070	Tehama	None
Merced	37,520	Trinity	Unknown
Modoc	None	Tulare	70,000
Mono	Unknown	Tuolumne	3,300,000
Monterey	6,470	Ventura	85,180
Napa	Unknown	Yolo	Unknown
Nevada	31,200	Yuba	395,925

KNOWN GRAND TOTAL: $125,480,135

SOURCE: Information supplied the Assembly Committee on Revenue and Taxation by the county assessors of California

As shown in Table XI, eighteen key county assessors reported that they have no idea how much public property in their county is taxable. Forty other assessors reported a total assessed value of $125,000,000 for public property in 1963. The total could easily be double this figure

The major point of dispute among the counties in the taxation of publicly owned land is the assessment of water rights. This is not to

[17] *Constitution of California*, Article XIII, Section 1.

be confused with watershed which has been subject to taxation since 1914.

Watershed is the land itself, the hillside from which the runoff from melting snow is captured and diverted to storage reservoirs. Water rights are the privileges which accompany ownership of land through which a stream runs. Large cities and municipal utility districts have purchased mountain land traversed by streams to serve as water supply sources for people living hundreds of miles away. The "counties of origin" point out that these rights are taxable to the owning jurisdiction under Section 1 of Article XIII which defines property to include moneys, credits, bonds, stocks, dues, franchises, *and all other matters and things*, real, personal, and mixed, capable of private ownership.[18]

Since 1934, the courts have held that water rights accompany the public ownership of land and that these rights are taxable to their government owner if the land were taxable when the government acquired it [*City and and County of San Francisco* v. *County of Alameda* (1934), 5 Cal 2d 243.]

This tax status is generally accepted, but the standards for assessing have never been agreed upon Even the court is undecided.

> "Placing a value on the usufructuary right to divert water separate and apart from the structures which are necessary to divert it, presents a knotty problem which does not admit to an entirely satisfactory solution.[19]

The dams, sluices, and other structures constructed by the government owners are free of taxation, but the "right to the water" remains assessable and the subject of much controversy.

The jet airport mentioned earlier is the San Francisco International Airport, located in San Mateo County The entire complex has been developed by bond issues voted by the people of San Francisco and financed by their taxes with supplements from airport revenues. The airport, the airlines based there, and the services attendant to this facility create the largest single employer for San Mateo County By law, the San Mateo County Assessor must assess the airport property in the condition in which the land was when acquired and he may not tax improvements constructed by San Francisco The land on which the main terminal is situated as well as runways themselves were all under water when San Francisco purchased the property, and they are assessed with this understanding Yet the taxable figure jumped from $1,100,000 in 1962 to $3,900,000 in 1963

The law covering assessment of government property held outside the owning jurisdiction's boundary was designed to protect the smaller counties from economic oppression by their larger neighbors, but through interpretation, especially in the field of water rights, it has worked to the economic oppression of the larger counties In the case of San Francisco Airport, the law puts a burden on a small group of taxpayers for the support of a regional facility The airport serves the needs of six million people and firms in the bay area, including those in San Mateo County, and yet only San Francisco taxpayers are re-

[18] *Constitution of California*, Article XIII, Section 1 (Emphasis added)
[19] *County of Tuolumne* v. *State Board of Equalization* (1962) 206 Cal. App. 2nd 352.

quired to pay the tax tab for the airport. While San Mateo County provides the airport with certain services such as police and fire protection the county benefits from the facility in many ways and takes in much more in revenue than the cost of the services which are provided. If San Mateo County had built the same airport in the same location it would be tax free, but in the present situation, San Mateo derives a tax windfall from a facility it did little to develop San Franciscans had the foresight to build the airport, but San Mateo County takes the tax revenue San Francisco has spent $65 million in bond funds and the federal government has added $11 5 million ($10 million in development money as a trade for Treasure Island) to produce a modern international airport. The airport's annual payroll comes to $150 million and is drawn mainly by residents of San Mateo County. The county derives sales tax from this payroll when it is spent in local shops, but it continues to tax the public source which offers it. This is a unique situation in the state, and it appears that San Franciscans deserve some relief.

IV. INEQUITY OF RESOURCES IN TAXING JURISDICTIONS

Every county, every city, and every school district must provide certain services for its citizens. In turn the citizens of these cities and counties must pay property taxes to support these local governments. Their individual property tax burden is measured by the total assessed valuation of property in the taxing jurisdiction divided by the yearly budget to be met.

This sounds simple and reasonable enough until the division is performed If the taxable resources are seriously limited in the taxing jurisdiction, high rates must be charged to meet costs The boundaries of the government units are political boundaries, not economic boundaries, so the need within the county may not reflect the ability to pay. Certainly as assessed valuation rises the level of service will rise, but there is a basic demand which is not always sufficiently covered by the tax capacity of the district. It will be noted in a subsequent section of this report that there are certain difficulties in using assessed value as a measure of fiscal capacity.

In the nine counties which surround San Francisco Bay per capita assessed value ranges from $1,380 to $2,227, and the high and low are found in bordering counties as shown in Table XII

TABLE XII

Per Capita Assessed Valuations Subject to General County Taxation, San Francisco Bay Area Counties: 1963

Solano	$1,380 49
Napa	1,475 47
Alameda	1,675 53
Sonoma	1,816 29
Marin	1,913 81
San Mateo	1,952 65
Santa Clara	2,085 09
San Francisco	2,106 59
Contra Costa	2,227.66

SOURCE Computed from Board of Equalization, *Annual Report*, 1962–63, and Department of Finance provisional population estimate for 1963.

Such disparity can only be reflected in differing levels of services, and when the counties are adjoining the difference is exaggerated. In southern California the range is just as pronounced. San Diego has a per capita assessed valuation of $1,543, while Santa Barbara County shows $2,127 per capita. Even more widely separated per capita valuations can be found within single counties. Emeryville, in Alameda County, has a figure of $19,640, while the City of Alameda had only $1,093 to back up each citizen as shown in Table XIII.

TABLE XIII

Per Capita Assessed Valuations Subject to City Taxation, Cities of Alameda County: 1963

Alameda	$1,093 26
Pleasanton	1,108 02
Livermore	1,251 48
Albany	1,276 70
Hayward	1,460 61
Fremont	1,546 74
Newark	1,683 64
Berkeley	1,687 54
Oakland	1,859 52
Union City	2,308 82
San Leandro	2,365 60
Piedmont	2,423 54
Emeryville	19,640 21

SOURCE: State Controller, *Annual Report of Financial Transactions Concerning Cities of California, 1962–63.*

The wide differences in city figures do not affect individual county taxes, but they do create hardships for local school districts and cities. Using the example above, we see that Emeryville, an industrial city with approximately 600 students in its school system, hasn't the financial problems of neighboring Alameda, which has approximately 11,000 students in its school district.

The poorer areas in the state must make a hard choice—either provide lesser quality services or charge higher tax rates, a decision which is likely to turn many a representative out of office. Under the generally accepted pattern of like treatment of like properties some of these districts could not exist. A $20,000 home in the poorer area must bear a heavier burden than would the same home were it in one of the richer districts. The person in a city with limited tax resources may have to pay twice as much as his neighbor living across the street but in a different city, for the same services, although the value of their property is the same.

The creation of special districts in part demonstrates the inadequacies of older forms of local government in the supply of needed services. For the most part the city and county boundaries are fixed. Social needs of growing communities, changing technology, and rapid development are not restricted by political subdivisions. Possibly the

area encompassed by special districts are better indicators of need than rigid city or county lines. But the problem remains that the counties and cities are the basic units of local government, and they are defined by political boundaries which do not represent taxable capacity, population, geography, or resources, both human and mineral.

The local school boards, in cooperation with the state, solve this problem with equalization aid and basic aid, which insure at least a statewide minimum level of education It may be possible to remedy the city and county disparity by some formula of state aid. If a taxing jurisdiction has a capacity below a stated level, it might be aided by the state, however, the level at which state aid would begin should be carefully defined before such a program is proposed.

V. INCIDENCE OF THE PROPERTY TAX

Who actually bears the burden of the property tax in California? Measuring tax incidence [20] even under most favorable circumstances is difficult and fraught with danger In the area of property taxation, a precise determination of tax incidence is impossible. Many useful data are available, however, from which the initial distribution of property tax burden by class of property and by income group can be determined within a limited tolerance range

Statewide distribution of assessed value in 1961 by various types of property was as follows:

TABLE XIV

Gross Assessed Value—Statewide: 1961

	Assessed Value (millions)	*Percent*
Railroads *	$344	1.0 †
Gas and electric companies *	2,246	6 7
Telephone and telegraph *	1,435	4.3
Other public utility *	40	.1
Commercial property	3,565	10 7
Industrial property	1,642	4 9
Farms and acreage	2,355	7.1
Vacant lots	737	2 2
Single-family houses	13,046	39 3
Other residential	1,787	5 3
Personal property (other than utility)	4,788	14 4
Other and unallocable	1,164	3 5
Total	$33,149	

* Includes personal property
† Figures may not add to 100 due to rounding
SOURCE Computed from U S Department of Commerce, Bureau of the Census, *Census of Governments* 1962, *Taxable Property Values*, and State Board of Equalization, *Annual Report*, 1960–61

[20] Incidence is the ultimate resting of a tax upon some individuals or class who cannot shift it further

Assessed values of locally assessed real property by income groups in 1961 show:

TABLE XV

Assessed Values of Locally Assessed Real Property by Income Groups: 1961

Assessed value level	All types	Nonfarm residential	Acreage and farms	Commercial and industrial	Vacant lots	Other and unallocable
	Percent of all properties assessed					
Total	100 0	69 0	9 8	3 1	18 4	0 8
Properties assessed at						
Less than $500	18 2	1 2	3 6	----	12 8	0 6
$500 to $999	7 1	3 2	1 0	----	2 7	0 1
$1,000 to $2,999	32 7	28 4	2 0	0 2	2 2	----
$3,000 to $3,999	16 9	16 1	0 5	0 1	0 2	----
$4,000 to $4,999	9 1	8 5	0 4	0 1	0 1	----
$5,000 to $6,999	7 4	6 0	0 7	0 4	0 2	----
$7,000 to $14,999	6 1	3 7	0 9	1 2	0 1	----
$15,000 to $49,999	2 2	0 7	0 5	0 8	----	----
$50,000 or more	0 3	----	----	0 2	----	----
	Percent of all assessed value					
Total	100 0	62 5	9 9	21 9	3 1	2 5
Properties assessed at						
Less than $500	0 9	0 2	0 2	----	0 6	----
$500 to $999	1 3	0 6	0 2	----	0 5	----
$1,000 to $2,999	17 0	15 1	0 9	0 1	0 9	----
$3,000 to $3,999	14 6	13 9	0 5	0 1	0 2	----
$4,000 to $4,999	10 1	9 5	0 4	0 1	0 1	----
$5,000 to $6,999	10 8	8 8	1 0	0 6	0 2	----
$7,000 to $14,999	14 6	8 8	2 4	2 9	0 4	----
$15,000 to $49,999	13 4	4 3	3 1	5 5	0 3	0 1
$50,000 or more	18 3	1 3	1 2	12 6	0 1	2 3

SOURCE Census of Governments, 1962, *Taxable Property Values*, p 47

Property tax burdens cannot be assumed to be in the same proportion to the above tables due to the different tax rates and assessment practices within the various taxing jurisdictions Tax rates are almost uniformly lower in the rural counties and the portions of the populous counties with heavy industrial development An analysis of the distribution of assessed value by class of property in four counties with some of the highest average tax rates illustrates this point:

TABLE XVI

Distribution of Assessed Value by County (San Francisco Bay Area): 1961

ALAMEDA COUNTY

	Percent of assessed value
Single family	41 0 †
Other residential	5 8
Farms	0 6
Vacant lots	1 3
Commercial and Industrial	20 5
Other	0 2
Public Utility *	11 6
Personal Property	18 9

Average tax rate in Alameda County in 1961: $9 27

SAN FRANCISCO COUNTY

	Percent of assessed value
Single family	23 4 †
Other residential	14 3
Farms	–
Vacant lots	1 0
Commercial and Industrial	30 9
Other	–
Public Utility *	11 3
Personal Property	18 8

Average tax rate in San Francisco County in 1961: $8 34

SAN MATEO COUNTY

	Percent of assessed value
Single family	53.8 †
Other residential	5.4
Farms	3 1
Vacant lots	2 2
Commercial and Industrial	12 2
Other	0.9
Public Utility *	8 1
Personal Property	14 3

Average tax rate in San Mateo County in 1961 $8 37

CONTRA COSTA COUNTY

	Percent of assessed value
Single family	44 6 †
Other residential	0 6
Farms	4 1
Vacant Lots	2 0
Commercial and Industrial	19 S
Other	0 5
Public Utility *	19 1
Personal Property	9 1

Average tax rate in Contra Costa County in 1961. $8 59

* Includes personal property
† Figures may not add to 100 due to rounding
SOURCE Computed from U S Department of Commerce, Bureau of the Census, *Census of Governments*, 1962, *Taxable Property Values*, and State Board of Equalization, *Annual Report*, 1961–62

In Los Angeles County, which has approximately 37 percent of the total assessed valuation of the state, and a tax rate approximately at the state average, the following distribution of assessed valuation is more significant in terms of measuring tax burdens:

TABLE XVII

Distribution of Assessed Value, Los Angeles County: 1961

	Percent of assessed value
Single family homes	44 3 †
Other residential	9 1
Farms	1 1
Vacant lots	2 5
Commercial and Industry	18 3
Other	9.1
Public Utility *	8.6
Personal property	16 0

* Includes personal property
† Figures may not add to 100 due to rounding
SOURCE Computed from U S Department of Commerce, Bureau of the Census, *Census of Governments*, 1962, *Taxable Property Values*, and State Board of Equalization, *Annual Report*, 1961–62.

From an analysis of assessed valuations on a county-by-county basis, using average county tax rates, it is possible to generalize on property tax incidence by classes of property. Due to the variations in tax rates within counties, the percentages below are only approximate guides and not absolute.

TABLE XVIII

Estimated Percentage of Property Tax Paid by Class of Property in California: 1961

	Percent of assessed value
Single family homes	41.7 †
Other residential	5 6
Farms and acreage	6 0
Vacant lots	2 3
Commercial	10 8
Other	3 5
Public utility *	11 0
Personal property	14 6
Industrial	4 9

* Includes personal property
† Figures may not add to 100 due to rounding
SOURCE Computed from U S Department of Commerce, Bureau of the Census, *Census of Governments*, 1962, *Taxable Property Values;* and State Board of Equalization, *Annual Report*, 1960–61.

More accurate determination of actual property tax incidence by class of property requires one further step—an analysis of the shifting of the tax from one class of property and one taxpayer to another

Some positive statements with respect to shifting can be made

1. The tax on real and personal property owned by individuals who do not itemize their deductions for federal income tax purposes will not be shifted. Taxpayers who itemize will be able to pass on from 14 to 70 percent of their property tax to the federal government depending on their income class

According to the United States Treasury Department, deductions are itemized on 39 percent of all tax returns. Of these, 69 percent include deductions for real estate taxes. The total amount deducted from the federal income tax for real estate taxes in 1961 was $4,136,718,000—or 35 percent of the total amount of property taxes collected from individuals in the United States.[21] Assuming California is typical, approximately 7-8 percent of the property tax paid by individuals is passed on to the federal government.

2. For corporations, 50 percent of the tax paid by firms earning more than $25,000, and 22 percent of the tax paid by all other corporations can be passed on to the federal government. Ability to shift the balance of the tax will depend on the nature of the corporations.

With respect to shifting the balance of the tax, certain limited generalizations have been widely accepted.

For public utilities, it is quite likely that the property tax can be passed on to consumers.

For other property, taxes on land value will not be shifted but can be capitalized when the property is purchased. It will be possible to shift property taxes on business improvements and personal property to consumers, depending on competitive conditions. Taxes on rental property may be shifted to renters except that long-term leases, rent controls, and competitive conditions in declining neighborhoods may block such shifting.[22]

In considering the impact of the property tax by income groups, several studies point to the fact that the tax as a percentage of income is higher for low income groups (regressive). Dr. Gerhard Rostvold of Pomona College presented evidence to this committee in Los Angeles in November 1963, showing the regressive nature of the portion of the property tax falling on homeowners A survey of several hundred householders in eastern Los Angeles County in 1959, by Dr Rostvold and his associates disclosed the following relationship between household income and property tax payments:

[21] U S Department of Commerce, Bureau of the Census, *Government Finances in 1961*, Washington, D C , GPO, 1962, p 18 and U S House of Rep Committee on W & M, *President's 1963 Tax Message*, Part 1, Washington, D C GPO, 1964, pp 232, 235 and 236

[22] See William J Shultz and C Lowell Harriss, *American Public Finance*, Englewood Cliffs, N J Prentice-Hall, 1960, pp 400-402

TABLE XIX

Relation of Household Income to Property Tax, Los Angeles County: 1959

Annual household income	*Property tax payment as a percentage of household income*
$3,000	6 95%
4,000	6 00
5,000	5 35
6,000	4 70
7,000	4 15
8,000	3 95
9,000	3 80
10,000	3 60
11,000	3 10
12,000	3 20
13,000	3 26
14,000	3 10
15,000	3 03
16,000	2 90
17,000	2 86

SOURCE Testimony of Gerhard N. Rostvold before Assembly Committee on Revenue and Taxation, Los Angeles, November 15, 1963

This study, however, does not consider shifting. Several other studies have attempted to measure property tax incidence considering the effects of shifting. These studies are based on assumptions of shifting rather than from the collection of empirical data. They exclude the shadowy area of shifting at the time of sale of the property.

All of the recognized studies have reached the same conclusion: The property tax is definitely regressive. Probably the best known of these studies is the one by Richard Musgrave for a congressional subcommittee on tax policy in 1955 For the purpose of his study, Musgrave assumed that property taxes on business and tangibles, inventories, implements, equipment, and improvements to land all shift to consumers while property taxes on residences either shift to the owners or tenants and property tax on farm and business land are also borne by the owner. The findings of this study are shown in Table XX.

TABLE XX

1954 Tangible and Intangible Property Taxes Paid in the United States as Percent of Income

Income class	*Percent of money income*
Under $2,000	4.8
$2 000 under $3,000	4 3
$3,000 under $4,000	4 1
$4,000 under $5,000	4 1
$5,000 under $7,500	3 8
$7,500 under $10,000	3 6
Over $10,000	3 4
All incomes	3 8

SOURCE Richard A Musgrave, *"The Incidence of the Tax Structure and Its Effects on Consumption," Federal Tax Policy for Economic Growth and Stability*, Papers submitted by Panelists Appearing before the Subcommittee on Tax Policy, Joint Committee on the Economic Report. U.S. Government Printing Office, Washington, 1956, p 93.

Musgrave also made a study of property tax incidence in Michigan for that state's 1958 tax survey. His assumptions were:

— Property taxes on owner-occupied residences do not shift

— 75 percent of the property taxes on local industries and retail establishments shift to consumers with the balance falling on the owners of land and not shifting.

— Property taxes on manufacturing firms in Michigan which dominate the national market (such as automobiles) shift while those on national industries where Michigan firms' contribution to the total national market is small do not shift.

— Property taxes on public utilities are shifted to the consumer.

— Property taxes on farms do not shift.

His findings are shown in Table XXI.

TABLE XXI

1956 Michigan Tangible and Intangible Property Taxes as Percent of Income

Income class	*Percent of money income*
Under $2,000	9 14
$2,000 under $3,000	5 13
$3,000 under $4,000	3 99
$4,000 under $5,000	3 24
$5,000 under $7,000	2.92
$7,000 under $10,000	2 48
Over $10,000	2 92
All Incomes	3 20

SOURCE Richard A Musgrave and Darwin W Daicoff, *"Who Pays the Michigan Taxes," Michigan Tax Study Staff Papers*, Lansing, Michigan, 1958, pp. 138–139 See also pp 134, 138–140, 144–145, 147–148, 161–163, 174–177.

The report of the University of Wisconsin tax study committee in 1959 described the regressivity of property taxes in Wisconsin as follows:

TABLE XXII

1956 Wisconsin Property Taxes as Percent of Money Income

Income class	*Percent of money income*
Under $2,000	13 77
$2,000 under $3,000	7 40
$3,000 under $4,000	6 05
$4,000 under $5,000	5 33
$5,000 under $6,000	4.87
$6,000 under $7,500	4 70
$7,500 under $10,000	4.49
Over $10.000	4 63
All incomes	5 53

SOURCE University of Wisconsin Tax Study Committee, *Wisconsin's State and Local Tax Burden*, Madison, Wisconsin, 1959, pp 49 and 57. See also pp 38–48

The assumptions of shifting for this study are much the same as those made by Musgrave with the exception of an estimate that 25 percent of the taxes on land (other than owner-occupied residences) shift.

In the *National Tax Journal* of December 1962, Thomas F. Hady discusses the incidence of the personal property taxes in Minnesota After allocating proper shifts to the federal government, Hady concludes that retailers can shift the balance of their personal property taxes to consumers, that manufacturers can shift one-third of the balance to the residents of the other states but must absorb the rest, that public utilities will shift the balance to the consumers and that the property tax on farms will not shift.

His conclusion as to the regressivity of the personal property tax in Minnesota is shown in Table XXIII.

TABLE XXIII

Distribution of Personal Property Tax Incidence Among Minnesota Income Groups: 1958

Income class Allocation 1 (most likely)	*Tax as percent of income*
$0 to $2,000	1.6
2,000 to 3,000	1.1
3,000 to 4,000	.8
4,000 to 5,000	.6
5,000 to 7,000	.6
7,000 to 10,000	.5
10,000 plus	.7
Total	.7

SOURCE Thomas F Hady, "The Incidence of the Personal Property Tax," *National Tax Journal*, December, 1962, pp 368–384

As a part of the tax study conducted by the California Assembly Committee on Revenue and Taxation, Dr. Levern Graves of California State College at Fullerton, has made a study of the tax incidence of the total tax structure in California In this study he has also broken out the incidence of the property tax

His findings are shown in Table XXIV.

TABLE XXIV

Property Tax Payments as a Percentage of Family Personal Income After Federal Income Tax

Income group	*Percentage*	*Income group*	*Percentage*
Under $2,000	9 21	$5,000– 5,999	7 42
2,000–2,999	10 44	6,000– 7,499	7 03
3,000–3,999	9 05	7,500– 9,999	6 19
4,000–4,999	7 99	10,000–14,999	5 01
		15,000–over	5 63

Considering virtually unanimous agreement among the many studies of property tax regressivity, it is safe to conclude that the property tax in California is regressive in that those with lower incomes will pay a higher percentage of their income in property taxes than will those with higher incomes.

VI. STATE AND LOCAL TAX BURDENS IN CALIFORNIA: THE PROPERTY TAX COMPARED WITH STATE TAXES

by
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A. *Introduction*

The present study endeavors to estimate the distribution of the burden of state and local taxation in California. The method employed for this purpose is the standard one of allocating the taxes collected during a specific year among consumer units [1] The year selected was 1961 because this is the latest year for which the necessary data was available. A comprehensive estimate of this kind for California has not been undertaken before, in fact, a careful search of the literature published on this subject in recent years reveals that similar studies are available for only three other states [2]

There are at least two good reasons for the relatively small amount of research that has been done in this area. In the first place, tax burden estimates require large amounts of data on such diverse subjects as the distribution of aggregate income and various types of income, the distribution of total and specific consumption expenditures, the amounts and types of taxes collected and the ownership and distribution of taxable property to mention only the most obvious. Such data are, if not entirely absent, at least seriously deficient in a number of respects.

More important than inadequacies in the data, perhaps, are problems having to do with questions of tax shifting and incidence. Accurate tax burden estimates require a high degree of knowledge with respect to the shifting and incidence of particular taxes However, there is very little empirical evidence available with respect to this important subject. Therefore, it is necessary to employ more or less arbitrary assumptions based on theoretical reasoning. Such assumptions can, at best, be regarded as no more than a reasonable approximation of the actual situation This means, of course, that in a very real sense the investigator assumes the conclusions which later emerge from his statistical analysis. It also means that tax burden estimates, including those presented in this study, must be viewed as approximations of the actual distribution of the tax load, rather than as empirically verified facts.

[1] I am indebted to Professor Paul T Kinney of the California State College at Fullerton, and Professor Frank H Jackson of Alma College, Alma, Michigan, for their helpful comments and criticisms I would also like to take this opportunity to express my appreciation to the staff of the Assembly Committee on Revenue and Taxation, especially David R Doerr, the committee consultant, and Raymond R. Sullivan, assistant consultant Their cordial willingness to assist me in numerous ways made a difficult task much easier.

[2] R. A Musgrave, D W Daicoff, and W Darwin, "Who Pays Michigan Taxes," *Michigan Tax Study, Staff Papers*, 1958, 131–83, O H Brownlee, 'Estimated Distribution of Minnesota Taxes and Public Expenditure Benefits," University of Minnesota 1958 (mimeographed), and *Wisconsin State and Local Tax Burdens: Impact, Incidence and Tax Revision Alternatives* (Madison, University of Wisconsin Tax Study Committee, 1959), pp 36–61.

The uncertainty associated with tax incidence has led some economists to question the wisdom of attempting to statistically determine the tax burden falling on any particular group These economists prefer to confine their appraisals of the distribution of the tax burden to the realm of theory where the *ceteris paribus* assumption may be invoked [3] While there is much to be said for the point of view, it ignores at least one of the basic facts of life This is the fact that, whatever the state of our knowledge of the incidence of particular taxes, legislators are faced with the necessity of making decisions concerning the tax structure In so doing, the way in which the tax burden is being distributed among income classes should be an important consideration It is with the view that these decisions are better made on the basis of imperfect knowledge than no knowledge at all that the tax burden estimates in this study are presented

B. *Income Concepts*

Since the burden estimates presented in this paper are designed to show the proportion of their income which consumer units in various income classes devote to the payment of taxes, the initial problem that is encountered is the selection of an income base against which the burden of taxation can be measured The importance of this problem cannot be overemphasized Earlier studies have shown that while a considerable amount of latitude employed with respect to shifting and incidence assumptions does not greatly affect the overall pattern of burden distribution, an equal amount of latitude employed in the selection of an income base does have a significant impact.[4]

The income concept used in the computation of the tax rates which appear in this study is family personal income (as defined by the Office of Business Economics of the U S Department of Commerce), minus federal income taxes Other concepts which might have been employed and which have been used by other writers include: adjusted gross income, taxable income, and money income before or after personal income taxes. The principal reason for selecting family personal income rather than any of these latter concepts is that it includes various types of income in kind which are not included in money income or in income reported for tax purposes Since such income contributes to economic well being, it must be included in the income base against which the tax burden is to be measured Indeed, failure to do so would lead to burden estimates that give a distorted picture of the actual distribution of the tax load.

Appropriate though it may be as an income base for measuring tax burdens, an income concept can be used for this purpose only if its distribution among income classes is known While data relative to the

[3] See in this connection Professor Jackson's excellent paper on the Hawaiian tax burden F H Jackson, *The Tax Burden and the Hawaiian Tax System* (Honolulu, Economic Research Center, University of Hawaii, 1960), 47 pp, and R F Colli er, "Some Empirical Evidence of the Tax Shifting," *National Tax Journal*, Vol XI (March 1958), pp 16–50

[4] R A Musgrave, "Distribution of Tax Payments by Income Groups A Review," *Proceedings of the Forty-fifth Annual Conference of the National Tax Association* (1952), pp 119 ff, and R S Tucker, "Distribution of Tax Burdens in 1948," *Ibid*, pp 195 ff

distribution of family personal income is available for the United States as a whole, similar data is not available for the State of California or for any other state. Thus, before any tax burden estimates could be computed it was necessary to estimate a California distribution of family personal income The precise method that was used to accomplish this task is discussed in detail in Part H. Suffice it to say here that the general procedure followed was to compare Department of Commerce estimates of the distribution of consumer units by family personal income class for the United States as a whole with a similar distribution by money income class available from the Bureau of Labor Statistics From this comparison there was obtained a series of population relatives. These population relatives were then applied to a B L.S estimate of the distribution of California consumer units by money income class in order to derive the distribution of California consumer units by family personal income class For example, if the national income distributions indicated that the percentage of the total number of consumer units within a particular personal income class was twice as large as the percentage within the same money income class the population relative obtained was two On the assumption that this same relationship would hold for California, the B L S. estimate of the percentage of California consumer units within that money income class was multiplied by two. A repetition of these computations for each income class resulted in the family personal income distribution that is shown in Table XXV. The personal income class means that are shown in this table were estimated by an analogous procedure.

Although time considerations precluded the application of appropriate statistical techniques to test its accuracy, there are at least three reasons to believe that the estimated distribution represents a reasonably good approximation of the actual distribution of family personal income in California In the first place the estimated distribution behaves in precisely the manner one would expect on the basis of *a priori* reasoning. Since both the per capita and the median income in California are well above those for the nation as a whole, one would expect to find a larger proportion of California consumer units in the higher income brackets than would be the case nationally. As can be seen by comparing Table XXV with Table XXVI in which the national family personal income distribution is shown, the derived California distribution conforms to this expectation. Second, and more significant, is the fact that the distribution shown in Table I can be used to estimate aggregate family personal income in California with a relatively small amount of error An estimate of this aggregate figure obtained from the Department of Commerce places it at $42 333 billion. As is shown in Table XXV, the aggregate obtained by multiplying our consumer unit figures by the estimated class means and summing the resulting products exceeds the Department of Commerce figure by only $119 million or 0 4 percent. Finally, the mean family personal income of the estimated distribution ($7,429) exceeds the actual mean ($7,408) by less than 0 3 percent.

TABLE XXV

California Distribution of Family Personal Income and Federal Income Tax Liabilities

Family personal income (before income taxes)	Under $2 000	$2,000–2 999	$3,000–3,999	$4,000–4,999	$5 000–5,999	$6,000–7,499	$7,500–9,999	$10,000–14,999	$15 000 and over	Total
Number of consumer units	599,646	407,508	486,437	690 156	638,154	957,971	855 028	729 606	449,341	5,714,000
Percent distribution	10 5	7 1	8 5	10 3	11 2	16 8	15 0	12 8	7 9	100 00
Aggregate family personal income (000)	734,566	1,010 460	1,741,137	2,668 095	3,493,893	6,435,649	7,396,847	8,556 819	10,414,825	42,452 294
Percent distribution	1 74	2 38	4 10	6 28	8 23	15 16	17 43	20 16	24 53	100 00
Average family personal income	1,225	2,479	3,579	4,521	5,475	6,718	8,651	11,728	23 178	7,429
Average federal income tax liability	46	128	216	305	430	581	783	1,097	4 097	781
Average family personal income after federal tax	1,179	2,356	3 363	4,216	5,045	6,137	7,871	10,631	19,081	6 626
Aggregate family personal income after federal tax (000)	709,011	957,390	1,630 573	2,478,514	3,209,600	5,861,102	6,747,673	7,733,955	8,570 753	37,858,570
Percent tax rate	3 7	4 9	6 0	6 7	7 9	8 6	9 0	9 3	17 7	10 5
Aggregate federal income tax liability (000)	27,583	50,135	105,081	170 968	274 106	556,581	626 736	800,378	1,840,959	4,461 845
Percent distribution of aggregate tax liability	62	1 12	2 36	4 03	6 15	12 47	14 05	17 94	41 26	100 00

TABLE XXVI

U.S. Distribution of Family Personal Income and Federal Income Tax Liabilities

Family personal income (before income taxes)	Under $2,000	$2 000–2,999	$3 000–3,999	$4,000–4,999	$5,000–5,999	$6,000–7,499	$7,500–9,999	$10,000–14,999	$15,000 and over	Total
Number of consumer units	7,400	5,205	5,927	6,164	6,015	8,057	8,403	6,368	3,732	57,390
Percent distribution	12 9	9 1	10 3	10 8	10 5	14 1	14 7	11 1	6 5	100 00
Aggregate family personal income (000)	6,721	13,066	20,786	27,726	33,065	54 183	72,139	78,194	91,580	395,992
Percent distribution	3 1	3 3	5 2	7 0	8 3	13 6	18 2	19 2	23 1	100 00
Average family personal income	1,118	2,510	3,504	4,498	5,497	6,725	8,586	11,927	24,539	6,930
Average federal income tax liability	26	119	195	288	410	560	747	1,144	4,351	708
Average family personal income after federal tax	1,092	2,391	3,309	4,210	5,087	6,165	7,839	10,783	20,188	6,170
Aggregate family personal income after federal tax (000)	8,080,800	12,445,155	19,612,443	25,950 440	30,598,.05	49,671,405	65,863,278	68,881,804	75,341,816	356,445 246
Percent tax rate	2 3	4 7	5 6	6 4	7 5	8 3	8 7	9 6	17 7	10 2
Aggregate federal income tax liability (000)	191,000	619,000	1,154,000	1,773,000	2,468,000	4,514,000	6,278,000	7,307,000	16,238 000	40,540 000
Percent distribution of aggregate tax liability	0 5	1 5	2 8	4 4	6 1	11 1	15 5	18 0	40 1	100 00

SOURCE Survey of Current Business (April, 1964), pp 5-9.

C. *Tax Exporting*

Tax exporting provides one of the most difficult problems encountered in determining the distribution of the tax burden within a particular state This term refers to the fact that the burden of a given state's taxes is not entirely borne by the residents of that state. A portion of it is certain to be shifted to nonresidents.

Tax exporting occurs for a variety of reasons An important part of it arises because many state and local taxes are deductible in computing taxable income for federal income tax purposes To the extent that such deductions are taken by either consumer or business taxpayers, a portion of the burden of state and local taxation is assumed by the federal government or, more realistically, is shifted to federal taxpayers in the country at large An even more important source of tax exporting is associated with the fact that to a considerable degree the taxes for which business concerns are liable are shifted forward in the form of higher selling prices This tends to be true, for example, of all sales and excise taxes paid on business purchases and of taxes levied on business property To the extent that locally produced goods are sold outside the state, therefore, a portion of the burden of these taxes comes to rest on nonresidents A third type of tax exporting occurs in connection with taxes on corporate income A large part of the burden of these taxes is almost certainly borne by stockholders Since it cannot be assumed that all of these stockholders are residents of the state in which the tax is levied, a portion of the total burden of these taxes must also be shifted out of the state Finally a portion of the sales and excise tax collections of any state are derived from out of state visitors or individuals passing through the state.

Although tax exporting unquestionably has an important impact on the distribution of tax burdens, no account of this phenomenon is taken in the computation of the burden estimates that appear in the remainder of this study One consideration that dictated this decision was the relatively short time that was available for the completion of the estimates Even if the time factor had been absent, however, it is not clear that any extensive consideration could have been given to this knotty issue. The chief reason for this is that with the exception of that portion of tax exporting which occurs as a consequence of the deductibility of state and local taxes in the computation of taxable income for federal income tax purposes, there is virtually no data upon which to base an estimate of the amount of tax exporting that takes place More important, it should be recognized that if it is true that a portion of the taxes levied by California are exported to the residents of other states, it is also true that a portion of the taxes levied by other states is imported by the residents of California In the absence of data that would permit an evaluation of the relative importance of these two phenomena, it seems best to assume that their effects on the distribution of tax burdens are offsetting—in short, to assume that the entire burden of California taxes is borne by Californians

Finally, the primary concern of this work is with the relative rather than the absolute burden of taxation borne by the various income classes

and there is some reason to believe such relative tax burdens are not greatly influenced by tax exporting.[5]

D. Shifting and Incidence

It was noted earlier that this study relies almost entirely on theoretical reasoning to determine the shifting and incidence of particular taxes In this section, the assumptions employed with respect to each tax are discussed along with the reasons for selecting these particular assumptions.[6] Following the procedure employed in the Wisconsin study, taxes are for this purpose divided into two broad categories· (1) taxes with an initial impact on individuals and (2) taxes with an initial impact on business concerns.

1. TAXES WITH AN INITIAL IMPACT ON INDIVIDUALS

Governments in California levy four taxes that have an impact on individuals. Included are. the personal income tax, registration and license fees on consumer owned motor vehicles, property taxes on owner-occupied housing, and the inheritance and gift taxes. These taxes present no real problem with respect to the determination of incidence The avenues open to individuals for tax shifting are at best minimal. Tax shifting can occur only through price changes, and individuals generally have little direct influence on the prices they pay or receive

There are, of course, some exceptions For example, some shifting of the personal income tax may take place if the tax reduces work incentives or if it induces unions or the owners of unincorporated enterprise to insist on higher wages and prices[7] In addition partial shifting of taxes levied on owner-occupied housing and consumer-owned motor vehicles may occur because the tax may induce a reduction in the demand for and the prices of these goods. However, there is little evidence that any of these types of tax shifting is of any great consequence Indeed, what empirical evidence is available suggests the contrary[8] In this study, therefore, it is assumed that the monetary burden of taxes with an initial impact on individuals falls on the individuals who are legally liable for the payment of the tax.

2. TAXES WITH AN INITIAL IMPACT ON BUSINESS

The remainder of the taxes levied in California have their initial impact on business concerns. In contrast with those discussed above,

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[5] In the 1959 Wisconsin study it was found that relative burdens were not greatly changed by adjusting them to take account of tax exporting even though great care was exercised in estimating the extent to which Wisconsin taxes were exported *Wisconsin's State and Local Tax Burden, op cit*, p 60

[6] In connection with this discussion, it may be useful for the reader to keep in mind the following comment made by the authors of a study of the incidence of Michigan taxes "In all cases more refined procedures might have been applied But experience with projects such as this suggests that refinement yields rapidly diminishing returns" R A Musgrave *et al Ibid*, "Who Pays Michigan Taxes," *op cit*, p 131

[7] It should be noted also that some shifting of this tax occurs because of differences in the degree to which different individuals are able to take advantage of the provisions in the tax law covering exemptions and deductions and also because the possibilities of tax avoidance are unevenly distributed However, it seems unlikely that such shifting is very significant, if only because it entails resource transfers which, in the long run, induce compensating changes in wages and other resource prices

[8] In this connection see G F Break, "Income Taxes and Incentives to Work," *American Economic Review*, Vol XLVII (September 1957), pp 529–49, R Goode, "The Income Tax and the Supply of Labor," *Journal of Political Economy*, Vol LVII (October 1949), pp 428–37.

the incidence of business taxes is more difficult to determine For this reason, each of the major types of taxes in this group is considered separately in the paragraphs that follow.

Sales and Excise Taxes

Sales and excise taxes provide the State of California with its most important source of revenue.[9] A wide variety of state and local taxes fall into this category. In addition to the sales and use tax, these include business license fees, horseracing fees and taxes on gasoline, diesel fuel, L P. gas, alcoholic beverages, cigarettes, and insurance premiums.

With respect to incidence, this study follows the prevailing practice of assuming that the monetary burden of sales and excise taxes is entirely shifted forward to consumer in the form of higher selling prices of the products involved. This procedure may be justified on the grounds that it is in accord with the mainstream of economic thinking on the subject of tax incidence and with what little empirical evidence that is available [10]

However it must be admitted that while forward shifting of sales and excise taxes appears to be the rule, complete forward shifting of all such taxes is extremely improbable, since all of the conditions required for this to take place are rarely, if ever, present. Further, in those industries in which resources are specialized to a taxed commodity, backward shifting in the form of lower returns to the owner of such specialized resources is almost certain to occur [11] It must be admitted also that the capacity of business firms to shift taxes applied at the state and local level is likely to be somehat smaller than their capacity to shift similar taxes applied at the national level The reason for this is that in the former case, some business firms in any given state (e g , California) are certain to be competing in a national market with firms operating from states where similar taxes are not levied or if levied are set at lower rates.

The significance of the above remarks is that the assumption that consumers bear the entire burden of sales and excise taxes represents no more than an approximation of actual conditions However, for purposes of allocating tax burdens to income classes, it is undoubtedly a sufficiently close approximation that no serious distortions are intro-

[9] In recent years such taxes have on the average accounted for approximately 58 percent of the state's total tax revenue

[10] See for example R F Collier, "Some Empirical Evidence of Tax Shifting," *op cit*, pp 35-50, and J F Due, "The Effect of the 1954 Reduction in Federal Excise Taxes on the List Prices of Electrical Appliances," *National Tax Journal*, Vol VII (September 1954), pp 222–26

[11] A small minority of American economists is of the opinion that the entire monetary burden of sales and excise taxes is always shifted backward to the owners of resources producing the taxed commodities For the most complete statement of this view see E R Rolph, *The Theory of Fiscal Economics* (Berkeley, University of California Press, 1954), Chapters vi and vii It is interesting to note that if the highly unorthodox viewpoint of Rolph and his followers is correct, most of the arguments for the many exemptions to sales taxes as well as those for allowing the deduction of such taxes in computing taxable income for income tax purpose, are invalid This is because, for the most part, these arguments are based on the explicit assumption that sales taxes are shifted to consumers For this reason, if for no other, Professor Rolph's position with respect to tax shifting should, in the opinion of the present writer, be given more attention by both economists and legislators than has thus far been the case.

duced. In this connection, it is important to take note of a number of factors that tend to promote forward shifting even when completely rational economic behavior would dictate otherwise One such factor is that most consumer markets tend to be dominated by conditions of oligopoly For a variety of reasons this type of market structure tends to be characterized by full and immediate forward shifting.[12] Perhaps more important is the widespread practice of setting prices by applying a standard mark-up to average costs Since a sales or excise tax appears to the seller as an addition to his costs, this practice virtually insures that such taxes will be shifted forward. A third factor is the existence of statutory provisions requiring the separate statement of the tax Such provisions facilitate forward shifting because they make it more likely that the consumer's purchase decision will be made on the basis of price net of the tax It is of significance for the present study that California's sales and use tax law contains such a provision. A final consideration is the fact that the sales and excise taxes with which this study is concerned have been in existence in substantially their present form for a relatively long period of time This fact lends strength to the assumption that the burden of them falls entirely on consumers because it increases the likelihood that the market adjustments necessary to forward shifting have taken place.

Property Taxes

Business Property

With regard to incidence, taxes on business property are in most respects similar to those discussed in the preceding section. This is because the tax in both cases constitutes a direct expense of doing business which must be recovered by the firms in the long run if they are to continue operations As a general rule, therefore, taxes on business property tend, in the long run, to be shifted forward to consumers by means of increased commodity selling prices. However, there is at least one important exception to this general rule. This exception concerns the portion of the tax which is levied on land. Traditional incidence theory takes the position that a tax levied on a good in fixed supply cannot be shifted Since land is such a good, a portion of the burden of taxes on business property must be assumed to remain with the owners of business enterprise

Yet, in spite of this fact, the treatment accorded to business property taxes in this paper is to assume that such taxes are entirely shifted forward. The considerations that account for this treatment are three in number First, it seems probable that most business firms treat the whole of any property tax as an expense of doing business. When this is true, it can be argued that even that portion of the tax which falls upon land can be shifted [13] Second, the statistical data necessary to accurately segregate the portion of the tax falling on land is simply not available Finally, since the amount of tax attributable to land is a relatively small proportion of the total collected on business property, an estimate made on the basis of date available might well intro-

[12] J F Due, *Government Finance: An Economic Analysis* (Homewood, Illinois, Richard D Irwin, Incorporated, 1959), p 291 ff

[13] J F. Due, *Government Finance, op cit.*, p. 397

duce a larger amount of error than the assumption that the whole of the tax is shifted forward to consumers in the long run.[14]

Rental Property

The incidence of taxes on rental property is identical with that of taxes on property used for other business purposes. That is, the portion of the tax which falls on improvements will tend, in the long run, to be shifted to consumers, while the portion which falls on the land involved will be difficult to shift. The only difference to be observed is that, in the case of rental property, the portion of total tax collections attributable to land is much more significant. Accordingly it is assumed for purposes of this study that one-fourth of the taxes levied on rental property falls on the property owner, while the remaining three-fourths is shifted forward to consumers in the form of higher rental charges The selection of these particular proportions reflects the view that no more than one-fourth of the total assessed value of rental property is attributable to land.

Agricultural Property

Taxes on agriculture property have a threefold base—land, farm residence, and the value of improvements, including any improvements in the basic quality of the land due to the use of fertilizer or other soil conditioning ingredients To the extent that the tax base reflects the value of unimproved land and farm residences, such property taxes are absorbed by the property owner To the extent that the base reflects improvements, they tend to be shifted forward, in the long run, to the consumers of food and other agricultural products.

From these few remarks, it might be concluded that the incidence of the property tax is relatively easy to determine Yet, this is far from true, because any attempt to estimate the proportions in which total tax collections should be divided between property owners and consumers encounters problems that are virtually impossible to solve Not only is available statistical data sparse, it is also not very useful. For example, in the published data on land, the values given include certain improvements, e g those due to the use of fertilizer, etc. Equally important, it is almost never possible to distinguish clearly between land and improvements Further, since almost all farm residences are at least partially used for business purposes, some portion of the taxes upon such residences is subject to forward shifting There is, however, no reasonable basis, statistical or otherwise, upon which this amount can be determined

Because of the difficulties it involves, it is necessary to deal with the problem of determining the incidence of agricultural property taxes in a more or less arbitrary fashion Thus in the present study, it is simply assumed that 60 percent of the total tax levy is shifted and that the remaining 40 percent is absorbed by the owners of agricultural property No defense of these particular proportions will be attempted,

[14] It is recognized, of course, that in the short run, full forward shifting is extremely unlikely This consideration may be an important one in a state like California where property taxes have been rising more or less continuously over a relatively long period of time However, in this regard, it should be remembered that many of the factors which promote the immediate and forward shifting of sales and excise taxes are also applicable to those levied on business property

except to remark that, in part, they represent a compromise between the procedure followed in the Wisconsin incidence study, in which the authors concluded that 25 percent of agricultural property taxes were shifted, and that followed in a similar study for Michigan, in which the authors concluded that 75 percent of such taxes were shifted [15] If anything, the 60-40 ratio employed here probably underestimates the amount of tax shifting that occurs One reason for believing this to be the case is that, in the absence of improvements permitting irrigation, much of the present agricultural land in California would be virtually valueless Hence, the proportion of the tax on agricultural land that California farmers are able to shift forward to consumers is certain to be high Also significant in this regard is the importance of corporate agriculture in California Shifting of taxes seems much more likely in the case of incorporated farms than in the case of the family operated farms, which predominate in much of the rest of the county, because in the former case the resources involved are much more likely to have equally profitable alternatives

Corporation Profits Taxes

California levies two taxes that fall into this category—the Bank and Corporation Tax and the Corporation Income Tax The incidence of these taxes is more difficult to ascertain than that of any of the other taxes considered in this study Economic opinion on this subject is divided into at least two schools of thought [16] The older of the two schools takes the position that taxes on corporate profits cannot be shifted The reasoning that is employed to support this view may be summarized as follows: Since the tax is levied upon net income, it has no effect on costs and, therefore, does not alter profit maximizing prices Under these circumstances, it is unprofitable for a corporation to shift the tax because, if profits are being maximized, any increase in price will lower profits before taxes and hence, also, profits after taxes

The newer school of thought takes issue with this viewpoint on a number of grounds First, it is pointed out that the net income upon which the tax is levied actually contains at least two cost elements One of these is an implicit return to the owners for any labor they supply and for which they are not explicitly compensated, while the other is the minimum return which must be paid to invested capital to prevent it from being withdrawn and invested elsewhere The significance of this is, of course, that the tax does affect costs and profit maximizing prices and, hence, can be shifted to some degree A second argument offered in favor of at least partial shifting of this tax is that the prices being charged at the time the tax is levied or raised may not be those that would maximize profits Indeed, under conditions of oligopoly a good case can be made to the effect that prices are typically below the maximum profits level [17] If this is the case, there is a strong likelihood that the tax will be shifted Finally, it is argued that

[15] R A Musgrave, *et al*, "Who Pays Michigan's Taxes," *op cit*, p 145 and *Wisconsin State and Local Tax Burdens*, *op cit*, p 39

[16] The most complete discussion of the various aspects of corporate income taxation including its incidence is R Goode, *The Corporation Income Tax* (New York, John Wiley & Sons), 1955

[17] J F Due, *Government Finance*, *op cit*, p 225

for shifting to occur, it is not necessary that the tax be an element of cost, it is necessary only that corporation managers regard it as such. If they do, they will attempt to recover it by increasing prices [18] In this connection it is important to note that the widespread use of standard markup and similar pricing practices encourages the treatment of the tax as a cost

One conclusion that is suggested by the foregoing analysis is that, while there is a strong possibility that at least a portion of the corporation income tax is shifted to consumers, full shifting of this tax is extremely improbable. Moreover, it is clear that the capacity of some firms to pass the tax on is considerably greater than that of others. Further, some corporations may not be able to shift any of the income taxes for which they are liable. Generally speaking, these conclusions are consistent with the empirical evidence that has been assembled on this subject For, while some investigators have found considerable evidence of tax shifting, others have found none at all [19] On balance, however, the case for at least partial shifting would appear both empirically and logically somewhat stronger than its opposite.

Yet, even if it were possible to be perfectly certain that some part of the burden of corporation income taxes is passed on to consumers, there would still remain the problem of determining the size of the shifted and unshifted portions. This problem cannot be satisfactorily solved On the other hand, there does appear to be some agreement that the proposition that no more than two-thirds of the burden of the tax falls on corporate stockholders is at least a reasonable one [20] In the absence of any convincing evidence to the contrary, it is this assumption that is employed in the present paper

E. Allocation of Burden Among Income Classes

The final step in estimating the distribution of California's state and local tax burden is the selection of statistical series which can be used to distribute particular taxes to income classes in accordance with their assumed incidence. The distribution bases which are employed to make the burden estimates presented in this study are summarized in Table XXVII The taxes to be allocated are presented in Table XXVIII. A detailed discussion of the distribution of each of the amounts shown in Table XXVIII is presented in Part G It will suffice here to illustrate the general procedure employed by apportioning the burden associated with a single tax. The tax on motor fuels is selected for this purpose.

[18] As in the case of commodity taxes, it is also possible for taxes on corporate income to be shifted backwards in the form of lower returns to resource owners However, backward shifting is much less probable than its opposite

[19] The volume of empirical work that has been done in this area precludes the citation of all the studies that have been published For alternative views see E M Lerner and E S Hendrikson, "Federal Taxes on Corporate Income and the Rate of Return in Manufacturing," *National Tax Journal*, Vol IX (September 1956), pp 193-202, and M A Adelman, "The Corporation Income Tax in the Long Run," *Journal of Political Economy*, Vol LXV (April 1957), pp 151-57

[20] See R A Musgrave, J J Carroll, L D Cook and L Frane, "Distribution of Tax Payments by Income Groups A Case Study for 1948," *National Tax Journal*, Vol IV (March 1951), pp 1-53 and "Wisconsin State and Local Tax Burden, *op cit*, p 79 For an argument that more than one-third of the tax is shifted see G A Bishop, "The Tax Burden by Income Class, 1958," *National Tax Journal*, Vol XIV (April 1961), pp 41-58

In 1961, the State of California collected a total of $352,597,000 from taxes on motor fuels The distribution of this amount to income classes was accomplished in two steps.

The first step was to determine the proportion of the total which could be attributed to the gasoline purchases of consumer units and to allocate this amount to family personal income classes To accomplish this, an estimate of the average annual gasoline expenditures of consumer units within each income bracket was divided by an estimate of the average price paid per gallon This calculation yielded the average number of gallons consumed which was then multiplied by the tax per gallon in order to obtain the average tax paid by consumer units in each income class Finally by multiplying these averages by the population distribution shown in Table XXV the total amount of tax to be allocated to each income bracket was obtained.

The second step in distributing the burden of motor fuel taxes was to determine the amount of the tax attributable to business purchases This was done by the simple expedient of subtracting from total fuel tax collections the amount which had already been allocated directly to consumer units On the assumption that any taxes paid on business purchases would be shifted forward to consumers, the amount obtained by this calculation was distributed to family personal income classes on the basis of an estimate of the percentage distribution of total consumption expenditures.[21]

TABLE XXVII

Assumed Incidence and Bases for Distribution of Tax Payments

Type of tax	Incidence	Distribution bases
STATE		
Personal income	Income recipient	Distribution of taxes by income class as reported by the Franchise Tax Board
Corporation	1/3 on consumers, 2/3 on stockholders	Two-thirds on the basis of the distribution of dividend income as reported by the Franchise Tax Board and one-third on the basis of the distribution of total consumption expenditures
Sales and use	Consumers of taxable commodities	Distribution of taxable consumption expenditures
Motor fuel	Auto owners and consumers	67 1% on the basis of the distribution of consumer gasoline expenditure, 32 9% on basis of the distribution of total consumption expenditures
Motor vehicle	Auto owners and consumers	67% on basis of the distribution of consumer expenditure on automobiles, 33% on the basis of the distribution of total consumption expenditures
Cigarette	Consumers of cigarettes	Distribution of consumer expenditures on tobacco
Alcoholic beverage	Consumers of alcohol	Distribution of reported consumer expenditures on alcoholic beverages
Horseracing	Consumers of recreation	Distribution of consumer expenditures on recreation.
Private car	Consumers	Distribution of total consumption expenditures
Insurance	Policyholders	Distribution of consumer expenditures on personal insurance
Gift and inheritance	Recipient	Distribution of property income as reported by the Franchise Tax Board
LOCAL		
Property	55 6% on consumers residential housing, 10% on owners of rental property, 4% on farm owners, 30 4% on consumers	55 6% on the basis of the distribution of consumer expenditures on shelter, 30 4% on the basis of the distribution of total consumption expenditures, 4% on the basis of the distribution of the family personal income of farm operator families, and 10% on basis of distribution of rental income
Sales and use	Consumers of taxable commodities	Same as State
Licenses and permits	Consumers	Distribution of total consumption expenditures

[21] No attempt was made in this study to estimate the tax payments of governments on the grounds that, since the funds for these payments must themselves come from taxes, the overall burden distribution is unlikely to be significantly affected

TABLE XXVIII

Total Tax Receipts by Major Source and Type of Government [b]

	Thousands of dollars [a]	*Percent of state or local* [a]	*Percent of total* [a]
Total state and local	4,980,733		
State			
Personal income	297,146	13 13	5 88
Corporate income	270,168	12 02	5 39
Sales and use	720,848	32 08	14 37
Motor fuel	352,943	15 70	7 04
Motor vehicle	307,152	13 58	6 08
Cigarette	66,019	2 94	1 32
Alcoholic beverage	53,980	2 40	1 08
Horseracing	37,660	1 68	.75
Private car	1,752	08	03
Insurance	67,389	3 00	1 34
Gift and inheritance	76,408	3 40	1 52
Total	2,247,448	100 00	44 81
Local			
Property	2,446,670	88 27	48 78
Sales and use	231,417	8 36	4 61
Licenses and permits	90,462	3 27	1 80
Total	2,768,549	100 00	55 19

[a] In those instances in which data was available for the fiscal year only, an average of the fiscal year data was used

[b] Detail may not add to totals due to rounding

SOURCES *Annual Report California State Board of Equalization*, 1960–61 and 1961–62, *Annual Report Franchise Tax Board*, 1962, State Controller, *Annual Report of Financial Transactions Concerning Cities of California* 1961–62 and *Annual Report of Financial Transactions Concerning Counties of California*, 1960–61 and 1961–62

F. Conclusions

The results of the tax burden computations undertaken in this study are summarized in the tables that appear on the following pages Table XXIX shows the absolute dollar amounts of taxes that have been allocated to each of the several income classes In tables XXX and XXXI, these absolute amounts are converted into percentages Both of these sets of percentages are designed to measure the distribution of the tax burden.

Table XXX, which is perhaps the more significant was obtained by expressing the aggregate amount of each major tax and of total taxes allocated to an income bracket as percentage of total family personal income after taxes received by families in that bracket These figures, therefore, may be viewed as the effective rates of taxation applicable to an income class Table XXXI in contrast shows the average amount of tax paid per family expressed as a percentage of the average family personal income after taxes within the various income groups

In appraising their significance, the reader should keep in mind that owing to the arbitrary assumptions employed in some instances and the tentative character of much of the data, the findings presented in these tables are somewhat speculative Among other things, this means that no great significance can be attached to relatively small differences in the tax rates applicable to different income classes However, even when this is taken into account, at least the following conclusions appear to be warranted

1. The overall state and local tax structure in California tends to be quite regressive throughout almost the entire range of incomes covered.

This is revealed by the fact that the effective rate of taxation declines continuously between a family personal income of $2,000 and one of $15,000 (see Table XXX) Below $2,000, the structure appears to be slightly progressive and above $15,000, it appears to be quite progressive. However, both of these latter conclusions must be viewed with

TABLE XXIX

Amounts of Taxes Allocated

Income bracket (Thousands of dollars) [a]

Tax	Under $2,000	$2,000-2,999	$3,000-3,999	$4,000-4,999	$5 000-5,999	$6,000-7,499	$7,500-9,999	$10,000-14,999	$15,000 and over	Total
STATE										
Personal income	59	590	2,243	4,398	8,117	14,322	22,134	33,966	209,297	295,146
Bank and corporation	6,768	7,902	11,260	12 970	14,608	25,659	30,826	39,728	120,469	270,295
Sales and use [b]	14 966	16,001	33,331	43 813	59 676	126,699	122,262	125,741	174,367	720,848
Motor fuel	5,120	7,288	20,222	29,545	26,701	57,903	66 785	69,727	79,835	352,897
Motor vehicle [c]	5,074	5,804	14 421	19,144	23,941	51,456	51,165	57,804	76,342	305,152
Cigarette	2,734	2,166	4,332	5 389	6,927	13,472	12,356	6,957	12,046	66,019
Alcoholic beverage	864	1,085	1,755	2,666	4,896	10,900	8,854	9,836	13,124	53,980
Gift and inheritance	3,461	3,339	4,126	3,897	3,773	5 141	7 817	11 018	33 835	76,409
Horseracing fees	1,081	972	910	1,718	2,340	6,784	7,594	7,946	8,324	37,660
Private car	51	49	86	119	155	300	311	309	372	1,752
Insurance	937	2,124	2,940	4,989	6,209	10,106	14,027	11,738	14,017	67,387
LOCAL										
Sales and use	4,617	4 983	10,673	13,069	19 112	40,494	39,326	41,623	56,732	231,394
Property	65,346	100,023	147,634	197,088	238,182	411,935	417,597	387,461	480,610	2,446,670
License fees and permits	2,640	2,514	4,440	6,158	7,984	15,472	16,041	15,960	19,206	90,424
Total state	41,464	47 120	65,645	128,678	157,325	322,942	344,751	367,812	741,768	2,247,448
Total local	72,603	107,419	162,596	218,115	265,278	467,901	472,964	445,044	556,548	
Total local and state	114,057	154,739	228,241	346,793	422,576	790,843	817,719	812,856	1,298,307	

[a] Detail may not add to totals because of rounding
[b] Includes license fees
[c] Includes the Motor Vehicle Transportation Tax and Use Fuel Tax

TABLE XXX

Effective Tax Rates Based on Family Personal Income After Federal Income Taxes [a]

Income bracket

Tax	Under $2,000	$2 000 -2,999	$3,000 -3,999	$4,000 -4,999	$5 000 -5,999	$6,000 -7,499	$7,500 -9,999	$10,000 -14,999	$15,000 and over
STATE									
Personal income	01	01	14	18	25	24	33	44	2 45
Bank and Corporation	1 00	83	69	53	46	44	46	51	1 41
Sales and use [b]	2 12	1 67	2 04	1 77	1 86	2 16	1 81	1 68	2 04
Motor Fuel	72	76	1 24	1 19	83	99	99	77	94
Motor Vehicle [c]	73	61	88	77	75	88	76	75	89
Cigarette	39	23	27	22	22	23	18	09	14
Alcoholic beverage	12	11	11	10	15	19	13	13	15
Gift & inheritance	49	35	25	16	12	09	12	14	39
Horseracing fees	15	10	06	07	07	12	11	10	10
Private car	01	01	01	01	00	01	00	00	00
Insurance	13	22	18	20	19	.17	22	.14	16
LOCAL									
Sales and use	65	51	65	56	60	69	58	54	67
Property	9 21	10 44	9 05	7 99	7 42	7 03	6 19	5 01	5 63
License fees and permits	37	26	27	25	25	26	24	21	23
Total state and local	16 08	16 15	15 84	13 99	13 17	13 49	12 12	10 52	15 22
Total state	5 85	4 94	5 87	5 19	4 90	5 51	5 11	4 76	8 69
Total local	10 23	11 21	9 97	8 80	8 27	7 93	7 01	5 76	6 53

[a] Detail may not add to totals due to rounding
[b] Includes license fees
[c] Includes the Motor Vehicle Transportation Tax and the Use Fuel Tax

TABLE XXXI

Average Taxes Expressed as a Percentage of Average Income After Federal Income Taxes

After-tax income	*Total state*	*Total local*	*Total state and local*
Under $2,000	5 9	10 3	16 2
2,000–2,999	4 9	11 2	16 1
3,000–3,999	5 9	9.9	15 8
4,000–4,999	5 1	8 8	13 9
5,000–5,999	4 9	8 2	13 1
6,000–7,499	5 5	8 0	13 5
7,500–9,999	5 3	6 8	12 1
10,000–14,999	4 8	5 7	10 5
15,000 and over	9 0	6 5	15 5

considerable caution because it is with respect to these two income classes that the data on both consumption and income is the least reliable. On the face of things, it seems probable that additional data would show that the regressivity extends farther up the income scale than the figures presented here indicate This is suggested by the fact that the majority of the taxes levied are related directly or indirectly to consumption expenditures and the proportion of income spent on consumption is likely to decline rapidly as income rises above $15,000.

2. While the overall tax burden falling on families with very high incomes may be less than is indicated by the effective tax rate shown for the $15,000 and over class, it is nevertheless clear that the burden imposed by the tax structure on families with incomes between $4,000 and $15,000 is significantly less than that imposed on families with incomes above and below these levels In addition, it is equally clear that highest effective tax rates imposed by the system are those applicable to families with relatively low incomes (below $4,000) However, the significance of this latter fact should not be evaluated without taking into account at least two important characteristics of the very low income classes First, this group contains a significant number of families that normally have much higher incomes This is because, at any given time, it includes those whose incomes have been reduced temporarily by illness or unemployment. Equally important, the low income brackets contain many retired individuals who, although their current incomes are low, possess substantial savings On the other hand, it also needs to be kept in mind that any tax induced reduction in income is likely to do more damage to the living standards of a low income family than one which reduces the income of a high income family by an equal percentage [22]

3. From even a cursory examination of Table XXX, it is clear that the regressivity of the overall tax structure has its sources at the local rather than the state level The incidence of the state tax structure tends toward proportionality. This is due primarily to the fact that the state government draws a significant portion of its total revenue (approximately 20 percent) from personal and corporate income taxes the burden of which falls largely on these with incomes in excess of

[22] I am indebted for this point to *Wisconsin's State and Local Tax Burdens*, op cit, p. 56.

$15,000.[23] In the absence of these two taxes the state tax structure would be slightly regressive as can be seen from an examination of Table XXXII.

TABLE XXXII

Effective Rates of State Taxation
Exclusive of Taxes on Corporate and Personal Income

Income class	*Tax rate*
Under $2,000	4 84
$2,000–2,999	4 10
$3,000–3,999	5 04
$4,000–4,999	4 44
$5,000–5,999	4 21
$6,000–7,499	4 93
$7,500–9,999	4 32
$10,000–14,999	3 81
$15,000 and over	3 83

4. More specifically it is possible to say that the regressiveness of the overall tax structure is associated primarily with two related facts . . . the fact that local governments rely so heavily on property taxes to finance their expenditures and the fact that this tax is highly regressive.[24] This regressiveness is revealed in Table XXX by the fact that the effective rates of taxation imposed by property taxes on families with incomes above $4,000 are substantially lower than those imposed on families with income below this level. More significant perhaps, the property tax rates of the two lowest income groups are almost twice the rates of the highest income groups Furthermore, since expenditure on housing does not rise as rapidly as income, the effective rates of property taxation imposed on families with very high incomes is almost certain to be substantially less than the 5 09 percent shown in Table XXX for the income class $15,000 and over

5 Finally, if the average amount of taxes allocated to consumer units in an income class is expressed as a percentage of the average after tax income in that class, the pattern of burden distribution that emerges does not differ in any significant respects from that shown in Table XXX. As is clearly evident from Table XXXI, the overall tax structure continues to be regressive to $15,000 and progressive thereafter. Again, this regressiveness is the result of local rather than state taxes. Indeed the percentage figures shown in Table XXXI reveal both the proportionality of the state tax structure and the regressiveness of the local tax structure even more clearly than those shown in Table XXX

G. *Explanation of Tax Distribution by Income Group*

It was noted earlier that in order to determine the effective tax rates that are shown in Table XXIX, it is necessary to distribute the amounts of each of the numerous types of taxes collected to each of the several income classes in accordance with the assumed incidence of the tax However, at that time, only an illustrative computation

[23] The regressivity of the corporate income tax below $7,500 is undoubtedly less than that shown in Table XXX The reason for this is that no attempt was made to adjust the corporate income tax data to take account of the difference in the definition of income for tax purposes and the family personal income concept employed in the computation of effective tax rates

[24] In 1961, property taxes accounted for 88 percent of local tax revenues and 49 percent of total tax revenues

utilizing the motor fuel tax was made In this section the specific procedures that were employed with respect to each major type of tax and the data utilized are considered in somewhat more detail.

SALES AND USE TAXES

The basic source of the statistical information used in this study to allocate state and local sales and use taxes, as well as certain portions of other taxes was sample data reported by the Bureau of Labor Statistics in its *Survey of Consumer Expenditures*, 1960–61.[25] However, for a variety of reasons, it was necessary to adjust this data in several ways before it could be utilized Two of these adjustments deserve to be mentioned

First, since data was not available for California as a whole, but only for the Los Angeles, San Francisco, and Bakersfield metropolitan statistical areas, it was necessary to average the three sets of data available in order to get some idea of the distribution of consumption expenditures in the state as a whole In computing this average the most important difficulty encountered was in the selection of weights Sample weights could not be used because, with the exception of Los Angeles, the proportions which each city represented of the total sample differed greatly from the proportion which it represented of the total population of consumer units within the state To solve this problem, the median incomes reported by the 1959 decennial census for the various sections of the state were compared From this comparison it was learned that 1959 median incomes fell into three size groups, and that each of these groups contained one of the cities for which sample consumption data was available On the assumption that consumption patterns are closely related to income, each sample city was then assigned a weight equal to the proportion which the population of its group represented of the total population of the state.

The necessity for the second adjustment arose from the fact the B L S consumption data is not reported in the detail that is necessary for allocating the sales and use tax to income classes given the many exemptions which characterize this tax. In some catagories only a portion of the expenditure reported is taxable Before any tax distribution could be undertaken, therefore, it was necessary to divide the total expenditures reported in each such category into taxable and nontaxable proportions. Although recent data upon which such a division could be made is unavailable, the portion of each major category of expenditure subject to the California Sales and Use Tax was estimated by Professor William H. Hickman in 1958 [26] The procedure followed in the present study to estimate taxable expenditures was to apply Professor Hickman's proportions to the amounts of the various types of expenditure that were reported for 1960–61.

It is recognized that the use of this procedure is certain to reduce the reliability of the estimates of the distribution of the sales and use tax Particularly in view of the fact that Professor Hickman's estimate of the proportions of taxable and nontaxable expenditure was based on

[25] B L S Reports, 237–52, 237–70 and 237–72, U S Department of Labor, Bureau of Labor Statistics, Washington, D C., 1964

[26] W. H. Hickman *Distribution of California Sales and Other Excise Taxes*, issued by the State Board of Equalization, Division of Research and Statistics, Sacramento, December 1958.

data for the year 1950 On the other hand, it is equally probable that the amount of error introduced is of no real significance It seems highly unlikely that the taxable proportion of any particular category of expenditure changes very much over time Much more important, insofar as any estimate of the tax burden is concerned, are changes in the proportions of total consumption expenditure going to each major expenditure category (e g food, housing, etc) Since Hickman's proportions were applied to each expenditure category rather than to total consumption expenditures, any changes of this sort which may have occurred between 1950 and 1961 were taken into account.

OTHER TAXES ON CONSUMPTION EXPENDITURES

In addition to the sales and use tax, California levies four other taxes on consumer expenditures. Included are those on motor fuels, cigarettes, and alcoholic beverages, and insurance premiums Since the first of these has already been considered, the discussion in this section will be confined to the latter three Neither the cigarette tax nor the insurance premium tax raises any serious problems of allocation. Expenditures on both items are reported separately, and since the assumed incidence of the tax is on consumers, the allocation of total tax collections from these sources could be made on the basis of the percentage distribution of the expenditures involved. By contrast, an attempt to allocate alcoholic beverage taxes does encounter a serious problem. The reason for this is that expenditures on alcoholic beverage are characteristically underreported Thus if reported expenditures are multiplied by the distribution of consumer units and aggregated, the total expenditure figure obtained falls far short of that which is necessary to account for the taxes collected One way of resolving this problem would be to undertake an estimate of the degree to which underreporting of expenditures takes place within each income bracket Because of weaknesses in the data available, however, such an estimate would be extremely crude. For this reason, no such estimate was attempted Instead taxes on alcoholic beverages were allocated on the basis of the percentage distribution among income groups of the expenditures on alcoholic beverages reported in the B L S survey.

INHERITANCE AND GIFT TAXES

It is appropriate to take up the taxes on inheritances and gifts immediately following the discussion of taxes on cigarettes and alcohol because these taxes are also excise taxes They are excise taxes on the transfer of property from one person to another. For this reason, a distribution of property income based on data drawn from state income tax return was used as the basis for allocating the burden of these taxes.[27]

PERSONAL INCOME TAX

The basic source material used in allocating taxes on personal income was a distribution of tax payments by income class available from the Franchise Tax Board [28] However, owing to the fact that the tax data in this distribution was reported by adjusted gross and taxable income classes, it was necessary to reallocate the reported tax payments to

[27] *Annual Report of the Franchise Tax Board*, 1962, p A-40
[28] *Ibid*, p A-3.

family personal income classes before the distribution of the burden of this tax could be determined This reallocation was based on the assumption that approximately the same relationship would exist between the distribution of state income taxes by adjusted gross class and the unknown distribution of state income taxes by family personal income class as existed between the distribution of federal income taxes by adjusted gross and family personal income class Thus if the percentage of the total federal income taxes that had been allocated to a family personal income bracket was half as large as that in the same adjusted gross income bracket, it was assumed that this relationship would hold for state income taxes. To find the percentage of total state income taxes to be allocated to this family personal income bracket, therefore, the percentage allocated to the same adjusted gross income bracket by the Franchise Tax Board was divided by two.

CORPORATE INCOME TAX

As noted in the text, it is assumed for purposes of this study that one-third of the burden of taxes on corporate income is shifted forward to consumers in the form of higher prices, while the remaining two-thirds of the burden rests on the owners of corporate stock In line with this assumption, one-third of the $270,168,000 of tax revenue derived from corporation income taxes in 1961 was distributed to income classes in accordance with the percentage distribution of total consumption expenditures. The remaining two-thirds was distributed in accordance with a percentage distribution dividend income based on state income tax returns [29] With respect to the latter portion, however, a problem similar to the one discussed in the preceding section arose Available distributions of dividends are by adjusted gross rather than family personal income brackets In this instance, however, no attempt was made to reallocate the tax to the appropriate personal income bracket Had such a reallocation been made, the effect would have been to place more of the burden of this tax on those in the higher income classes

MOTOR VEHICLE TAXES

The procedure used in allocating of the revenue derived from motor vehicle registration and operators license fees and the "in lieu" tax among income classes is similar to that employed with respect to motor fuel taxes The first step was to divide the total collected into that which could be attributed to commercial vehicles and that which could be attributed to consumer owned vehicles Fortunately, the data needed to make this division was available from the California Department of Finance [30] Once determined, the amount collected on commercial vehicles was allocated to consumers in accordance with the percentage distribution of total consumption expenditures The remainder was also allocated to consumers but on a different basis The base used for this latter allocation was the percentage distribution of expenditures on automobiles.

PROPERTY TAXES

For the purpose of determining the burden of property taxes, the total revenue from this tax was divided into three parts corresponding

[29] *Ibid*, p A-40
[30] I am indebted to Mr Ralph Currie for providing me with this information

to the three major types of property upon which such taxes are levied Accordingly, 65 6 percent of the total collected was allocated to nonfarm residential property, 26 5 percent to commercial and industrial property, and the remaining 9 9 percent to agricultural property [31] Each of these amounts was then allocated to income classes in accordance with the assumed incidence of property taxes Thus, 90 percent of the amount allocated to nonfarm residential housing was apportioned on the basis of the percentage distribution of consumer expenditure on shelter and 10 percent on the basis of the distribution of rental income.[32] The amount allocated to industrial and commercial property, on the other hand, was distributed in accordance with the percentage distribution of total consumption expenditures This base was also used to distribute the portion of the tax levied on agricultural property that was assumed to be shifted forward The remaining portion of the agricultural share, that allocated to farm land and residences was, in the absence of more reliable data, allocated on the basis of a California percentage distribution of the family personal income of farm operators estimated by the writer using data for 1959 drawn from the decennial census of that year and a distribution of the family personal income of farm operators published by the Department of Commerce.[33]

HORSERACING AND BUSINESS LICENSE FEES

The assumed incidence of horseracing fees is on the bettor However, no data exists on distribution of such individuals by income class In the absence of such data, this tax was allocated in accordance with the distribution of expenditures on recreation. Business licenses were assumed to be shifted forward and were allocated to income groups in proportion to their total consumption expenditures.

H. Explanation of Estimate of California Personal Income

In order to estimate the distribution of family personal income in California, three different sets of data were employed. These included a percentage distribution of the United States population by family personal income class (column 1, Table XXXIII), a similar United States distribution by money income after tax class (column 2, Table XXXIII), and a percentage distribution of the California population by money income after tax class (column 4, Table XXXIII) The first two sets of data were available in the form needed from the Department of Commerce and the Bureau of Labor Statistics respectively.[34] The last however, was not and, therefore, had to be estimated from B L S. sample data drawn from the Los Angeles, San Francisco, and Bakersfield metropolitan statistical areas.[35]

As noted in the text, the procedure employed involved the use of the two national distributions to obtain a set of population relatives which

[31] This division was based on the assessed values of various types of locally assessed taxable real property as reported in U S Bureau of the Census, *Taxable Property Values, 1962*, p 47

[32] *Ibid*

[33] U S Bureau of the Census, *United States Census of Population, 1960, Detailed Characteristics, United States Summary*, p 599, U S Bureau of the Census, *United States Census of Population, 1960, Detailed Characteristics, California*, and U S Office of Business Economics, *Survey of Current Business* (April 1964), p 7

[34] *Survey of Current Business, op cit*, pp 7–11, and U S Bureau of Labor Statistics, *Survey of Consumer Expenditures, Consumer Expenditures and Income, B L S Report*, 237–38 (April 1964).

[35] *B L S Reports*, 237–52, 237–70, and 237–72.

were then applied to the California data in order to obtain the percentage distribution of the California population by family personal income class Thus column 3 of Table XXXIII in which the population relatives are presented was obtained by expressing column 2 as a percentage of column 1. Column 5 in which the percentage distribution of California consumer units by family personal income class is shown was obtained by multiplying column 4 by column 3 Column 6 which shows the number of California consumer units in each family personal income bracket was obtained by multiplying column 5 by 5,714,000, the estimated number of consumer units in California

The derivation of this latter figure deserves some additional mention because of the key role it plays in determining the proportion of the total amount collected from certain tax sources (e g motor fuel taxes) to be allocated directly to consumers. The data readily available for estimating the total population of consumer units in California consisted of Bureau of the Census estimates of the total population as reported in the *California Statistical Abstract, 1963,* and a B.L S. estimate of the average number of individuals per consumer unit.[36] However, when these data were used for this purpose, the figure obtained was clearly too large. Since the data on the total number of individuals in the population were known to be the more accurate, this indicated that the B.L.S estimate of the number of individuals in a consumer unit was too small. Therefore, data from Current Population Reports and from the Survey of Current Business were used to make an independent estimate of the number of individuals in a consumer unit.[37] It was this figure (2 92) by which the total population was divided to obtain the 5,714,000 figure mentioned above.

The next step in deriving a family personal income distribution for California was the estimation of personal income means for each income class. With one exception the procedure employed to obtain the esti-

TABLE XXXIII

Data Used to Estimate a California Family Personal Income Distribution

Income bracket	Percent distribution of consumer units by family personal income, U S	Percent distribution of consumer units by aftertax money income, U S	Population relative (column 1 — column 2)	Percent Distribution of consumer units by aftertax money income, California	Estimated percent distribution of consumer units by family income, California (column 3 × column 4)	Estimated number of consumer units by family personal income (column 5 × 5,174,000)
	(1)	(2)	(3)	(4)	(5)	
Under 2,000	12 9	11 5	112 17	9 36	10 5	599,646
2,000–2,999	9 1	9 8	92 85	7 76	7 1	407,603
3,000–3,990	10 3	10 9	94 49	9 05	9 5	486,487
4,000–4,999	10 8	12 3	87 80	11 84	10 3	590,156
5,000–5,999	10 5	13 1	80 15	14 03	11 2	638,164
6,000–7,499	14 1	16 5	85 45	19 76	16 8	957,971
7,500–9,999	14 7	15 3	96 08	15 67	15 0	855,028
10,000–14,999	11 1	8 2	135 37	9 46	12 8	739,606
15,000 and over	6 5	2 3	282 60	2 81	7 9	449,341

SOURCE Column 1—Survey of Current Business (April 1964), pp 5–9., column 2—B L S Report, pp 237–38, column 4—B L S Reports, pp 237–52, 237–70, 237–72

[36] Published by the Economics Development Agency of the State of California, Sacramento

[37] U S Bureau of the Census, *Current Population Reports, Current Income Series.*

mated means was completely analogous to that used in obtaining the distribution of consumer units That is, personal income and money income class means for the U S. were used to obtain relatives which were then applied to money income means for California in order to obtain the class means for the California personal income distribution [38] The exception related to income class "above $15,000." A comparison of the initial mean obtained for this bracket with the United States mean for the same bracket strongly suggested that the California estimate was much too low A new estimate of this mean based on independent data and was therefore obtained The technique utilized to accomplish this was to separate this income class into four subclasses · $15,000–$19,999; $20,000–$24,999; $25,000–$49,999; $50,000 and over. The number of consumer units and the personal income mean for each of these subclasses was then estimated on the basis of personal income data from the Department of Commerce and adjusted gross income data drawn from federal income tax returns.[39] Finally, these data were used to compute the mean which appears in Table XXX.

The final set of computations which was necessary in order to obtain the income distribution from which the tax burden ratios in Table XXX were calculated was to estimate the amount of federal income tax to be allocated to each personal income class This allocation was made on the basis of an estimate of the federal income tax rates which were applicable to each income class. This in turn was accomplished by simply adjusting Department of Commerce estimates of the tax rates which would apply nationally to account for the differences between the estimated California within class mean incomes and those reported for the United States as a whole.[40]

[38] The data were drawn from *B L S Reports*, 237–52, 237–70, and 237–72, and *Survey of Current Business*, *op cit*, p 9.
[39] *Ibid*, pp 5 and 9, and U S Internal Revenue Service, *Statistics on Income, Individual Income Tax Returns*, 1961, p 92.
[40] Survey of Current Business, *op cit*, p. 9.

SECTION III

WHO DOESN'T PAY

I. PROPERTY TAX EXEMPTIONS: PURPOSE IN GENERAL

There are several major purposes for exempting various classes of property from the property tax Exemptions can be granted for administrative reasons, social policy reasons, or economic reasons

Government property is customarily exempt for administrative reasons As there is no revenue gain if a taxing jurisdiction taxes its own property, administrative costs of assessing and taxing would be expenses which could otherwise be saved. In general terms, property of one governmental jurisdiction will be exempt in another for similar reasons (but this does not hold true in all cases) see Section two, Part III C, page 20 Exemptions of government property can also be defended on social policy grounds There is no justification for taxing government property if the cost of imposing the tax exceeds the amount of revenue collected. Exemptions are also granted to properties which are more efficiently and equitably taxed in a different manner

Another justification for a property tax exemption is the manner in which the property is used If the property is used to provide functions which otherwise might have to be provided by government or used to further some social good, such property may be exempt from the burden of taxation. Most of the present exemptions can be justified under this theory. By means of a tax exemption, religious programs, youth activities, private schools, charity programs and homes for the poor and aged can be encouraged Care of the sick and promotion of health are also commonly accepted as activities resulting in public benefit. The concept of the public good is elusive, however, and the problem of drawing the line at what logically should be taxable is almost insurmountable.

Property tax exemptions are also granted for economic reasons By this means, special economic incentives can be created. Property might also be exempted if it is determined that taxation would have serious detrimental economic effects or create undue burden on certain classes of property.

All property tax exemptions involve a shifting of the tax burden to properties still on the tax rolls Often, however, the "savings" in governmental expenditures for certain activities, such as schools, care for the poor, etc, will exceed the cost of the exemption Where exemptions are granted to promote the public good or pursue some economic policy without compensating "savings" in governmental expenditures it is imperative that each exemption be fully evaluated to determine if it is fair, equitable and in the public interest for the balance of the taxpayers to pick up the tab for the exempt property

In summarizing the problem of property tax exemptions, the Advisory Commission on Intergovernmental Relations has stated·

> "The seemingly endless process of narrowing the property tax base has progressed so far, and in such diverse directions, as to

necessitate some forthright determination not only of where it should stop but how much of it should be repealed Step by step, exemptions place heavier burdens on those still required to pay, or reduce the responsibility of local governments by inducing them to depend increasingly on fiscal aid. No brief commentary can attempt to deal with all the legal, administrative, economic, social, and political pros and cons of property tax exemption; thus attention is restricted here to certain types of exemptions whose use may be seriously questioned or at least needs more careful control

The kinds of exemptions that should be curtailed or abolished include·

1. Exemptions that foster inequity and special privilege
2. Exemptions which are veiled subsidies to private interests that would be difficult to justify as frank State budget appropriations
3. Exemptions which are an ill-chosen and defective method of granting subsidies and awards and recognizing needs that may in themselves have been justifiable
4. Exemptions which unnecessarily and heedlessly complicate the tax system and add to the difficulty and expense of its administration "[1]

II. BACKGROUND

In California, real property tax exemptions are granted under provisions of the State Constitution Any change in the exemption status on such property can come about only through an amendment to the Constitution approved by the electors of this state The Legislature has been authorized to exempt from property taxation or classify any or all personal property.

Under the 1849 Constitution, there were no valid exemptions from property taxation, except for government property Prior to 1900, under the 1879 Constitution, exemptions were limited to growing crops, government property, fruit and nut bearing trees under four years of age, grape vines under three years of age, and privately owned property used for public libraries and museums.

In 1900, the proliferation of privilege began with an exemption for churches and Stanford University. Public bonds were added in 1902 and a limited amount of personal property of householders and the California Academy of Science were exempted in 1904.

Liberalization of the exemption provisions continued with the adoption of the veterans exemption (1911), exemption of vessels of more than 50 tons (1914), nonprofit colleges exemption (1914), orphanage exemption (1920), immature timber (1926), cemetery exemption (1926), exhibition exemption (1935), motor vehicle in-lieu tax (1935), and the welfare exemption (1944). Some of these exemptions have been extended in scope in recent years

[1] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Vol 1, Washington, D.C, Government Printing Office, June 1963, pp 77–78

III. TOTAL ASSESSED VALUE EXEMPT

It has been virtually impossible to ascertain the total value of all untaxed property in the state Complete and reliable statistics are available only for a few exemptions—the veterans', church, college, welfare, and orphanages These properties are assessed by county assessors and values are reported to the State Board of Equalization In an attempt to close this knowledge gap, the Assembly Committee on Revenue and Taxation asked all county assessors to supply the committee with their best estimates of values for the various types of untaxed property within their jurisdiction [2]

The major stumbling block has been property owned by governmental units It has been impossible to get any reliable data as to the value of government property. Since government property is excluded from the tax base, it is not assessed and the county assessors have been unable to supply more than the crudest estimates of its worth Even these estimates do not include the value of highways, streets, and roads The securing of actual values by appraisal and the computing of adjustments would cost a fortune. Such an expenditure cannot be justified

From the information provided by the assessors and from other sources, we can say only that the total assessed value of property not on the tax rolls (including all government property) will fall somewhere between $6 5 billion and $28 billion A more precise estimate would only be misleading Of this total, the exempt categories which are recorded—veterans', church, college and welfare—had an assessment value of $1 57 billion in 1964.

There has been a decrease in the total dollar value of exemptions for the last two consecutive years However, these itemized exemptions as a percentage of total assessed valuation have been dropping since 1954, as Table I illustrates

TABLE I

Property Tax Exemptions Recorded by the State Board of Equalization

Year	*Assessed Value of Combined Exemptions*	*Percentage of Total Net Assessed Value*
1947	$414,152,000	3 76%
1948	500,316,000	4 10
1949	576,361,000	4 35
1950	654,123,000	4 80
1951	765,171,000	5 19
1952	843,449,000	5 23
1953	917,236,000	5 34
1954	1,012,161,000	5 55
1955	1,102,387,000	5 51
1956	1,206,425,000	5 52
1957	1,324,178,000	5.44
1958	1,401,768,000	5 39
1959	1,472,678,000	5 36
1960	1,546,147,000	5 22
1961	1.587,741,000	5 03
1962	1,639,338,000	4 91
1963	1,604,430,000	4 57
1964	1,572,389,000	4 27

SOURCE Computed from Board of Equalization *Annual Reports*, 1947–1964

[2] All but three counties—Sierra, Amador and Inyo—responded to the committee's request

IV. DISTRIBUTION PATTERN OF EXEMPTIONS

Exemptions are not evenly distributed among all taxing jurisdictions statewide In some, the assessed value of exemptions from the tax rolls is extremely high, while in others, exemptions are miniscule. The exemptions for which accurate statistical data are available—the veteran's, welfare, church and college, and orphanages—vary from a high of 7 5 percent of the taxable value in Napa County in 1964 to 6 percent in Mono County. See Table II.

TABLE II

Recorded Property Tax Exemptions by County: 1964

County	Amount	As a percent of taxable property	County	Amount	As a percent of taxable property
Alameda	$80,459,000	4 6	Orange	$82,329,000	4 0
Alpine	46,000	1 8	Placer	4,615,000	2 7
Amador	735,000	1 5	Plumas	863,000	1 1
Butte	6,549,003	3 2	Riverside	27,118,000	3 3
Calaveras	940,000	2 5	Sacramento	52,464,000	5 0
Colusa	618,000	1 1	San Benito	680,000	1 3
Contra Costa	38,047,000	3 4	San Bernardino	44,375,000	3 8
Del Norte	931,000	3 2	San Diego	108,957 000	5 8
El Dorado	3,183,000	2 4	San Francisco	88,897,000	5 4
Fresno	31,987,000	3 6	San Joaquin	28,953,000	5 5
Glenn	1,083,000	1 8	San Luis Obispo	5,214,000	2 2
Humboldt	7,185,000	3 7	San Mateo	46,416 000	4 4
Imperial	3,347,000	2 3	Santa Barbara	19,040,000	3 6
Inyo	878,000	1 8	Santa Clara	132,960,000	7 1
Kern	22,662,000	2 8	Santa Cruz	10,624,000	4 9
Kings	4,250,000	2 9	Shasta	6,220,000	3 3
Lake	1,176,000	2 4	Sierra	209,000	2 9
Lassen	1,218,000	4 5	Siskiyou	2,477,000	3 2
Los Angeles	563,667,000	4 2	Solano	10,737,000	4 8
Madera	2,364,000	2 0	Sonoma	13,344,000	4 1
Marin	16,239,000	4 3	Stanislaus	13,418,000	4 7
Mariposa	427,000	2 5	Sutter	2,827,000	2 2
Mendocino	3,354,000	3 5	Tehama	2,015,000	2 8
Merced	6,221,000	3 0	Trinity	420,000	2 5
Modoc	445,000	1 8	Tulare	10,448,000	2 8
Mono	178,000	6	Tuolumne	1,386,000	2 8
Monterey	14,432,000	3 2	Ventura	25,564,000	3 8
Napa	8,440,000	7 5	Yolo	3,025,000	2 9
Nevada	1,787,000	3 3	Yuba	2,711,000	3 7

The relative impact of these exemptions is even greater on governmental units within the county The cities of Los Angeles County have been selected as a representative sample to illustrate this phenomenon. In 1963, the statistical exemptions in the City of Claremont amounted to 33.74 percent of the total assessed value while in Vernon these same exemptions amounted to only 0 01 percent of the total assessed value Eight other cities in Los Angeles County have exemption ratios exceeding 10 percent—which is more than double the statewide average. (See Appendix III for relationship of exemptions to assessed value for all cities in Los Angeles County)

Citizens in a few cities are required to bear an artificially high tax burden due to a statewide exemption policy over which they have no control Richard Malcolm, City Manager of Claremont, told the Assembly Committee on Revenue and Taxation in Palm Springs.

"Local jurisdictions have little or no control over matters pertaining to exemptions. Although our fine colleges and retirement homes confer benefits beyond the city limits of Claremont, although

the functions of higher education and welfare for the aged are as much the concern of the State as they are of the community, our local jurisdiction and local citizens and taxpayers are carrying the major burden in financing municipal and other ad hoc services required by such institutions."[3]

Other local jurisdictions also have an unduly high proportion of public property within their borders. The loss of tax base often presents formidable challenges to the community to provide adequate local services.

The Advisory Commission on Intergovernmental Relations has recommended, as a partial solution to this problem that·

"In the instance of mandatory tax exemptions extended to individuals for such purposes as personal welfare aid and expressions of public esteem, the state should reimburse the local communities for the amounts of the tax loss."[4]

V. SPECIFIC EXEMPTIONS

A. *Public Property*

Most government-owned property in California is tax exempt—as it is in other states There are several reasons for this. Some United States government property is exempt under the Act of Congress admitting California to the union. Admission was granted on the condition that the state "shall never levy any tax or assessment of any description whatsoever upon the public domain of the United States[5] . . ." Most other federally owned property is exempt under this doctrine of intergovernmental immunity that stem from the U S Supreme Court's decision in *McCulloch* v *Maryland.* Property belonging to the State of California, counties, cities and school districts is exempt under Article XIII, Section 1 of the State Constitution.

"Property . . . as may belong to this State, or to any county, city and county, or municipal corporation within this State shall be exempt from taxation. . . ."

To tax government-owned property would, in effect, be taking money from one pocket and putting it into another. The additional cost involved in assessing and taxing such property would be nonproductive, and the cumulative effect would be an increase in governmental costs

Where a substantial amount of this type of tax exempt property is located in one taxing jurisdiction, it can severely restrict the tax base and create undue hardship. The federal government has a number of programs under which it attempts to compensate local governments on an "in-lieu" basis for the loss in tax revenue Probably best known is the P.L. 874 program under which California school districts were allocated $44,365,917 in 1962–63 because of the federal "impact" on the school districts. The State of California also provides local units of government with substantial financial support, however, the subventions are not correlated with state-owned property in an area

[3] Statement to Committee, February 29, 1964
[4] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Washington, D C , G P O , June 1963, p. 12
[5] *9 United States Statutes at L*, Ch 50, p. 452, approved Sept 9, 1850.

Approximately 50 percent of the land area of California is owned by the United States government or the state itself. The federal government holds 49.7 million acres of land, while the state owns another one million acres, not including congressional land grants.[6] It is virtually impossible to get an accurate figure for the value at which this property would be assessed if listed on the tax rolls. In the course of our study we have received various estimates ranging from $3.5 billion to $19.7 billion.

B. Private Property Exempt Under United States Constitution

In addition to government-owned property, several classes of private property are protected from taxation by provisions of the United States Constitution.

Under the Commerce Clause of the United States Constitution, goods strictly in interstate transit are exempt from taxation if they happen to be passing through a state on the lien date. [*Vonn Hamm-Young Company, Ltd* v. *City and County of San Francisco* (1947) 29 Cal. 2nd 798.]

Imports and exports are exempt from taxation under Article 1, Section 10, Clause 2 of the United States Constitution, which states:

> "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws."

One of the major problems in this area is the determination of what is an import or export. In so far as imports are concerned, for many years the "original package doctrine" was used to determine the taxability of imports. Under this doctrine, an import was not subject to any state tax so long as it remained the property of the importer in the "original package" or form in which it was delivered to him. [*Brown* v *Maryland* (1827) 12 Wheaton 419.]. In 1959, the United States Supreme Court further clarified the taxability of imports by ruling that the immunity from taxation is lost when imports are "irrevocably committed" to use in manufacturing at their point of final destination. [*Youngstown Sheet and Tube Company* v. *Bowers* (1959), 358 U.S. 354.]

As a result of this decision, beginning in 1960 some imports formerly tax exempt were assessed as personal property and taxed by local governmental units. It is reported that taxable imports that would have been exempt under earlier interpretation of the commerce clause had an assessed value of $16,516,478 in 1961.[7] In the Legislature, bills were introduced and passed the Assembly both in 1961 and 1963 which attempted to restore the "original package doctrine" to certain classes of imports.[8] All these measures were killed in the Senate. As the problems attendant to the taxation of all business inventories will be discussed subsequently, it will suffice at this point to note that the state Senate study of this problem came to the conclusion that, although this new tax burden caused considerable hardship on various industries using imported raw materials, the solution to the problem "does not

[6] *California Statistical Abstract*, 1963, p. 2.
[7] California Senate Factfinding Committee on Revenue and Taxation *An Inquiry into the Effects of Exempting Certain Imported Raw Materials from Local Personal Property Taxes*, Sacramento, March 1963, p. 47.
[8] See Assembly Bills 527 and 1166 in 1961 and AB 315 in 1963.

appear to lie in granting exemptions to certain types of personal property while leaving other types to bear the burden "[9]

C. Church Exemption

Churches and their equipment and property attendant thereto have been exempt from property taxation in California since 1900 After minor amendments in 1952, 1954, and 1956, Section 1½ of Article XIII of the State Constitution now provides·

> "All buildings and equipment, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, and any building and its equipment in the course of erection, together with the land on which it is located as may be required for the convenient use and occupation of the building, if such building, equipment and land are intended to be used solely and exclusively for religious worship, shall be free from taxation; provided, that no building so used or, if in the course of erection, intended to be so used, its equipment or the land on which it is located, which may be rented for religious purposes and rent received by the owner therefor, shall be exempt from taxation "

All church property is not exempt under this section—just buildings, equipment used solely for religious worship, and that portion of the land necessary for the use of the church Additional church property not eligible for the church exemption may be exempt under the welfare exemption to be discussed later If only a portion of a parcel of property is used for church purposes and the balance is used for nonreligious purposes, a partial exemption can be granted

TABLE III

Church Exemptions

Year	*Number*	*Value*	*Church exemption as a percentage of total statewide assessed value*
1947	6,875	$56,254,000	51%
1948	7,193	61,445,000	50
1949	7,791	67,675,000	51
1950	9,247	73,859,000	54
1951	8,342	82,672,000	56
1952	8,998	92,378,000	.57
1953	9,759	101 200,000	.58
1954	10,228	109,627,000	60
1955	10,593	124,522,000	62
1956	11,113	136,903,000	.62
1957	12,121	155,614,000	64
1958	12,848	170,808,000	65
1959	13,213	190,347 000	.69
1960	13,614	208,826,000	.70
1961	13,939	222,473,000	.70
1962	14,027	246 394,000	.73
1963	13,629	254,387,000	.72
1964	13,919	288,940,000	78

SOURCE· Computed from Board of Equalization *Annual Reports*, 1947–1964

[9] California, Senate, *Inquiry, op. cit.*, pp 8–9.

Property tax exemptions for churches are based on the premise that the maintenance and encouragement of religion is of great benefit to society. A tax on church property would seriously cripple, if not destroy, the activities of a number of churches in California. In 1964, the total number of church exemptions was 13,919 with an assessed valuation of $288,940,000 Since 1947, the assessed value of property exempt coming under the church exemption has been increasing at a much more rapid rate than the assessed value of the state as a whole. From 0 51 percent of the total in 1947, the church exemption represents, as of 1964, 0 78 percent of the total assessed value of the state

To illustrate the magnitude and diversity of the exemption, churches receiving the exemption in the City of Berkeley have been selected as a sample Eighty-seven churches with an assessed value of $3,444,480 were off the tax rolls in Berkeley in 1963:

CHURCH EXEMPTIONS IN BERKELEY: 1963

South Berkeley Community Church
Progressive Baptist Church Temple
Christian Methodist Episcopalian Church
Ephesian Church of God in Christ
Northern California Conference of Seventh Day Adventists
Gallilee Missionary Baptist Church
All Nations Church of Christ Holiness
Bethlehem Lutheran Church
Third Church of Christ Scientist
Church of Christ in Berkeley
The Church by the Side of the Road
St. Paul's African Methodist Episcopalian Church
Russian Orthodox Greek Catholic Church of St. John the Baptist
South Berkeley Church of Christ
Ollie Grove Baptist Church
Berkeley Higashi Honganji (Buddhist Temple)
McGee Avenue Baptist Church
Church of Jesus Christ of the Latter Day Saints
St. Clement Parish
Christian Layman Church
Bethlehem Temple Inc.
Primitive Baptist Church of Berkeley
Japanese Berkeley Free Methodist Church
Faith Chapel Church of God in Christ
Berkeley Methodist United Church Inc.
Christian Churches of Northern California
Grace Baptist Church of Oakland
Russian Orthodox Memorial Church of Christ the Savior
Plymouth Brethren IV Meeting Halls, Inc.
Northern California Conference Association of Seventh Day Adventists
St. John's Presbyterian Church
University Lutheran Chapel
Christian Science Organization at the University of California
First Church of Christ Scientist
Vendanta Society of Northern California
St. Michael's Evangelical Lutheran Church of Berkeley
First Presbyterian Church of Berkeley
First Baptist Church
First Congregational Church
Trinity Methodist Episcopalian
St. Mark's Parish
Berkeley Buddhist Church
Durant Avenue United Presbyterian Church
Church of the Nazarene
Hebrew Center of Berkeley

The First Finnish Apostolic Lutheran Church
St. Paul Baptist Church
First Assembly of God in Berkeley
Apostolic Lutheran Church of Berkeley
Berkeley Chinese Community United Church of Christ
Sisters of the Presentation
St. Joseph's Church
Evangelical Lutheran Bethany Church of Berkeley
Calvary Baptist Church of Berkeley
Covenant Presbyterian Church
Liberty Hill Missionary Baptist Church
Latin American Assemblies of God
Apostolic Assembly of the Faith in Christ Jesus, Inc
Oakland Congregation of Jehovah's Witnesses, Inc.
Berkeley Friends Church
Calvary Presbyterian Church
Berkeley Fellowship of Unitarians
North Congregational Church
All Souls Parish
Corp of the Pres. of the SF Stake Church of Jesus Christ of the LDS
University Christian Church of Berkeley
Newman Hall
Congregation Beth El
Second Church of Christ Scientist
Berkeley Society of Friends
Church of Jesus Christ of the Latter Day Saints
Holy Trinity Lutheran Church
Beth El Apostolic Faith Church
El Golgotha Assembly of God Church
Berkeley Mount Zion Missionary Baptist Church
St. Ambrose Church
Westbrae Church
Immanuel Baptist Church
Mission Covenant Church
Roman Catholic Welfare Corporation
St Mary Magdalen Church
Peoples Church of Berkeley
Reorganized Church of Jesus Christ of the Latter Day Saints
Epworth Methodist Church
Northbrae Community Church
Thousand Oaks Baptist Church
Shepherd of the Hills Lutheran Church

One of the ambiguities of the constitutional provisions granting the church exemption is the term "religious worship" as used in Section 1½ of Article XIII. What is "religious worship"? Belief in a supreme being is not a prerequisite. In *Fellowship of Humanity* v. *Alameda County* (1957) 153 Cal 2nd 673, the court defined religion to include "(1) A belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief."

The state would run into serious trouble if it set up a program to certify "bona fide" religions for the purpose of the property tax exemptions. But, on the other hand, the definition of religion is so loose as to open the door to various groups not generally thought of as religious groups but rather as associations of people. By proclaiming themselves religions, it is possible for fringe organizations to apply for tax exemptions for their property.

It is not necessary for property to be owned by a church to be eligible for a church exemption An individual who owns the land and the building where religious services are conducted regularly, but who receives no rent or other compensation for the use of such property may claim an exemption from taxation [*Havens* v. *County of Alameda,* (1916) 30 Cal App 266] Under this interpretation of the church exemption, it would be possible, providing the circumstances were right, for a land speculator to acquire a piece of potentially valuable property, allow a church to use the property for a period, and then boot the church out when the time for development is ripe. In this way, the speculator can hold a highly appreciating piece of property and pay no property taxes at all until he decides to develop it.

D. The Veterans' Exemption

The veterans' exemption from the property tax became a part of the California Constitution in 1911 by a vote of the people of the state It passed 106,554 "yes" to 96,891 "no". That total vote wouldn't be a respectable tally in some of our city council elections today but it has given the state a 53-year headache.

The original purpose of this exemption was to bring new citizens to the sparsely settled West A $1,000 exemption on all holdings up to $5,000 was of substantial value in 1911, and the $5,000 limit rarely applied Thus the exemption became blanket coverage for any man who had served in the wars of his country The veterans were from the Civil War, the Spanish-American War, and the Indian skirmishes of the wild West No one dreamed of the great wars which would follow 1911, but it is not fair to say we wouldn't have the exemption if these conflicts had been forecast

The exemption was never conceived as a reward, for military service in war or peace cannot be compensated in dollars and cents Appreciation for such service had been expressed in farm and home loans, educational funds, civil service preference, and a host of lesser known but equally important benefits If it were to be a reward, it would no doubt be restricted to men entering the service from California, and any reward would not be given only to specific classes of the veterans Those unable or unwilling to purchase a home or other locally taxable property are not eligible for the exemption

The property tax is now the revenue source for local government It supports our police, our fire departments, schools, libraries, and all the other vital services which touch our lives every day However, the statutes which govern the assessment and collection of this tax are all written at the state level

The exemption is granted by the state but really involves no cost to the state since the property tax supports local government; the state continues to grant exemptions to a tax it does not collect or administer, but the political effects of making any changes are staggering to imagine In 1964, the 845,959 veterans who received the exemption took more than $785,462,000 of assessed valuation from the tax rolls and shifted $62,800,000 in tax burden to noneligible veterans and nonveterans

TABLE IV

Number and Assessed Value of Veterans' Exemptions and Average Value of Veterans' Exemptions: 1964

County	Veterans' exemptions			County	Veterans' exemptions		
	Number	Value (× 1,000)	Average value		Number	Value (× 1,000)	Average value
Alameda	43,062	$40,388	$938	Placer	3,592	$3,327	$926
Alpine	24	21	875	Plumas	722	671	929
Amador	849	802	912	Riverside	18,206	15,978	878
Butte	5,376	4,895	911	Sacramento	38,338	37 007	965
Calaveras	801	703	878	San Benito	436	351	828
Colusa	442	417	943	San Bernardino	29,128	28,209	969
Contra Costa	25,154	25,079	997	San Diego	72 667	64 316	885
Del Norte	542	703	942	San Francisco	32,851	23,482	715
El Dorado	2,378	2,076	911	San Joaquin	18,257	16 884	897
Fresno	18,722	17,844	954	San Luis Obispo	3,899	3 374	865
Glenn	797	750	941	San Mateo	30 729	28,064	913
Humboldt	4,057	4,566	980	Santa Barbara	7,914	7,716	975
Imperial	2,879	2,266	787	Santa Clara	36 386	35,596	953
Inyo	806	551	684	Santa Cruz	4,224	3,938	932
Kern	18,094	15,980	878	Shasta	4,308	3,899	909
Kings	2,764	2,056	873	Sierra	165	125	758
Lake	1,203	920	772	Siskiyou	2,648	1 946	734
Lassen	944	943	999	Solano	7,840	7,830	1,000
Los Angeles	262 411	250,863	955	Sonoma	7,594	7,163	979
Madera	1,941	1,589	802	Stanislaus	9 955	8,817	856
Marin	6,701	6,488	960	Sutter	1,543	1,493	948
Mariposa	344	308	903	Tehama	1,613	1,315	789
Mendocino	2,740	2 339	850	Trinity	512	384	750
Merced	4,779	3,961	829	Tulare	7,071	6,057	862
Modoc	428	350	818	Tuolumne	847	800	945
Mono	179	151	844	Ventura	16,622	14 959	900
Monterey	7,733	6,883	890	Yolo	3,887	3,554	914
Napa	4,617	4,423	958	Yuba	1,882	1,676	891
Nevada	1,487	1 377	926				
Orange	57,664	56,802	985	Totals	845,959	$785,462	$928

SOURCE State Board of Equalization, *Annual Report*, 1963–64, p A-18

It should be noted, however, that the assessed value of the veterans' exemption has been declining as a percentage of statewide assessed value since 1954 and declining absolutely since 1959 The exemption now represents 2 13 percent of the total assessed value of the state

TABLE V

Veterans' Exemptions 1947–1964

Year	*Number*	*Assessed value*	*Veterans' exemption as a percentage of total statewide assessed value*
1947	391,985	$296,465 000	2 69%
1948	466 145	372,067 000	3 05
1949	571,896	434,681,000	3 28
1950	626,970	469,674,000	3 66
1951	699,677	584,240,000	3 96
1952	749,970	647,746,000	4 02
1953	821,312	686,332,000	3 99
1954	924,422	757 410,000	4 14
1955	971,154	808,170,000	4 04
1956	1,028,995	879,473,000	4 03
1957	1,090,850	930,057,000	3 82
1958	1,146,818	968 608,000	3 72
1959	1,195,257	978,278,000	3 56
1960	1,168,961	984,602,000	3 32
1961	1,136,478	971,931,000	3 08
1962	1,111,333	960,859,000	2 88
1963	970,078	881,209,000	2 51
1964	845,959	785,462,000	2 13

SOURCE Computed from Board of Equalization *Annual Reports*, 1947–1964

The exemption is available to all veterans who own property in the state—if they don't own too much property In 1960, 55 percent of the male veterans, 25 and older, in California were receiving the exemption The other 45 percent were not eligible because their assets were too extensive or because they were renters rather than owners.

CENSUS FIGURES FOR 1960 SHOW:

Population—State of California	15,717,204
Population—State, 25 and older	8,873,827
Population—State, 25 and older, male	4,343,271
Population—State, 25 and older, male, veteran	2,155,629
Population—State, 25 and older, male, veteran, receiving exemption	1,168,961

Over three-fourths (77%) of the men in California between the ages of 40 and 44 are war veterans. Forty-eight percent of the men 25 and older have served in the armed forces during a war period

SOURCE *Veterans in the State of California, 1960*. Research Statistics Service, Office of Controller, Veterans' Administration, Washington, D C, April 1963 Contra Costa Grand Jury Report, 1963

Renters can't take advantage of the exemption on their living quarters and property owners with assets over $5,000 ($10,000 for married veterans) are not eligible Assets include assessed value of home or homes, assessed value of all other tangible property, and full value of savings accounts, cash, checking deposits, stocks, bonds, savings bonds, motor vehicles, cash surrender value of life insurance, noncompulsory retirement funds, and money owed the veteran on mortgages, trust deeds, and personal loans There should be very few veterans eligible for the exemption when all these items are carefully evaluated and totaled.

It is conceivable that a higher percentage of veterans will receive the exemption in one county than a group of equally situated veterans in another county due to the manner in which the exemption is administered by the county assessor, particularly the method by which the $5,000 limit is verified. The forms used by the 58 county assessors have not been uniform in their general questions nor specific enough in sections which deal with property problems peculiar to the geographic area involved. Rural county land holdings present different situations from those found in urban areas The State Board of Equalization has been working on a standard form which will improve this situation.

Some assessors say that they have neither the staff nor the authority to conduct an investigation where they feel the claim may be fraudulent The Contra Costa County Grand Jury report for 1963 indicated that in many cases business and professional men do not consider their business property when totaling their assets, hoping they can squeeze under the $10,000 limit This same grand jury found that in Contra Costa County 87 percent of those who claimed the exemption on homes assessed at $7,000 and above were not entitled to it. Most of these faulty claims were the results of misunderstandings rather than outright perjury on the part of the claimant.

Since eligibility for the exemption only involves service during a war or military action, between dates specified in the Revenue and Taxation Code, many men who never left the continental United States and others who served their wartime duty in military headquarters in large European cities are entitled to it. Some of these men lived in

more comfort during their service days than they could have found at home. Many other men performed their complete tour of duty between cessation of hostilities and declarations of peace—yet they may claim the same privileges as those who risked their lives in combat.

Once the veteran has qualified for the exemption he may claim it by mail in subsequent years This procedure seems too loose. We can't expect the assessor's office to hire staff to conduct an average of 10,000 to 20,000 personal interviews in the office (262,000 in Los Angeles County), nor can we imagine the physical problem of 20,000 veterans waiting in line at the assessor's office However, the simple post card form now sent out can only ask if the veteran's assets have changed enough during the year to disqualify him and allow a place for his signature. The temptation to sign your name when it will take $1,000 from the amount which will be taxed to you is too much for some people If the full form were mailed the individual would have to evaluate his holdings for the record each year The temptations to continue claiming the exemption would be reduced and proof of eligibility could more easily be established. As an alternative—or better, to supplement this method of application—a personal visit to the assessor's office one time in each four-year period would not be too much to ask. It might cost the claimant one hour or two from his job but two hours in four years is a small price compared with the value of the exemption.

The original intent of the exemption has been served adequately and long since forgotten Changes in the administration cannot be said to deny a right to those now receiving the benefit since "the reward for service" theory is a misunderstanding on the part of the recipient Suggested improvements in administration are designed to dissuade those who are claiming fraudulently or through some misunderstanding of the intent of the exemption Even with administrative improvements, it is clear that this exemption is unfair in its coverage, unfair in its enforcement, and unfair in its application.

E. College, library and museum exemption

California's Constitution contains a series of sections pertaining to property tax exemptions for private colleges, free museums and free public libraries In general, all private, nonprofit educational institutions of a collegiate grade are exempt from property taxation under Section 1a of Article XIII In addition, there are separate sections allowing the exemption of property of Stanford University (Article IX, Section 10), California School of Mechanical Arts (Article IX, Section 11) and Cogswell Polytechnical College (Article IX, Section 13)

Exemptions are also extended to free museums (Article XIII, Section 1), the California Academy of Sciences (Article IX, Section 12), free public libraries (Article XIII, Section 1) and the Henry E Huntington Library and Art Gallery (Article IX, Section 15)

The purpose of these exemptions is to encourage the improvement of educational opportunities for the people of the State of California to the end that they will become more useful and productive citizens. These institutions are also performing a function which might otherwise have to be provided by government

As of 1964, the total assessed value of the tax-exempt private colleges was $135 million This represented slightly more than one-third of 1 percent of the state's total assessed value The college exemption remained relatively constant from 1947 through 1959 In 1960, this pattern changed and the college exemption recently has been growing faster than the assessed value of the state as a whole

TABLE VI
College Exemption: 1947–1964

Year	*Number*	*Value*	*College exemption as a percentage of the total assessed value of the state*
1947	75	$31,102,000	28
1948	82	33,431,000	27
1949	90	35,449,000	26
1950	91	37,563,000	27
1951	97	42,394,000	28
1952	102	46,627,000	28
1953	106	50,874,000	29
1954	110	52,583,000	28
1955	116	56,741,000	28
1956	121	60,066,000	27
1957	124	66,251,000	27
1958	126	71,830,000	27
1959	127	81,604,000	29
1960	127	105,633,000	35
1961	127	113,260,000	35
1962	125	121,062 000	36
1963	130	129,954,000	37
1964	141	135,627,000	36

SOURCE Computed from Board of Equalization *Annual Reports*, 1947–1964

It should be noted that the private college exemption has a very uneven distributional pattern statewide In most counties this exemption results in no loss in assessed valuation from the local tax base As table VII illustrates, in the remaining 20 counties, the private college exemption ranges from 2 79 percent of the total assessed value of Santa Clara County to 0 01 percent of the total in Fresno County.

TABLE VII
College Exemption by County: 1964

County	*Number*	*Value*	*Percent of total county assessed value*
Santa Clara	8	$52,001,000	2 79
Napa	1	963,000	86
Marin	5	3,110,000	82
San Joaquin	2	3,476,000	66
Los Angeles	49	48,440,000	35
San Mateo	7	3,520,000	33
San Diego	11	5,357,000	28
San Francisco	13	4,563,000	27
Alameda	16	4,598,000	26
Ventura	3	1,493,000	22
Riverside	4	1,726,000	20
Sierra	1	15,000	20
San Bernardino	2	2,259,000	19
Santa Barbara	5	871,000	16
Contra Costa	2	1,287,000	11
Santa Cruz	2	217,000	09
Orange	7	1,437,000	06
Inyo	1	33,000	06
Monterey	1	104,000	02
Fresno	1	157,000	01

SOURCE Board of Equalization *Annual Report*, 1963–64.

Prior to 1963, the private college exemption was limited to 100 acres for each institution. This provision was repealed by a vote of the people in November 1962 While the 100-acre limit was very unrealistic,[10] the present wording of the exemption which allows an unlimited exemption is equally unrealistic. It would be possible for a private college to be founded with a campus of thousands of acres This property could be used exclusively for educational purposes—such as intensive wildlife study—and be tax exempt If this were to happen, the tax base of the local governmental units might be severely restricted. A limit of 2,000 to 3,000 acres might be more realistic.

Another problem with the college exemption is in the determination of "collegiate grade" It is doubtful that it was the voter's intent in establishing this exemption to grant tax relief to diploma mills. Therefore, the Legislature has defined "collegiate grade" as·

> ". . . an institution incorporated as a college or seminary of learning under laws of this State, which requires for regular admission the completion of a four-year high school course or its equivalent and confers upon its graduates at least one academic or professional degree, based on a course of at least four years in liberal arts and sciences, or on a course of at least three years in professional studies, such as law, theology, education, medicine, dentistry, engineering, veterinary medicine, pharmacy, architecture, fine arts, commerce or journalism "[11]

It is clear that our forefathers acted wisely in approving the college exemption. The development of our human resources through education has created in California a standard of living unmatched anywhere in the world In this achievement, our private colleges have played an important part.

F. The welfare exemption

1. ADOPTION OF THE WELFARE EXEMPTION IN CALIFORNIA

In 1944, the "welfare exemption" (Article XIII, Section 1c) was added to the California Constitution, by a vote of the electorate[12] This amendment authorized the Legislature to exempt from property taxation the property of various types of "welfare" organizations used for religious, hospital or charitable purposes Subsequently, legislation was enacted exempting such property from property taxation bringing California into conformity with the 47 other states which had already allowed this exemption.[13]

In support of this amendment, proponents advanced the argument that while the loss in the tax base would cost the taxpayer possibly 1 cent per $100 of assessed value, "additional health and welfare services resulting from the exemption would save the entire exemption cost" They also assured the voters that "the meaning of every phrase has been clearly defined by the taxing authorities and by the courts"

[10] Only three state colleges, Humboldt (96), Los Angeles (97), and San Francisco (93), operate on campuses of less than 100 acres Fresno State has a 1,423-acre campus, and San Luis Obispo has 2,536 acres
SOURCE State of California *Budget* 1964–65

[11] *Revenue and Taxation Code*, Section 203

[12] This amendment, Proposition No 4 at the general election on November 7, 1944, carried by a vote of yes 1,532,141 to no 1,277,160.

[13] *Statutes of 1945*, Chapter 241.

and that competent legal authority had advised "that schools other than colleges will not be exempted under this amendment because the Legislature expressly eliminated the term 'educational.'"[14]

Assemblyman T. Fenton Knight, opposing the measure, challenged the principle of letting the Legislature control the exemption and observed that a tax exemption was

> "a subsidy by the entire community . . . [for an enterprise] in which only a small part may have any interest or even be in sympathy."

He also noted that each additional exemption establishes a precedent for future ones.[15]

Despite the assurances given the voters in 1944, the 1951 Legislature extended the welfare exemption to property used exclusively for schools of less than collegiate grade owned and operated by nonprofit religious, hospital or charitable organizations.[16] This action was put to the electorate in the form of a referendum and sustained 2,441,005 to 2,363,528. Voters were told by the proponents that private schools relieve the overcrowded public schools and save the taxpayers hundreds of millions of dollars and that "penalty taxation" of church school was a violation of the principle of the separation of church and state.[17]

The opposition also used separation of church and state as an argument, charging a tax exemption is a subsidy and a violation of the principle of the separation of church and state. They also complained about the narrowing of the tax base and the fact that assurances had been given to the voters that schools would not be included in the welfare exemption.[18]

In *Lundberg* v. *Alameda County* (1956) 46 Cal. 2nd 644, the California Supreme Court ruled that the term "charitable" as used in Article XIII, Section 1c of the Constitution authorizes the exemption of schools of less than collegiate grade.

In 1954, the only subsequent amendment to Section 1c was approved to allow an exemption for property in construction that would otherwise qualify. At present, Article XIII, Section 1c reads as follows:

> "In addition to such exemptions as are now provided in this Constitution, the Legislature may exempt from taxation all or any portion of property used exclusively for religious, hospital, or charitable purposes and owned by community chests, funds, foundations, or corporations organized and operated for religious, hospital, or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. As used in this section, 'property used exclusively for religious, hospital or charitable purposes' shall include a building and its equipment in the course of construction on or after the first Monday of March, 1954, together with the land on which it is located as may be required for the use and occupation of the building to be used exclusively for religious, hospital, or charitable purposes."

[14] California, Secretary of State, *Proposed Amendments to the Constitution, General Election, November 7, 1944*. California State Printing Office, 1944, p. 4.
[15] *Ibid.*
[16] *Statutes of 1951*, Chapter 242.
[17] California Secretary of State, *Amendments to the Constitution, General Election, November 4, 1952*, California State Printing Office, 1952, p. 4.
[18] *Ibid.*, p. 5.

It should be noted that the welfare exemption extends to taxes on property but not to special levies [*Cedars of Lebanon* v. *Los Angeles County* (1950) 35 Cal 2nd 729.]

2. ELIGIBILITY FOR EXEMPTION

It has been the general rule in California that tax exemptions are the exception and that ambiguities are to be construed strictly against the taxpayer [*Cypress Lawn Cemetery Association* v. *San Francisco* (1931) 211 Cal 387] although more recent decisions have held that the statutes should receive a fair and reasonable interpretation which should carry out the apparent intent of the Legislature. [*Moody Institute of Science* v. *Los Angeles County* (1951) 105 CA 2nd 107.]

To qualify for a property tax exemption under the welfare exemption, property must meet the criteria set forth in Section 214 of the Revenue and Taxation Code as follows:

A—*Property must be owned and operated by community chests, funds, foundations, or corporations organized and operated for religious, hospital, or charitable purposes and must be used exclusively for religious, hospital or charitable purposes.*

There are no definitions of these terms in the code and, due to their ambiguous nature, wide differences of opinion on interpretation result In the absence of legislative declaration, the courts have established some guideposts for county assessors to follow.

What is a religious purpose? The law is unclear as to just what is included and what should be included under the term religious purpose. The term religious does not require a belief in a supreme being. In *Fellowship of Humanity* v. *Alameda County* (1957) 153 CA 2nd 673, the court defined religion to include:

"(1) a belief, not necessarily referring to supernatural powers;
(2) a cult, involving a gregarious association openly expressing the belief;
(3) a system of moral practice directly resulting from an adherence to the belief; and
(4) an organization within the cult designed to observe the tenets of the belief."

In *House of Rest* v. *Los Angeles County* (1957) 151 CA 2nd 523, the court stated the test for determining whether the property is used exclusively for religious or charitable purposes is not whether such property is essential, indispensable and necessary for the accomplishment of such purposes but whether the use is incidental to and reasonably necessary for the accomplishment of such purposes.

The space occupied by a pantry snack bar, a gift shop, and a beauty shop on the grounds of a religious organization (the "I Am" sect) were declared to be tax exempt due to the evidence which the court said indicated these facilities were operated by the organization, not primarily for profit, but to serve the convenience of persons assembled for religious purposes. [*Saint Germain Foundation* v. *County of Siskiyou* (1963), 212 CA 2nd 911]. The residential facilities of this same

religious organization were declared tax exempt where these facilities were used by the followers who assembled in conclave in the Siskiyou mountains for two weeks each year for religious instruction. The residential quarters of the caretakers required to reside there for reasons of institutional necessity were also declared tax exempt

What is a hospital purpose? A hospital purpose may be easier to define than a religious purpose, but litigation has resulted from problems of interpretation in this area too Generally speaking a hospital is an institution which is operated for the diagnosis, care and treatment of the ill and is equipped to provide room and board A hospital is entitled to a welfare exemption even if it is not a charitable activity, providing it otherwise qualifies [*Cedars of Lebanon Hospital* v. *Los Angeles County* (1950) 35 C 2d 729] In this case, the court also ruled that property of a hospital devoted to housing of essential hospital personnel, to the conduct of a nurses' training school and to a tennis court maintained as a recreational facility for hospital employees was also exempt.

A sanitarium and a clinic are distinguishable from a hospital under the Cedars of Lebanon decision and do not qualify for the exemption However, Section 214 9 of the Revenue and Taxation Code, enacted in 1959, extended the welfare exemption to "outpatient clinics" where emotionally disturbed children are treated.

What is a charitable purpose? Webster defines "charity" as "an organization or institution engaged in the free assistance of the poor, incapacitated, distressed, etc." and "an institution founded by a gift and intended for use of the public."

California's courts have expanded the definition of "charity" to include almost any public good Charity has been defined as "a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or by otherwise lessening the burdens of government." [*Lundberg* v. *County of Alameda* (1956), 46 Cal 2nd 644; *Samarkand of Santa Barbara, Inc.* v. *County of Santa Barbara* (1963) 216 ACA 3807.]

In the Samarkand case, the court noted that if the benefit conferred has a sufficiently widespread social value, a charitable purpose exists and observed that gifts or trusts for educational institutions, the promotion of woman's suffrage, the publishing of religious writing and even the relief of dumb animals have been held charitable.

Charity includes the needs of the rich as well as the poor. [*Fredericka Home* v. *San Diego County* (1950) 35 Cal 2nd 789; *Fifield Manor* v *County of Los Angeles* (1961) 188 Cal. App. 2nd 1.] In the Fifield case, the court held:

> "The test is not found in the question of what financial ability does the recipient possess, but what are his needs, alleviation of which constitutes a worthy social value. We apprehend that the financial test becomes pertinent only when the occupants of an old age home pay more than the cost to the home of what it furnishes them."

Any standard of care, no matter how lavish or exclusive, would appear to meet the standards for qualifying as "charitable." Implicit in the Fifield decision is also the view that "charity" can include furnishing a "social good" at cost rather than at some expense to the donor.

California's Supreme Court has also ruled that the word charitable is broad enough to include nonprofit schools of less than collegiate grade of religious, hospital and charitable institutions [*Lundberg* v. *County of Alameda* (1956) 46 Cal. 2nd 644.] Section 214.5 of the Revenue and Taxation Code specifically exempts such schools under the "welfare exemption."

Court definitions of charity and charitable purpose as cited above are sufficiently broad to invite many organizations which have not qualified for a property tax exemption but which do qualify for an exemption from the Bank and Corporation Tax (Revenue and Taxation Code, Sections 23701–23705) to file for this further exemption. Only 4,287 organizations received a property tax exemption in 1963, while 62,631 organizations were granted an income tax exemption.

B—The owner and operator of the property must not be organized or operated for profit

There is no general definition of profit in the property tax law. However, Section 214 defines profit for hospitals, as the excess of operating revenue, exclusive of gifts, endowments or grants-in-aid, over operating expenses by more than 10 percent of the operating expenses.

C—Private Benefit.

No part of the net earnings of the owner may inure to the benefit of any private shareholder or individual, and the property must not be operated to benefit anyone through payment of excessive charges or compensations or through the more advantageous pursuit of their business or profession.

This requirement attempts to close the large loophole whereby an operation may be technically "nonprofit" but huge amounts are being taken out through excessive salaries, sales of assets at reduced rates, payment of excessive sums for contracts, etc.

What is "excessive"? As a standard, Section 254.5 of the Revenue and Taxation Code directs that a comparison of the amount paid for services and salaries in comparable public institutions be made as one test. Similarly, operating costs must bear a reasonable relationship to operating costs of like nonexempt property. Problems relating to this requirement will be examined in some detail in a subsequent section.

D—Property Use.

The property must not be used by the owner or members thereof for fraternal or lodge purposes or for social club purposes except where such use is incidental to the primary exempt purpose.

E—Irrevocable Dedication.

The property must be irrevocably dedicated to exempt purposes and upon dissolution must not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, or charitable purposes. However, Section 214.3 provides that property used for 20 years for charitable or hospital pur-

poses need not be irrevocably dedicated. This requirement of irrevocable dedication has been seriously eroded by court decisions, legislative amendment and administrative practice and will be discussed in detail in a subsequent section.

3. PROCEDURE FOR OBTAINING EXEMPTION

To gain a welfare property tax exemption, an organization must, by April 1, file an application with the assessor in each jurisdiction which assesses the property. This would normally be the county, but in several cases cities do their own assessing. In past years the Legislature has made it a practice to pass legislation excusing from taxation those institutions which would otherwise qualify but which failed to file by April 1

Applicants for an exemption must furnish assessors with information about the use of the property and the financial records of the organization. If it is the first claim by an organization, a copy of the articles of incorporation must be included These are checked for the nonprofit clause, the irrevocable dedication clause, the dissolution clause and the purpose of the organization.

The assessor reviews this material and sends it, along with his comments and findings, to the State Board of Equalization for a recommendation. The state must review the affidavits and statements and may institute an independent audit for verification of the operations of the owner and operator to ascertain whether both meet the requirements for an exemption The findings of the board are then returned to the county assessor, who may approve or deny the application regardless of the board's findings The board has no authority to compel the counties to accept their findings; the county may do as it wishes All authority for granting exemptions from the property tax resides with the local assessor A borderline organization may receive the exemption in one county and have a branch office denied in another county For that matter, a single piece of property may be granted the exemption by the county and denied by a city assessor within the county.

4. INSTITUTIONS NOW EXEMPT

An examination of the applications for the welfare exemption in the files of the State Board of Equalization indicated at least 4,351 welfare exemptions were granted in 1963 On 44 other applications, the board has received no word from the county assessor on whether the board recommendation for denial had been sustained [19]

Of the total, charitable exemptions constituted the largest segment—1,922 exemptions Schools accounted for 1,317. The largest single group is Catholic schools—784 of which qualify for an exemption A group by group breakdown of the types of organizations receiving a property tax exemption follows

[19] The annual report of the State Board of Equalization will show 4,265 welfare exemptions This statistic is compiled by the Division of Research and Statistics from information furnished in aggregate by the county assessors The figures used here are taken from the compilation of the applications which are processed individually through the Division of Assessment Standards of the State Board of Equalization The slight discrepancy between the two figures may be accounted for by the county assessors lumping several exempt parcels in one county owned by the same organization as one exemption while the state board counted each exempt property separately.

TABLE VIII

Exemption Application by Class of Welfare Organizations: 1963 *

		Approved	*Denied*	*No Information*
A. Religious				
1.	Churches	100	9	—
2.	Social halls or community centers	119	7	—
3.	Retreats	45	2	—
4.	Summer camps	139	5	—
5.	Convents, rectory	79	33	—
6.	Campus organization	30	—	—
7.	Evangelistic work	19	4	—
8.	Housing for missionaries, ministers, etc.	21	—	—
9	Reading rooms and organizations for distribution of religious literature	144	5	2
10	Religious training	42	3	1
	Total A	738	68	3
B. Hospitals				
1.	General Hospitals			
	a. Beds 49 and under	45	—	—
	b. Beds 50 to 99	49	3	1
	c Beds 100 to 199	52	1	—
	d Beds 200 and over	67	6	—
2.	Maternity hospitals	5	1	—
3.	Tuberculosis hospitals	5	—	—
4	Other specialized hospitals	19	—	—
5.	Outpatient clinic	7	—	—
	Total B	249	11	1
C. Charitable				
	Youth Service Agencies			
1	Boy Scouts—meeting place, headquarters	69	1	—
2.	Girl Scouts—meeting place, headquarters	65	3	—
3.	Camp Fire Girls—meeting place, headquarters	24	3	—
4	Y M C A.—meeting place, headquarters, hotel	112	4	—
5.	Y W C A.—meeting place, headquarters, hotel	52	—	—
6	Youth centers	137	8	3
7.	Camps			
	a. Boy Scouts	119	4	—
	b Girl Scouts	66	1	1
	c. Camp Fire Girls	27	1	3
	d. Y M C A.	40	2	—
	e. Y W C A	3	—	—
	f. Other	40	5	—
8.	Housing for Youth			
	a Boys' home	26	3	1
	b Girls' home	10	2	—
	c. Children's homes	41	4	1
	d. Orphanages	5	—	—
	e Working youth and young adults	4	—	—
9	Adoption agencies	16	—	—
10	Organizations for counseling parents and children	11	—	—
11.	Children's day nurseries, kindergartens	72	12	4

TABLE VIII—Continued

Exemption Application by Class of Welfare Organizations: 1963 *

General Welfare Agencies	*Approved*	*Denied*	*No Information*
21 Medical Welfare Agencies			
a. Blood banks	9	—	—
b Clinics, treatment centers and counseling (medical)	54	1	—
c. Maternity homes	4	—	—
d. Medical research	18	1	—
e. Nursing and convalescent homes	9	1	—
f. Rehabilitation and vocational training agencies	58	1	—
g Sanatoriums and sanitariums	10	—	—
22. Fund-raising and/or collection agencies for charitable purposes	146	11	3
23 Stores	152	3	2
24 Rehabilitation	9	3	—
25 Housing for blind, other infirmities	3	—	—
29. Social welfare work and relief for the needy	216	5	1
30. Alcoholic rehabilitation and related agencies	37	3	—
31. Visiting Nurses' Association	11	1	—
32. Animal welfare	25	1	—
33. Homes for the aged, include religious	141	7	—
34 Community Centers (not including youth or religious)	37	3	—
35. Scientific organizations (non-medical research)	5	—	—
36. Not otherwise classified	39	29	10
Total C	1,922	123	29
D. Schools			
1. Religious			
a Baptist	31	2	—
b. Catholic	784	12	2
c. Lutheran	117	1	—
d Seventh Day Adventist	130	—	—
e. Other	150	5	2
2 Hospital	—	—	—
3 Charitable			
a. Regular kindergarten, elementary, and secondary schools	53	4	—
b Schools for handicapped children	36	5	1
c Specialized training (music, arts, crafts, etc)	16	2	1
Total D	1,317	31	6
E. Veterans			
1 American Legion		70	—
2 Veterans of Foreign Wars		4	3
3. Miscellaneous services for veterans such as, information centers, service centers, employment services, etc	105	—	1
4. Miscellaneous veterans organizations		3	1
Total E	105	77	5
GRAND TOTAL	4,351	310	44

* Prepared by the staff of the Assembly Committee on Revenue and Taxation. Based on information in the files of the Division of Assessment Standards of the State Board of Equalization.

Of the 4,705 requests for an exemption in 1963, the state board recommended that 455 be denied The board recommendations are not binding on county assessors, so the final tally shows only 310 denied and 44 others on which information is not available. If the State Board of Equalization's recommendations had been followed in all cases, taxes would have been imposed on approximately $3,000,000 of assessed valuation that was listed in the exemption column

5. FISCAL IMPACT OF WELFARE EXEMPTION

Property totaling $362,360,000 in assessed valuation was exempt from taxation under the welfare exemption in 1964 This amounted to almost one percent of the total assessed valuation of all property in the State of California The welfare exemption has continued to grow each year both in gross amount exempt and in amount exempt in relationship to total assessed value It has increased drastically in comparison with the other major exemptions—the church, college and veterans exemptions (See Tables IX and X)

Los Angeles County had the largest gross amount of property exempt under the welfare exemption in 1964—$155,874,000—but, in percentage of total assessed valuation, San Francisco County had 2 51 percent of its total assessment off the tax rolls as a result of this tax provision, compared with 1 15 percent in Los Angeles County.

TABLE IX

Assessed Value of Property Exempt Under Welfare Exemption: 1947–1964
(amounts in thousands)

Year	*Schools below college grade*	*Hospitals*	*Other*	*Total*	*Total assessed value of state*	*Welfare exemptions as percent of total*
1947				$30,330	$10,993,637	276
1948				33,374	12,193,020	276
1949				38,556	13,227,731	.292
1950				43,047	13,618,915	316
1951				55,886	14,736,439	380
1952				56,608	16,107,000	352
1953				78,740	17,170,270	460
1954		$42,135	$52,406	94,541	18,228,961	518
1955		51,039	61,915	112,954	19,993,440	566
1956		57,590	72,393	129,983	21,819,002	.597
1957	$53,225	68,000	51,031	172,256	24,308,207	707
1958	60,303	73,164	57,658	191,125	25,966,688	.736
1959	72,278	84,413	65,758	222,269	27,434,577	810
1960	78,051	100,576	68,459	247,086	29,600,832	835
1961	85,432	112,096	82,669	280,197	31,549,630	.890
1962	93,293	123,861	93,869	311,023	33 326,914	935
1963	99,945	137,538	101,397	338,880	35,066,088	969
1964	108,969	141,747	111,644	362,360	36,743,364	986

SOURCE Computed from Board of Equalization *Annual Reports*, 1947–1964

TABLE X

Assessed Value of Property Exempt Under the Welfare Exemption, by County: 1964

(Amounts in thousands)

County	Welfare exemptions[a]						Total value
	Schools below college grade[b]		Hospitals		Other[a]		
	Number	Value	Number	Value	Number	Value	
Alameda	64	$4,734	16	$10,140	172	$6,019	$20,893
Alpine					4	22	22
Amador					3	45	45
Butte	6	101	2	174	11	37	312
Calaveras					9	92	92
Colusa	1	41					41
Contra Costa	24	1,798	6	1,107	44	792	3,697
Del Norte	2	32					32
El Dorado	1	22	2	310	15	184	532
Fresno	19	1,106	5	3,297	54	2,360	6,763
Glenn	1	28					28
Humboldt	9	358	5	809	12	70	1,237
Imperial	19	156			9	33	189
Inyo	1	40					40
Kern	21	546	4	1,268	29	360	2,174
Kings	6	119	3	823	1	222	1,164
Lake	3	11			1	22	32
Lassen							
Los Angeles	519	48,705	96	59,312	1,366	47,857	155,874
Madera	4	48			4	57	105
Marin	27	1,970	1	88	48	2,202	4,260
Mariposa	1	4			3	68	72
Mendocino	6	109	1	50	7	244	403
Merced	17	319	1	720			1,039
Modoc					1	1	1
Mono					1	5	5
Monterey	14	1,205	4	1,196	23	1,803	4,204
Napa	9	636	2	1,194	12	256	2,086
Nevada	2	20	2	99	30	79	98
Orange	62	4,360	8	5,326	84	2,016	11,702
Placer	4	89	1	9	17	345	443
Plumas							
Riverside	28	991	3	1,150	53	1,371	3,452
Sacramento	38	2,612	3	2,826	53	1,505	6,943
San Benito	4	89			1	77	166
San Bernardino	42	1,061	9	1,601	154	3,420	6,082
San Diego	75	4,827	12	6 346	211	9,882	20,955
San Francisco	85	11,756	17	18,674	148	10,911	41,341
San Joaquin	26	1,792	4	1,604	33	492	3,888
San Luis Obispo	8	278			20	106	384
San Mateo	36	4,077	3	1,403	52	2,237	7,717
Santa Barbara	24	2,818	5	2,091	40	1,923	6,812
Santa Clara	46	6,512	13	13,696	108	7,882	28,090
Santa Cruz	12	1,497	5	672	42	1,617	3,786
Shasta	2	232	1	686	8	23	941
Sierra					3	33	33
Siskiyou					11	144	144
Solano	6	349	3	644	4	40	933
Sonoma			2	755	36	2,448	3,203
Stanislaus	8	435	3	837	17	207	1,479
Sutter	3	155	1	512	4	26	693
Tehama	3	171	1	147			318
Trinity							
Tulare	10	409	3	374	24	371	154
Tuolumne	1	24	1	77	17	241	342
Ventura	24	2,015	5	1,645	58	1,362	5,022
Yolo	5	100	1	186	9	71	447
Yuba	5	312	2	173	6	64	449
Totals	1,319	$108,989	256	$141,747	2,996	$111,644	$362,360,000

[a] Includes 10 orphanage exemptions granted under Section 1¼a, Article XIII, of the Constitution with an aggregate assessed value of $1,816,700. Excludes solvent credits

[b] Includes 598 properties assessed at $49,598,028 that are used partly for religious purposes and partly for school purposes

SOURCE: Board of Equalization, *Annual Report*, 1963–64.

6. PROBLEM AREAS

a. Excessive Salaries

Section 214 of the Revenue and Taxation Code prohibits the payment by tax-exempt organizations of "excessive charges or compensations" in an attempt to close an obvious loophole by which a "nonprofit" organization can be lining the pockets of its promoters. As a guide to what is excessive, Section 254 5 directs attention to comparable salaries in public institutions

Yet, this is hardly adequate as a definition or even as a benchmark. In many instances, there are no comparable public institutions; where there are, jobs may not be comparable. What should be the annual salary of a professional fund raiser? for an administrator of an old folks' home? for a tenor in a religious singing group?

The Welfare Federation of the Greater Los Angeles Area, an organization which raises approximately $9 million a year, in 1963 paid salaries as follows:

Secretary and general manager	$23,700
Campaign director	21,000
Twelve others over	10,000
Nineteen others over	7,500

Clifford Weinning received $20,000 as the executive manager of the Fifield Manors Are these salaries excessive? What would comparable public salaries be? A large salary for a large organization may be more readily justified than a medium-sized salary of a small organization.

An example of an organization which received a welfare exemption in 1963, although the State Board of Equalization recommended a denial on the basis of excessive salaries, is the Crew of the Good Ship Grace, Inc. of 2400 Hyperion Avenue, Los Angeles. The Crew of the Good Ship Grace produces religious radio programs which are distributed on tapes to radio stations around the world Of their total expenditures, $243,327 94 is spent for radio time and tapes; $217,116.73 is spent for payroll; $41,020.28 for miscellaneous, and $1,172 20 for gardening service to maintain a very modest garden.

The state board stated that the following salaries are "in excess of those generally acceptable for religious organizations and appear to enhance private gain":

"First Mate Bob," President	$500/week	($26,000)
Vice President	245/week	(12,740)
Secretary	205/week	(10,660)
Quartet bass, music librarian	225/week	(11,440)
Station relations	220/week	(11,440)
Office manager	220/week	(11,440)
Quartet baritone, music arranger	220/week	(11,440)
Quartet tenor, tape editor	220/week	(11,440)
Organist	220/week	(11,440)
Head of printing department	205/week	(10,660)

Another organization, the International Communications Foundation, 870 Monterey Pass Road, Los Angeles, expended, according to information filed with the Board of Equalization in 1963, $105,118 of $260,056 total expenditures for salaries not including $10,371 for sales commissions and $8,488 for advertising The president of the organization receives $291 per week ($15,132 annually).

b. Conflicts of Interest

Closely akin to the problem of excessive salaries is the problem of conflicts of interest If the director of a nonprofit organization has an interest in a closely associated profitmaking organization, he can deal with himself at a nice profit and keep part of the activity tax exempt. The problem is compounded where the nonprofit organization sells assets at less than market value or buys goods or services at inflated prices

A recent case turning on this point was *St. Germain Foundation* v. *County of Siskiyou* (1963) 212 CA 2nd 911. The St. Germain Foundation is a nonprofit corporation organized in Illinois to propagate the teachings of the "I Am" religion. The foundation, founded in 1932 by Edna W Ballard, has a number of exempt properties in California including grounds for the holding of conclaves and pageants in Siskiyou County. The St Germain Press is a corporation organized for profit, and Edna W. Ballard is the sole stockholder of record. The Press is the sole source where official literature pertaining to the "I Am" religion may be obtained

In denying an exemption, Siskiyou County argued that "since The Press was admittedly a profit corporation and since all members of the organization had to buy their religious literature from The Press, the holding of the conclaves benefited The Press."

The court, in overturning Siskiyou County and allowing the exemption, said:

> "But the evidence shows that The Press advanced funds to the Foundation; that the benefits flowed from The Press to the foundation; and that no net profit was made by The Press We do not believe that the fact that The Press sold books at the pageant required a determination that the property was used for the advantageous pursuit of The Press. The sale of religious literature at the conclaves was to promote and foster the precepts of the foundation, and even though The Press could benefit from such activities this would not prevent the foundation from being exempt from taxation." [*Saint Germain Foundation* v. *County of Siskiyou* (1963), 212 CA 2d 911]

c. Lack of Accurate Assessing

Statistical data on the amount and value of property off the tax rolls under the welfare exemption are not precise as there is no incentive for the assessor to spend a great deal of time on properties which are exempt from taxation. Ronald B. Welch, Assistant Executive Secretary of the Board of Equalization and an expert on property taxation, has stated:

> These assessments (on life care homes) are frequently unrealistic since no taxes hang in the balance when the tax exemption is not in dispute [20]

d. Veterans' Halls

Section 215 of the Revenue and Taxation Code purports to bring property owned by veterans' organizations chartered by Congress and used exclusively for the purposes of such organizations under the

[20] Letter from Ronald B. Welch to Arthur E. Buck, Jr., dated December 13, 1961.

umbrella of the "welfare exemption." It was the intent of the Legislature at the time (1945) that these properties be exempt from taxation. However, this section has been ruled as unconstitutional by the Attorney General (See Ops Atty Gen 46-132). In arriving at this position, the Attorney General stated, in part:

> We believe that in view of the strong evidence that the voters believed that the welfare exemption was to be confined within narrow limits (see argument to voters) this extension of the definition of the word "charitable" was beyond the power of the Legislature.
>
> It will be noted that Section 215 applies only to organizations which are chartered by Congress. It does not apply to corporations organized by local posts or chapters of such organizations for the purpose of holding title to their property (*Compare Legion Clubhouse, Inc.* v. *City of Madison*, 248 Wis. 380)
>
> Section 215 purports to exempt all property used for the purposes of these veterans' organizations and would, therefore, apply to buildings used for their meetings and social gatherings
>
> We are of the opinion that property so used is not used for charitable purposes within the meaning of Article XIII, Section 1c of the Constitution and that Section 215 is unconstitutional to the extent that it purports to exempt real property not actually used for charitable purposes.

In 1963, four county assessors were granting tax exemptions for veterans' halls, as follows:

County	*Number*	*Assessed value*
Fresno	15	$84,080
Los Angeles	97	1,047,720
Siskiyou	2	2,835
San Luis Obispo	2	7,960

In 1964, Los Angeles County placed these veteran halls on the tax rolls.

e. *Exemptions for Housing*

INTRODUCTION

A number of nonprofit institutions providing housing for various groups of persons have been granted property tax exemptions as a result of court decisions, interpretations of those decisions and by administrative action Aside from the fiscal implications of these exemptions, a basic underlying problem is that of equity.

Is it fair for most of the citizens of California to pay, directly or indirectly, property taxes on their living quarters while a segment of the population resides in tax-exempt institutions? Can exempting the living quarters of those who can afford expensive institutional housing and taxing the inferior housing of others be justified? Is there enough of an overriding social purpose to make a genuine distinction? If so, where and how should the line between taxable and tax exempt housing be drawn? What *quid pro quo* should be required of the exempt property?

There is nothing in the Constitution or Section 214 specifically mentioning a tax exemption for housing This exemption has been inferred

from the exemption of charitable institutions. There are primarily three types of living quarters exempt from taxation—quarters available to all, quarters for special groups, and quarters for the aged. (See Appendix II).

GENERAL HOUSING

Classified in the first category—living quarters for all—would be the YMCA's and the Salvation Army which also maintain residence hotels that compete with surrounding taxable residential quarters.

SPECIAL HOUSING

Quarters for special groups include housing for those who, for reasons of institutional necessity, must be domiciled at an institution It would also include housing at summer camps sponsored by religious or charitable institutions. Also exempt are institutions such as the Hamburger Home and the Huntington Hartford Foundation.

The Hamburger Home at 7357 Hollywood Boulevard in Los Angeles is a residence for approximately 56 girls away from home. On the application for an exemption, the home stated that the primary focus is on the adjustment process of unattached girls living away from a home environment. The home provides low cost room and board and counseling on an individual basis for social problems Amount of exempt property at the home totals $69,930. There are other tax-exempt homes for wayward youth which serve the same charitable purpose It can be argued that homes such as these are laudable and should be encouraged by all means available including tax favors in this age of increasing juvenile delinquency. They provide a service which might otherwise have to be maintained by government. On the other hand, it can be pointed out that many young girls away from home live at places which are fully taxable.

The Huntington Hartford Foundation of Pacific Palisades provides housing and working facilities for artists and writers Property of the foundation which is tax exempt for this function totals $98,620. The foundation, in presenting its case for a tax exemption, asserts that the creation of works of art and of a literary character are clearly objects beneficial to the community.

In *House of Rest* v. *County of Los Angeles* (1957) 151 AC 2d 523, a home for missionaries while residing in the United States was held to fall within the religious element of the welfare exemption.

HOMES FOR THE AGED

The third category—homes for the aged—is the most controversial of the three. Tax-exempt status has been given to nonprofit homes for the aged in order to encourage private charities to perform functions at private expense which the state otherwise might have to perform with tax revenue

The Department of Social Welfare states that such homes are designed for persons needing a substitute home where services are available to support their maximum independence and to encourage their continuing participation in the activities of normal living Those served by such homes include. (1) socially isolated persons who need or prefer a living plan where friends and companionship are available; (2) frail persons who are no longer able to carry housekeeping responsibilities,

and (3) persons who need or want some oversight or personal assistance of the kind normally provided by relatives to an aged member of the family

The controversy in this area stems from the fact that many of these tax exempt homes are rather opulent in nature and charge entrance fees, life care fees or other fees which are beyond the means of the average person Many older citizens who barely make ends meet live in their own homes or other lodging on the tax rolls

While attempts have been made by local assessors to restore the more expensive homes for the aged to the tax rolls, the courts on a number of occasions have stated that charity includes much more than the care of the poor or needy. The rich have needs too, the courts have ruled, the satisfaction of which is a worthy social value [*Fredericka Home for the Aged* v. *County of San Diego* (1950) 35 Cal 2d 789, *Fifield Manor* v *County of Los Angeles* (1961) 188 CA 2d 1, *Samarkand of Santa Barbara, Inc.* v. *County of Santa Barbara* (1963) 216 ACA 380 as cited above]

A distinction is generally drawn between the life-care homes for the aged and those operating on a monthly payment basis Life-care homes—homes licensed by the state to enter into contracts with old people to provide care for a period of not less than a year and usually for life—have drawn the most attention This is primarily due to the high "accommodation" and "life care" charges which are required at some homes as a prerequisite to entrance [21] An "accommodation" or entrance fee is considered to be the payment for living quarters for life It is usually graduated with the size of the accommodations In addition, the age of the resident at the time of entry will determine what charge is made. Examples of some of the higher entrance charges at selected homes are·

Samarkand—$7,000 minimum and up
White Sands of La Jolla—$7,500 minimum and up
The Sequoias—$21,500 for couple—age 65
Fifield Manors—$8,377 average admission fee

The "life care" fee, if paid in monthly installments, usually runs from $100 to $350 per month At Fifield Manor, the average is approximately $245 a month. Lump sum life care will vary with the age of the resident At age 65 at Samarkand, the life care lump sum charge as stated in the Board of Equalization records is $18,800 for a woman and $15,750 for a man.

It is impossible to generalize with respect to these homes which provide care for the aged. They range from very small, modest buildings to those of the most recent construction and modern design to palatial estates Some have bungalow living units, others have apartments within one institutional building, while still others provide only dormitory-type living quarters Medical facilities vary from the most minimal requirements to elaborate clinics Some are closely related to a church, while others are completely secular.

On January 1, 1964, there were 141 homes for the aged receiving tax exemptions in California on an aggregate assessed valuation of $25,495,525. Of these, 51 were licensed by the Department of Social

[21] In lieu of a lump sum, however, the "life care" fee can usually be paid on a monthly basis.

Welfare to enter into life care contracts. The aggregate assessed value of these 51 homes as of January 1, 1964, was $14.833,875 This represents an increase of $4,667,609 in assessed valuation of life-care homes in a two-year period

The six life care homes with the highest assessed valuations are:

Wesley Palms—San Diego	$1,142,970
Congregational Homes—Pomona	1,059,790
The Sequoias—Portola Valley	764,320
Kingsley Manor—Los Angeles	756,640
White Sands of La Jolla—La Jolla	735,810
Southern California Presbyterian Homes—Duarte	713,660

The six homes for the aged, other than life care, with the highest assessed value are:

Senior Citizens Village—Fresno	$1,027,780
Portola Senior Citizens Village—Antelope Valley	823,950
Masonic Home of California—Union City	686,100
Channing House—Palo Alto	628,210
Pilgrim Place—Claremont	610,770
Eastern Star Homes of California—Los Angeles	368,120

A complete list of all homes for the aged receiving tax exemptions in 1963 can be found in the appendix, with assessed valuations and additional statistical data.

The question of a tax exemption for life-care homes was studied intensively by the Assembly Revenue and Taxation Committee during the 1961–63 interim. In a report filed with the Legislature in 1963, the committee recommended that the exemption be limited to "$1,000 of assessed value for each aged resident of the institution.[22] " AB 641 was introduced at the 1963 session of the Legislature patterned after the committee's recommendations After several amendments, this measure was referred for more interim study.

A meeting for this purpose was held February 28, 1964. Propopents and opponents testified at length on the bill and on the problem in general A summary of their main points follows.

Arguments for a Tax Exemption:

1 Decent housing for the aged is a pressing social need which has not been met. According to a recent study by the State Senate Subcommittee on Housing and Recreational Needs of Elderly Citizens,[23]

> "There exists in California an acute shortage of sanitary and safe housing facilities for older persons of low income which has resulted in thousands of senior citizens being denied adequate housing at rents they can afford to pay; and . . . the number of elderly persons in California is so rapidly increasing that unless emergency steps are immediately taken to provide additional housing which meets their needs, the shortage will constitute a grave menace to the health, safety and welfare of the citizens of this state."

[22] California Legislature, Assembly, *Final Report of the Assembly Interim Committee on Revenue and Taxation*, Sacramento State Printing Office, January 1963, p 11

[23] California, Legislature, Senate *Report of the Senate Subcommittee on Housing and Recreational Needs of Elderly Citizens*, Sacramento State Printing Office, 1961, p 87

In 1961, the Legislature placed a $100 million housing-for-the-aged issue on the ballot Although the measure was defeated, it expressed the intent of the Legislature, through a companion bill (SB 414) that homes constructed by nonprofit corporations with the aid of bond funds would be tax exempt The March 1963 report of the California Citizens' Advisory Committee on Aging also underscores the pressing need for more adequate housing for older people

Through a tax exemption, this type of development can be encouraged

2 Homes for the aged are saving the taxpayers money to the extent that the residents might otherwise have to be maintained at state expense or be dependent on the state program of medical assistance for the aged.

3 The relatively high fees for entrance should not disqualify a home for the aged from a tax exemption Many residents, even at the most expensive centers, have their entrance fees and expenses paid by third parties Funds are also donated directly to the home Other social service agencies receiving tax exemptions cater to the needs of both the rich and the poor, such as the Y M C A , private schools, etc.

4 Residents of homes for the aged do not require to the same degree as most citizens the services which are supported by the property tax Most obvious of these services are the schools.

5 Payment of real estate taxes would work an unjust hardship on institutions which have entered into life-care contracts on the assumption that property taxes would not be a cost factor

6 Higher costs resulting from a loss of the tax exemption would further restrict the clientele of these homes.

7 The amount shown to be taken off the tax rolls is deceiving Some of this assessed value would never have been added in the first place if the exemption did not exist

8. The attractiveness and facilities of these homes which encourage older people to come to California are a boon to the extent that the state will be able to increase its inheritance tax collections.

9 Older persons, living on fixed incomes, are having difficulties meeting their ever-increasing property tax bill This is becoming a serious social problem as property taxes are in some cases taking more than 10 percent of a person's income. Exemptions from this type of taxation should be expanded to include all over 65 who can meet certain qualifications

Arguments Against a Tax Exemption:

1 Tax exemptions are a form of public subsidy as a reduction in the tax base requires a redistribution of the tax burden to remaining taxpayers There are many activities, although very worthwhile, which should not be subsidized—directly or indirectly.

2. Many elderly people in other types of housing are forced to pay property taxes Is it equitable for one group to be favored from a tax standpoint over another?

3. Public services, such as police and fire protection, park facilities, public health and sanitation activities, etc, are required by those in exempt institutions as well as those on the outside.

While the above arguments are applicable to homes serving the rich and poor alike, several additional arguments have been made against a tax exemption for institutions which charge fees beyond the means of the average elderly person.

4. A tax exemption for a retirement spa for the wealthy aged violates almost all of the principles of tax policy—equity, ability to pay and benefits received. Living accommodations including all the latest modern conveniences, heated swimming pools, spacious landscaped grounds and extensive maid services, cannot conceivably be classed as charities Extraneous charges and life-care fees preclude most elderly from enjoying the benefits of such institutions The Senate Subcommittee on the Housing and Recreational Needs of the Elderly estimated the average aged couple would require an income of $500 a month to cover all expenses and living costs at these institutions According to the 1960 census, only 24 percent of all Californians over 65 had an income of $3,000 a year or above.

5. It is unlikely that many residents of these homes would become public charges in the absence of such institutions It is unlikely that such institutions would have to close their doors if payment of property taxes were to be required.

6 These homes could afford to pay property taxes—either from their own strong financial position or by passing the tax through to residents. An examination of the cash reserves required by the state and the cash reserves available to life-care homes (see appendix) will show most homes are in extremely good fiscal condition. If the tax were to be passed through, the burden on the residents would be minimal At Samarkand, for example, the property tax would amount to only $5 per month per person

7 Under a recent ruling of the Internal Revenue Service, persons making charitable contributions to the Fifield Manors may no longer deduct these contributions in preparing their personal income tax returns This ruling does not apply to all homes for the aged but does indicate that there are grounds for challenging the charitable nature of some of these homes.[24]

8 According to the 1963 report of the Assembly Committee on Revenue and Taxation,[25]

> "the first generation of residents pays for the original investment in land and buildings; the succeeding generations pay for improvements on the buildings, or more significantly, subsidize the creation of new homes in other locations."

If this much money is available, it would seem that the payment of taxes would present little difficulty

9. The removal of significant amounts of property from the tax rolls is of concern to a number of communities Particularly hard hit are San Francisco, San Diego, Los Angeles, Claremont, and Santa

[24] See United States Treasury Department Internal Revenue Service, *Supplement to Publication No 78* (Rev 12-31-62), *Cumulative List of Organizations, January–June 1963*, p 16

[25] California Legislature, Assembly, *Final Report of the Assembly Interim Committee on Revenue and Taxation, op. cit.*, p. 18.

Barbara. The trend to build even more of these homes appears to be accelerating In February 1964, the Episcopal Diocese announced the construction of an $8 million, 22-story retirement home near Lake Merritt in Oakland and a $1 6 million 10-story facility near San Jose State College in San Jose.

f. Irrevocable Dedication

As defined in Section 214, paragraph 6, property used for religious, charitable, scientific or hospital purposes must be irrevocably dedicated to these purposes to qualify for an exemption from the property tax. However, those organizations in the charity business for over 20 years need not irrevocably dedicate their property for exempt purposes The clause appears loosely enforced in that its terms are not specifically required in articles of incorporation. If the articles imply that the corporation is organized solely for exempt purposes, the Supreme Court has ruled that the property is impressed with a trust for exempt purposes and an irrevocable dedication clause is superfluous The requirement of irrevocable dedication is concerned with ultimate purposes rather than present uses.[26]

Records of the State Board of Equalization indicate that fully half the corporations receiving the welfare exemption do not include the "irrevocable dedication" per se in their articles of incorporation. The dedication then must be implied and must be determined by intent.

The usual exemption sought by nonprofit corporations is from the provisions of the laws relating to the corporation franchise tax. An exemption in this case doubly benefits the organization since it makes contributions to it deductible for personal income tax purposes. The franchise tax exemption is extended not only to religious, charitable, and scientific corporations but also to those organized for literary and educational purposes and for the prevention of cruelty to children or animals.[27] Most of the groups which incorporate in the charitable field include the words "literary" and "educational" in their articles of incorporation to make their purposes as broad as possible. However, these purposes are not included in the sections of the code dealing with property tax exemptions. As mentioned above the courts construe the exemption to follow a "charitable purpose" rather than a strict use of the words of the Revenue and Taxation Code An acceptable interpretation of articles of incorporation including religious, hospital, charitable, scientific, literary, and educational purposes would allow the proceeds of a foundation, on dissolution, to be distributed to any one of six purposes. However, the code sections dealing with property tax exemptions allow only four purposes.

The court again says:

> It thus appears, we think, that the words "educational, scientific, or literary," when construed distributively or collectively, lend themselves readily to the settled concept of a charity and their inclusion in appellant's statement of corporate purposes does not spell absence of a charity.[28]

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[26] *Pacific Homes* v *County of Los Angeles* (1953) 41 Cal 2d 844
[27] *Revenue and Taxation Code*, Section 23701d
[28] *Samarkand of Santa Barbara, Inc* v. *County of Santa Barbara* (1963) 216 ACA 380.

However, the court has also said

> If such powers (from their articles) permit the ultimate and permanent diversion of all corporate assets to nonexempt purposes, there can not be said to be an irrevocable dedication of such assets to exempt purposes and the exemption must be denied [20]

The problem then is the express inclusion of an irrevocable dedication clause in the organization's articles of incorporation and the express and implied purposes in which the organization may indulge

It is estimated that only 25 percent of the organizations presently receiving the exemption have language in their articles which specifically reflects the language of the Revenue and Taxation Code No one denies the value to society of many of these organizations, but without specific reference it is difficult to imagine the ultimate purpose to which benefits of a property tax exemption may be put

g. Other Selected Exemptions

Several other examples of property which was exempt in 1963 and which does not fit conveniently into any category are worthy of note All of these examples were recommended for denial of exemption by the State Board of Equalization but approved by county assessors Due to limited time, only a very small sample of exemptions was chosen for examination

BUSINESSMEN'S ART INSTITUTE

The Businessmen's Art Institute is a nonprofit organization owning property at 905 Beacon Street in Los Angeles with a 1963 assessed valuation of $14,350. A tax exemption was granted because of the purported educational features of the institute Members received instruction in painting at a cost of approximately $100 per year The organization received $13,290 in income in 1962 including $11,305 from tuition and $50 from the Los Angeles Dodgers As the students must be at least 25 years of age, the state board recommended a denial as it was not a "school of less than collegiate grade."

LIAHONA CLUB

The Liahona Club of 600 Plateau Drive, Berkeley, had exempt property assessed at $4,920 in Alpine County which was used as a camp for club members and their families. In addition, girls from the Church of Jesus Christ of the Latter Day Saints were allowed to use the camp and the club stated: "We serviced in excess of 900 girls in 1962." The state had recommended denial of this application as it was property of a private club and not irrevocably dedicated to exempt purposes.

BAYWOOD PARK WOMEN'S CLUB

The Baywood Park Women's Club at 337 Seventh Street in Baywood Park, California, received an exemption of $6,980 in 1963 The group is a civic and social club which, the State Board of Equalization says, does not meet the requirements of law for an exemption.

[20] *Pasadena Hospital Association* v *County of Los Angeles* (1950) 35 Cal 2d 779

INTERNATIONAL COMMUNICATIONS FOUNDATION

The International Communications Foundation, 870 Monterey Pass Road, Monterey Park, reproduces and distributes materials on Turkey, Pakistan, Afghanistan, Iran, Nepal, Egypt, Thailand, and Mexico to educational institutions Property with assessed value of $36,370 was exempt in 1963 although the state recommended denial as the organization's primary purpose is the sale of educational material. Forty percent of the foundation's income is derived from the sales while the balance is contributed, partly by the nations involved.

MOODY INSTITUTE OF SCIENCE

The Moody Institute of Science, with exempt property assessed at $591,270 in 1963 at 11428 Santa Monica Boulevard in Los Angeles, conducts scientific experiments and produces and exhibits religious motion pictures The institute also owns a Beech Twin Bonanza Airplane (N696T) which is being used for a film on flight instrumentation and aerial navigation as related to modern methods of blind flying. The state had recommended a denial stating that the property was not being used exclusively for religious or charitable purposes.

PHILOSOPHICAL RESEARCH SOCIETY

The Philosophical Research Society, 3341 Griffith Park Boulevard, Los Angeles, holds classes and gives lectures on philosophy, psychology and comparative religion The state recommended a denial of the exemption on the ground that the organization's activities do not qualify as it is not a school of less than collegiate grade The county assessor allowed the exemption of $71,650 in 1963, on the grounds that the activities are religious.

7. SUMMARY

The "welfare exemption" approved by California voters in 1944 to allow a property tax exemption for property used exclusively for charitable, hospital or religious purposes took $338,880,000 in assessed valuation from the property tax rolls in 1963 Of more significance, the amount of tax-exempt property is increasing much faster than the assessed value of the state as a whole and is approaching 1 percent of the total assessed value of the state.

One of the major problems with this exemption centers around the definition of just what is charitable The courts have given the term a liberal definition which includes educational functions and activities that confer a social benefit rather than those that just help the needy or underprivileged An area of controversy in this regard is the question of whether homes for the aged which are beyond the means of the average elderly citizen should receive a tax exemption. One hundred and forty-one such homes received an aggregate total exemption of $25,495,525 in 1963

To qualify for a tax exemption, property must be irrevocably dedicated to exempt purposes or have been used for such purposes for over 20 years In actual practice, most property is not so dedicated—partly as a result of court decisions giving a broad definition to irrevocable dedication, partly as a result of administrative practice and partly as result of the 20-year-use provision.

Another problem concerns the question of profits. What is profit? What are excessive salaries? What should be done to regulate conflicts or interest whereby one person with two hats can make a profit for his nonexempt firm by dealing with the tax-exempt institution he also controls.

G. Orphan Asylums

Orphan asylums have been exempt from property taxation in California since 1920 In order to qualify for the exemption, an institution must be "sheltering more than 20 orphan or half-orphan children receiving state aid" This exemption does not extend to all real property, only to the buildings and so much of the real property required for the occupation of the asylum Further, the property so used cannot be rented and still qualify for the exemption [30]

In 1963, 11 orphanages in 7 California counties were exempt from property taxes These orphanages had an assessed value of $2,131,105 As with the college exemption, the orphanage exemption has a very uneven distribution pattern and the property taxpayers of only seven counties are picking up the tab for a service which benefits all the citizens of the state.

TABLE XI

Orphanage Exemption by Counties: 1963

County	*Number of orphanages*	*Assessed value*	*Exemption as a percentage of total county assessed value*
Marin	1	$941,790	.28
Mendocino	1	189,140	.19
Sacramento	3	204,380	02
San Francisco	2	424,035	.02
Santa Clara	2	156,180	01
San Diego	1	142,590	01
Riverside	1	72,990	.01
Statewide total	11	$2,131,105	006

SOURCE Computed from data furnished by State Board of Equalization, Division of Research and Statistics

There is little to be gained by taxing orphanages as they are supported by governmental funds or private charitable donations It is generally most desirable for relatives to assume the care of orphaned children, but, short of this, foster homes are sought. Society has always had the responsibility to see that children without parents are properly cared for Orphanages which shelter orphan children who do not have the opportunity for normal family life should not be put in the position of paying taxes to government agencies that, in turn, pay orphanages for the care of the children.

H. Exemption of Agricultural Resources

Exemptions and partial exemptions covering certain agricultural resources have been written into the State Constitution at various times beginning with the exemption of growing crops in 1879

[30] *California Constitution*, Article XIII, Section 1¼a.

After a Supreme Court decision which ruled that trees and vines are not growing crops and that the exemption was limited to annuals [*Cottle* v. *Spitzer* (1884) 65 Cal. 456], fruit- and nut-bearing trees under four years of age and grapevines under three years of age were granted a property tax exemption by the adoption of Section 12¾ of Article XIII in 1894.

In 1926, the people adopted a constitutional amendment exempting immature forest trees planted in areas 70 percent logged off or on land not previously bearing merchantable timber. This exemption will be discussed in some detail in a subsequent section (see page 357)

Among the justifications of a "growing crop" exemption are

1 To assess growing crops on the lien date would be impractical as most crops are not at their peak at this time.

2. A tax on growing crops would be inequitable as it would hit hardest the farmers who produce crops in February and March.

3. Assessment of growing crops would be difficult due to the many uncertain factors which determine the value of a crop.

4. Growing crops do not enhance the permanent value of the land

5. A tax on growing crops, to the extent that it could be passed on, would constitute a tax on the basic commodity needed for life—food—and would be very regressive.

The total value of crops growing in California in 1963 was approximately $2 5 billion. It would be virtually impossible to get an accurate figure for the value of crops growing on the first Monday in March.

The exemption for immature fruit and nut trees and vines is more difficult to justify. These are permanent improvements to the land and have value if an owner were to sell the property for agriculture use. By exempting immature trees and vines, the state is recognizing in an imprecise manner that these trees will return no income to pay taxes until they are mature The exemption also serves as an incentive to further the fruit, nut and grape industries in California.

The county assessors estimate that $30 million in assessed value could be added to the tax rolls if this exemption were to be repealed. On the other hand, loss of the exemption would undoubtedly reduce the new plantings of trees and vines so the increase in assessed value would not necessarily be a continuing thing.

I. Exhibition Exemption

In 1935, the Legislature exempted from property taxation all personal property brought into California for exhibition purposes, provided the property is removed from the state following such use and is subject to taxation in another state [31]

This exemption has little impact on the property tax base The county assessors estimate that only $5,468.900 in assessed value was lost in 1963 under this exemption This figure does not include the possible additional value which might be found in San Francisco County, whose assessor reported that data relating to this exemption were not available.

This exemption gives California residents the opportunity to see exhibits, such as private collections of paintings, they might not see if exhibitors were to be liable for property taxes.

[31] *Revenue and Taxation Code*, Section 213.

J. Cemetery Exemption

Property used for the burial of the dead, except as used or held for profit, is exempt from property taxation in California. Section 16 of Article XIII of the State Constitution provides

> "All property used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance or upkeep of such property or such dead, except as used or held for profit, shall be free from taxation and local assessment."

It should be pointed out that the portion of cemeteries in which human remains are buried would have little value, even if not exempt, as a potential buyer of the property would have to rebury the bodies. Any money derived from the sale could be used only for certain limited purposes.[32]

According to estimates by county assessors, approximately $33 million in assessed value was exempt from taxation under the cemetery exemption during 1963.

TABLE XII

Known Assessed Value of Exempt Cemetery Property, by County: 1963

Alameda	$3,029,775	Orange	$3,812,650
Alpine	None	Placer	60,200
Amador	None	Plumas	None
Butte	None	Riverside	Unknown
Calaveras	42,000	Sacramento	1,500,000
Colusa	Unknown	San Benito	21,620
Contra Costa	150,000	San Bernardino	298,000
Del Norte	1,000	San Diego	1,527,330
El Dorado	50,000	San Francisco	None
Fresno	Unknown	San Joaquin	1,153,500 (est.)
Glenn	8,550	San Luis Obispo	1,000,000
Humboldt	56,760	San Mateo	1,452,420
Imperial	18,710	Santa Barbara	150,000
Inyo	None	Santa Clara	2,900,000
Kern	50,000	Santa Cruz	132,290
Kings	200,000	Shasta	600,000
Lake	2,000	Sierra	None
Lassen	None	Siskiyou	22,500
Los Angeles	13,000,000	Solano	350,000
Madera	24,100	Sonoma	500,000
Marin	107,930	Stanislaus	125,000
Mariposa	None	Sutter	60,000
Mendocino	10,300	Tehama	100,000
Merced	110,000	Trinity	500
Modoc	None	Tulare	100,000
Mono	310	Tuolumne	None
Monterey	250,000	Ventura	176,580
Napa	138,500	Yolo	33,000
Nevada	1,000	Yuba	38,400

Grand Total: $33,364,725

SOURCE: Computed from material supplied to the Assembly Revenue and Taxation Committee by county assessors of California.

By granting this tax exemption the state recognized the paramount social importance in the decent disposition of the remains of deceased persons and maintenance and care of their graves. In *Cypress Lawn*

[32] See *Health and Safety Code*, Sections 7500–8005.

Cemetery Assn v. *City and County of San Francisco* (1931) 211 Cal. 387, the California Supreme Court said:

> "It is in accordance with the common wish of mankind that the places where the dead are buried should be protected and preserved against interference of possible sales for unpaid taxes and be kept free from molestation or desecration. Exemptions of cemetery property from taxation are but the expression of that wish That this is true as regards Section 1b of Article XIII, supra, appears from the argument made in favor of the proposed constitutional amendment and sent to all of the voters prior to the election at which it was adopted The proponents of the measure urged that it 'should have been adopted long ago in order to protect the last resting place of the departed . The county assessors know that they cannot under the law seize and sell a burial lot containing a body and yet under the present law, they are compelled to levy an assessment against such a plot, thereby expending the time and money of the county in bookkeeping, etc, to no avail, and jeopardizing the title to a property that may be containing the last remains of some dear one . . .
>
> " 'Finally, only the cemetery property not held for profit and owned by those [sic] exclusively for burial purposes is exempted. It will not relieve from taxation property of cemetery associations and others which is to be sold for profit, but only property to be used exclusively for the burial of the dead, and this sacred property should be kept tax free . . .' "

One of the problems with the cemetery exemption involves the concept of profit The Constitution requires that the cemetery must not be used or held for profit However, in *San Gabriel Cemetery Assn* v. *Los Angeles County* (1942) 49 Cal App. 2d 624, the court held that the word profit does not refer to the financial benefit that accrues to a cemetery association through the sale of burial space in excess of cost, but means net earnings, the benefits of which accrue directly or indirectly to the stockholders or an individual

A cemetery can be nonprofit but be closely associated with a profitmaking enterprise This type of an arrangement was discussed in connection with the welfare exemption.[33] The nonprofit corporation can buy from a profitmaking company at high prices or sell to one at a loss. When the directors of one are the directors of another, an opportunity exists to make one operation nonprofit while siphoning off all profits to the other.

The administration of this exemption could be improved if claimants were required to file an application each year, similar to applications for the welfare exemption.

K. *Exemption for Vessels of More Than 50 Tons*

California's Constitution (Article XIII, Section 4) provides an exemption for vessels of more than 50 tons registered at any port in this state and engaged in the transportation of persons or freight.

[33] See *St. Germain Foundation* v. *County of Siskiyou* (1963) 212 Cal 2d 911.

The county assessors estimated that had these vessels been taxable in 1963, over $595 million in assessed value would have been added to the tax rolls. The breakdown by counties where these vessels are registered follows:

Alameda	Unknown	San Diego	$929,500
Contra Costa	Unknown	San Francisco	422,260,000
Los Angeles	$170,134,500	San Joaquin	2,000,000
Marin	4,600	San Mateo	250,000
Sacramento	40,000	Santa Barbara	200,000

L. Householder's Exemption

An exemption for $100 worth of personal property of every householder was approved by the voters in 1904 and added to the State Constitution.[34]

In 1960, there were approximately 5,208,000 occupied household units in California.[35] Assuming the number of households increased in proportion to the increase in the state's population from 1960 to 1964, the approximate number of occupied households in California in 1964 would be 5,989,000. The householder's exemption represents an estimated loss of approximately $500 million in assessed valuation to the state's tax base.

The theory behind this exemption is that at least $100 worth of personal property is necessary for the very minimum level of subsistence, and, with this exemption, an assessor can dispense with the assessment of property of many transients where the amount of the tax that could be collected would not equal the cost of collection.

M. Other Exemptions

Several other classes of property have been exempted from the property tax. Aircraft in California on the first Monday in March for the sole purpose of being repaired are exempt (*Revenue and Taxation Code*, Section 220), as is the stock in trade up to $1,500 of a blind vending stand operator (*Revenue and Taxation Code*, Section 216).

Motor vehicles and bank personal property are also exempt from property taxation but are taxed by the state on an in-lieu basis. A separate study of the bank in-lieu tax has been made for the committee this year. (See Section Five, Part Seven.) The motor vehicle in-lieu tax is discussed in the "Fees and Licenses" report issued by the committee in 1964[36] and will also be touched upon in a subsequent section on the taxation of house trailers. (See Section Five, Part Six.)

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[34] *California Constitution*, Article XIII, Section 10½

[35] Governor's Advisory Commission on Housing Problems, *Appendix to the Report on Housing in California*, April, 1963, p 43

[36] Assembly, California Legislature, Assembly Interim Committee on Revenue and Taxation, *Fees and Licenses, a Major Tax Study*, Part II, Vol 4, No. 9, July 1964.

SECTION FOUR

ADMINISTRATION OF THE PROPERTY TAX

I. INTRODUCTION

Responsibility for the administration of the property tax has been scattered among a number of public officials. The assessment of property—which is the listing and valuation of property—is the joint responsibility of the 58 county assessors and the State Board of Equalization The county assessor, who is an independent, locally elected official, assesses all property within his jurisdiction, except state-assessed utility property. These assessments can be changed, after a hearing, by the local county boards of supervisors or board of tax appeals The total assessment roll, as a unit, can be raised or lowered in equal percentage by the State Board of Equalization. The Board of Equalization also assesses most utility property and allocates these values to each local jurisdiction.

After the value of property is determined, the local taxing jurisdiction (city, county, school district, special district) fixes a rate at which this property will be taxed The tax rate multiplied by 1/100 of the assessment (value of the property) will determine how much money each person will have to pay in property taxes Bills for payment of the property tax are then sent out by the county tax collector, generally an independent county officer, who has the responsibility for the collection of the tax.

When a case against property taxation is made, administrative weaknesses are frequently cited. Good assessment requires technical competence of the highest order since no two parcels of real estate are ever exactly alike. Location is always unique, and markets for certain types of property are often thin.

It is freely admitted that the assessor's job is an impossible one. In a recent document, the State Board of Equalization admits, "no assessor, even one given unlimited resources, could produce an assessment roll in which the appraisal of property was strictly current and precisely accurate in other respects."[1] Considering the magnitude of the property tax, even slight unevenness in assessments can create grave inequities among taxpayers. Although it is widely recognized that California has, as a group, the finest assessors in the United States, a great many problems exist in the equitable administration of the property tax.

In the sections which follow we examine the laws relating to property tax administration, the nature of present assessment practices under these laws, and the provisions for review and adjustment of the assessments.

[1] California State Board of Equalization, *Property Tax Assessment—Yolo County*, (mimeo), 1962, p. 3.

II. GENERAL PROVISIONS RELATING TO THE ASSESSMENT OF PROPERTY

A. Full Cash Value

In order to tax property, it is first necessary to place a value on the property on which the tax is to be levied California's Constitution gives local assessors a somewhat conflicting mandate in this respect Article XI, Section 12 requires that "all property subject to taxation shall be assessed for taxation at its full cash value." However, Article XIII, Section 1 provides "all property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value to be ascertained as provided by law, or as hereinafter provided "

It appears from the wording of the two sections that property must be assessed at full cash value, due to the "as provided by law" phrase in Article XIII, Section 1 and *Revenue and Taxation Code*, Section 401 which requires the assessment of property at full cash value Assessors have not been assessing at full cash value in this state.

Value is a very difficult word to define A piece of property will have differing values for different purposes and to different buyers for the same purpose. Section 110 of the Revenue and Taxation Code defines value as follows:

"Value, 'full cash value', or 'cash value' means the amount at which property would be taken in payment of a just debt from a solvent debtor."

In *DeLuz Homes, Inc.* v *San Diego County* (1955) 45 Cal 2d. 546, the court defined full cash value as the "price property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other; it is synonymous with market value "

Assessors have not been and are not assessing property at full cash value in California. In 1964, the average statewide assessment ratio for locally assessed property was 22 1 percent of full cash value according to the State Board of Equalization, a drop of one full percentage point from the previous year.

In justifying this practice, the assessors cite *Rittersbacher* v. *Board of Supervisors of Los Angeles County* (1934) 220 Cal 535, in which the court held:

> ". . it is the assessor's recognized duty that valuation placed on various kinds of property shall be in proportion to the worth of such properties. If all are proportional and all are treated alike, no one contends that the taxpayers must be charged a full one hundred percent, for such is not required by the law."

This statement only had the effect of dictum as there was no issue as to the legality of this practice in the case

More recently, a suit was filed in Los Angeles County in an attempt to force the local assessor to assess at full cash value As of October 15, 1964, this case was pending in the California State Supreme Court.

California's practice of fractional assessment is not unique According to the Advisory Commission on Intergovernmental Relations,

> "The laws of nearly two-thirds of the states appear to contemplate assessment at full value and the language of many of them is very specific on this point In 12 states there are general provisions for assessment at specified percentages of full value: Alabama, 60 percent, Arkansas, 18–20 percent, Indiana, 33⅓ percent, Iowa, 60 percent; Kansas, 30 percent, Nebraska, 35 percent; Nevada, 35 percent, Oklahoma, 35 percent; Oregon, 25 percent; South Dakota, 60 percent, Utah, 40 percent, Washington, 50 percent In Hawaii the law contemplates the use of 70 percent but authorized the State Director of Taxation, who is responsible for the assessment of all property, to use another ratio if he so indicates The laws of four states, Maryland, Minnesota, Montana, and Ohio, have somewhat more complex provisions involving the use of fractional assessment,[2] and Connecticut, New Jersey (in a 1960 law not yet in effect), North Carolina, Pennsylvania, and Vermont provide some form of local option
>
> "The assessment practice in most of the states bears little resemblance to the legal requirements The actual level of assessment is below the full-value or fractional-value level prescribed by constitution or statute The notable exceptions are a few states, such as Arkansas and Oregon, in which the law has been adjusted recently to approximate the existing local practice and the state supervisory agencies have been pressing for conformity "[3]

Sales data for 1961, compiled by the United States Census Bureau, show that the ratio of assessed value to sales price for nonfarm residential property in the United States was 31 9 percent This ratio ranged from 65 8 percent in Rhode Island, to 19 6 percent in California, to 5 6 percent in South Carolina[4]

One of the consequences of this fractional assessment is to distort the use of assessed value as an index to fiscal capacity Limits on local government's power to tax and borrow are based on the assessed value of the property in their jurisdiction

Assessed value has no consistent relationship to actual value from year to year and differs among the various counties Due to these factors, it is a very unreliable measuring standard Assessed value as a percentage of full cash value may go up and down like a yo-yo over a period of time

Assessed value is also used in the measurement of the veteran's exemption The eligibility for and value of the exemption will depend on the level of assessment Constitutional limitation on the exemption can be circumvented by lowering the assessment ratio. It was once possible for an assessor, by lowering his fractional assessment, to get

[2] Maryland, full value except fractional assessment of stock in trade for county tax purposes, Minnesota and Montana, various specified percentages of full value for different classes of property. Ohio, full value except 50 percent for manufacturing and agricultural tangible personalty and 70 percent for other business tangible personalty

[3] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Vol 1, Washington, D C, June 1963, p 43

[4] United States Department of Commerce, Bureau of the Census, *Taxable Property Values*, Washington, D C, June 1963, p 40

more state aid for the schools in his county than they would otherwise be entitled to receive. The use of assessed value as an indicator of fiscal capacity was modified by the adoption of the Collier factor and the Winton countywide recoupment tax An assessor is still wise to use low fractional assessment, however, as the utility roll is delivered to each county by the State Board of Equalization without a correction for the differences in fractional assessments among counties In a county with low fractional assessment and a high tax rate, the utilities will pay more taxes than in a county with a higher fractional assessment and lower tax rate.

The use of low fractional assessments by the assessor will also help reduce the tax liability of the taxpayers in his county who reside in overlapping school and/or special districts In the bay area, for example, San Francisco, Alameda, and Contra Costa Counties are all in the San Francisco Bay Area Rapid Transit District The district must levy a uniform tax throughout the three counties. Both Alameda and San Francisco County Assessors valued property at 21 7 percent of its full cash value in 1963, according to the State Board of Equalization, while Contra Costa had an assessment ratio of 23 4 percent.

As a result, a taxpayer in Contra Costa County with property worth $100,000 would pay a tax on $23,400 of assessed value while in San Francisco the owner of property worth $100,000 would pay a tax on $21,700, although both properties were worth exactly the same. This is obviously unfair to the residents of Contra Costa County and completely unjustified

A more serious problem is the use of fractional assessment to confuse and mislead the taxpayer The Advisory Commission on Intergovernmental Relations has observed:

> "The existence of underassessment diminishes the taxpayer's chances of protecting himself In the first place, it increases his difficulty in determining whether he is being equitably treated. To find that his property is assessed at less than the legal basis of full value or designated fraction of full value offers no assurance While his property, for example, is assessed at 50 percent of the legal base, it may be that the prevailing level of assessment for other property is only 25 percent of the legal base The assessor is not likely to make a voluntary disclosure of this state of affairs and, in fact, may not know with any degree of precision what the actual situation is In the second place, the taxpayer must obtain data that not only satisfy him as to the inequity of his assessment but may be introduced as evidence in his appeal for adjustment Such evidence usually has been hard to come by; but the assessment ratio studies that are being conducted by an increasing number of states are dispelling for the taxpayers some of the obscurity that has surrounded assessment levels and also appear to have potentialities for facilitating taxpayer efforts to obtain equitable treatment." [5]

The average taxpayer is not aware of the fractional assessment level in his county unless, by chance, he happens to read about the ratio findings of the State Board of Equalization.

[5] Advisory Commission on Intergovernmental Relations, *op cit*, p 46

The solution to this problem is either legalization of a fractional assessment ratio or the enforcement of the present constitutional and statutory requirements that property be assessed at full cash value. As the code now requires a full cash value assessment, enforcement of existing law would appear to be the simplest solution. However, adjustments in tax rate limitations and bonding capacities would have to be made by the Legislature if assessors were to make full-value assessments This could easily be done by dropping all limits to 25 percent of their present levels

Adoption of either approach, with appropriate enforcement, will give the taxpayer a tool with which he can make a judgment of the equity of his own assessment In addition, if all counties were assessing at the same ratio, intercounty tax differentials and other problems of measurement would cease to be major problems.

B. Lien Date

For uniformity, property is assessed for tax purposes as to its condition on a given date called the lien date In California, the lien date is the first Monday in March,[6] and property is assessed at its value and to its owner on that particular day As it would be impossible to assess all property at a given date by personal inspection, the assessors, using various indicators of value, must make a judgment as to the property's value on the lien date, even though the actual appraisal may be made several weeks or months before or after this date

There has been a considerable amount of discussion as to whether or not the first Monday in March is the most desirable date to use as the lien date Obviously, any one date will be advantageous to some taxpayers and disadvantageous to others, particularly with respect to the assessment of personal property

At any one given date, some businesses will require larger inventories than others A subsequent section will go into detail on the problem of taxation of business inventories (See Section Five, Part One).

California is unique in using the first Monday in March as a lien date A majority of states use January 1 as the assessment date, and only three have dates which fall on other than the first day of the month. (See Table I)

A lien date coinciding with the end or beginning of the month is much more practical because of the greater ease in checking and assessing business property January 1 would be preferable as it is the end of the normal business year for most businesses This date would also give assessors more time in which to complete their work In the past, agricultural interests have been reluctant to see any change made in the lien date[7]

Although almost all states assess property as of a fixed date, it is also possible to assess property at its average value over a period of time Representatives of local government and some business interests have suggested this method of assessment with respect to personal property Although this promotes greater equality among various types of business and probably would mean additional revenue to local government, an average assessment date has some administrative difficul-

[6] *Revenue and Taxation Code*, Section 405
[7] Senate Interim Committee on State and Local Taxation, *The Taxation of Personal Property in California*, Sacramento, State Printing Office, January 1955, p. 58.

TABLE I

State by State Summary of Property Tax Lien Dates

(Tangible Property)

Alabama	October 1
Alaska	January 1
Arizona	Between 1st Monday, January and May 1
Arkansas	Farm crops July 31 All other January 1
California	1st Monday in March
Colorado	January 1
Connecticut	October 1
Delaware	No fixed date
Florida	January 1
Georgia	January 1
Hawaii	January 1
Idaho	2nd Monday in January
Illinois	Real property: January 1 —Personal property April 1
Indiana	March 1
Iowa	January 1
Kansas	January 1
Kentucky	Bank deposits: September 1 Manufactured tobacco September 1 Other January 1
Louisiana	January 1
Maine	April
Maryland	By state: January 1 By Baltimore. October 1
Massachusetts	January 1
Michigan	December 31
Minnesota	May 1
Mississippi	January 1
Missouri	January 1
Montana	January 1
Nebraska	January 1
Nevada	Between July 1 and December 31
New Hampshire	April 1
New Jersey	Real property: October 1 —Tangible personal property used in business January 1 —Tangible personal property not used in business. October 1
New Mexico	January 1
New York	May 1 In New York City, property is assessed on January 25 of the preceding fiscal year
North Carolina	January 1
North Dakota	April 1
Ohio	January 1
Oklahoma	January 1
Oregon	January 1
Pennsylvania	No fixed assessment date. Statutes prescribe date by class of county when assessment must be completed —1st class counties, 3rd Monday in September —2nd class counties, 1st Monday in September —3rd class counties, no date fixed —4th to 8th class counties, September
Rhode Island	December 31
South Carolina	December 31 except certain farm produce
South Dakota	1st, 2d, 3d, class cities, certain farm produce January 2 —All other. May 1
Tennessee	January 10
Texas	January 1
Utah	January 1
Vermont	April 1
Virginia	January 1
Washington	January 1
West Virginia	July 1
Wisconsin	May 1
Wyoming	February 1

SOURCE Commerce Clearing House, *State Tax Reporter*, data current through July 1, 1964

ties. According to Eugene Wilson, resident counsel for the California Retailers Association,[8]

> "Our people have consistently opposed the concept of averaging for assessment of business inventories, because they do not feel there is any assurance that it would introduce any equity into the system whatsoever, but they are quite sure that it would increase administrative costs of taxpayers and in all probability would increase the tax burden for most retailers in this state As an example of administrative costs, many of our stores use four week accounting periods Therefore, their accounting would rarely coincide with the dates mentioned in the bill This would have the effect of increasing the task of multiplying their accounting dates and assessment dates quite substantially. Also there are multitudes of small retailers in this state who compute their inventory values only once or twice a year and they have no desire to increase the number of times that they have to do so.
>
> "For these reasons combined with the fact that averaging would not decrease their assessed valuations, most retailers would not elect to use an averaging system if it were optional I think it's apparent that the only ones who would elect to use averaging are those whose inventory values would be thereby reduced The effect of this would be to reduce the personal property tax base in each county, making an increase in the tax rate necessary to raise the same amount of revenue The effect of this is to shift a portion of the burden of the tax from those who elect to average to those who don't. I want to emphasize this point, because so many people say to us, 'why are you opposed to an optional averaging system, you can take it or leave it' But we do feel that it will increase our tax burden We don't feel that mandatory averaging is the answer to this particular objection Whether other taxpayers' inventory valuation will be increased or decreased depends upon the pure chance of what dates happen to be chosen to average The five dates mentioned in the Marks' bill might be good for some taxpayers and might be bad for others I think the only way you can get a true average is to use a 365-day system because any other method ignores the quirks and circumstances that determine what a particular business' inventory will be from time to time. Obviously a 365-day system is impossible"

As noted earlier, a more detailed look at business inventory tax problems will be found in a subsequent section

Another problem resulting from the concept of a fixed lien date is that of damaged property. Loss or damage of property immediately following the lien date does not reduce the assessment, with the result that the assessee pays a full tax share although his property value may be considerably reduced The concept of lien date involves value at a given time, not average value; therefore, damaged property cannot be reassessed for one-half or the balance of a year The same concept holds true if property is improved during the year Once assessed, the assigned value remains for 12 months The property tax assessment is

[8] Statement of Eugene Wilson to Assembly Committee on Revenue and Taxation, San Diego, June 25, 1964

not concerned with average values as influenced by economic fluctuations or disasters, but is concerned only with value of property at 12 o'clock meridian of the first Monday in March All property is assessed to the person owning, claiming, possessing, or controlling it at that time, and a tax bill reflecting this condition is issued.

If the building or its contents are damaged or destroyed by fire, the assessment must remain fixed because the figure represents value at a particular moment in time—the first Monday in March at noon. If a piece of real property is demolished after lien date and replaced by a structure of double or triple value, the assessed value for that location will reflect the increase the following March and the property will be taxed accordingly.

It should be noted, however, that the Legislature has enacted bills to allow for reassessment of damaged property in special situations such as the Bakersfield earthquake and Crescent City tidal wave. In November 1964, a provision allowing the reassessment of property damaged in an area proclaimed by the Governor to be a disaster area was approved by the electorate However, most property damaged after the lien date will continue to reflect the higher predamage assessment because it will not lie within a disaster area.

C. *Place of Assessment*

Assessors have little difficulty in correctly establishing the "situs" or place of assessment for land and improvements Being immobile, the situs is fixed. Section 10 of Article XIII of the State Constitution provides that

> "all property, except as otherwise in this Constitution provided, shall be assessed in the county, city, city and county, town or township, or district in which it is situated in a manner prescribed by law."

The importance of the "situs" of property is that the place of assessment will determine which local governmental jurisdictions will get the revenue from a tax on the property A number of "situs" problems have arisen with respect to personal property, which is easily moved. The courts have distinguished between permanent situs and temporary situs and ruled that property is assessable at its permanent situs For example, a jewelry company in Los Angeles flew jewelry to Hawaii for a period of less than a month; however, the property was out of the county on the lien date Los Angeles sought to assess and tax this property and was upheld by the court [*Brock and Company* v. *Board of Supervisors of Los Angeles County* (1939) 32 Cal. App. 2d 550.]

One of the major problems of situs concerns commercial airplanes. Aircraft operated by certificated airlines are assessed on an apportioned basis, i e, the aircraft are assessed as other personal property at approximately 25 percent of market value, but this assessed value is then apportioned for the amount of time a given plane is located within the county plus one-half the time between the airport within the county and the port at which it next lands in the state or all the time between the airport in the county and the state line if it next lands outside the state. This information is obtained by schedules, logs, etc

A test period of one week to several months may be used, depending on the density of operations, to determine the average air and ground time allocable to the county This time is then expressed as a percentage of the total time in the test period, and the percentage is applied to the value of the plane to arrive at the allocated value for tax purposes.

D. *Assessment of Special Types of Property*

1. AIRCRAFT

County Assessors are required by *Revenue and Taxation Code*, Section 5363, to assess noncommercial aircraft at "market value" This could be confusing to the assessor in view of Section 401 of the code, which requires all property to be assessed at full cash value To make this distinction clear, Section 5363 of the *Revenue and Taxation Code* further provides:

> ". . . in determining the market value of aircraft, the assessor shall not take into account the existence of any custom or common method, if any, in arriving at the market value of any class or classes of aircraft"

A special tax rate of 1 5 percent of market value is also fixed by law for noncommercial aircraft. This tax is in lieu of all other property taxes In 1964, noncommercial airplanes had a value of $108,105,000 which produced $1,621,575 in revenue for local governments. The only argument for continuing this specific tax rate—or specifying any rate for that matter—is the argument of uniformity.

The extreme mobility of aircraft allows owners to select the airport they choose for storage purposes Without the statutory protection aircraft could easily be registered and stored in the nearest county with the lowest tax rate By fixing the rate in the *Revenue and Taxation Code*, the Legislature has assured that this portion of the county tax base will not be shifted to another county to escape the tax Shifting would cause problems at the local private airport, lower its revenues, and further limit the private airport owner in meeting his own property tax bill At municipal or county airports in high-rate counties, the landing, parking, and storage fees would diminish if aircraft were to be transferred to another county, all to the detriment of the public airport facility The average property tax rate is now approaching 2 percent of full value in California so the aircraft rate, set by statute at 1 5 percent, may be slightly below average If the property tax continues to increase, the Legislature may wish to consider raising the 1 5 percent tax rate to a more comparable figure

2. BALED COTTON

A special assessment and taxation procedure has been established for baled cotton Bales of cotton produced in California are assessed at their market value and taxed at a rate of one-tenth of 1 percent of this value There are both similarities and differences between this and the provisions relating to the assessment and taxation of noncommercial airplanes. Both baled cotton and airplanes are to be assessed at their

market value rather than at a percentage of market value However, bales of cotton produced in California are exempt from the lien date provisions In 1964, the value of baled cotton in California was $254,423,000. This produced a tax revenue of $254,423 for the eight cotton-growing counties of this state The purpose of this special assessment and tax procedure is to keep a large part of California's 1½ million bales of cotton in California warehouses until they are ready for shipment to the textile centers of the world

3. WORKS OF ART

Creative artists are in the unique position of having their works assessed at cost of production rather than at current sale value Section 986 of the *Revenue and Taxation Code* provides "the cash value of a work of art, still owned by the artist who created it and which has never been sold nor exhibited for profit, is the cash value of the materials which constitute the work of art" Works of art assessed under this provision have a value of approximately one million dollars according to the county assessors. Although this method of assessing works of art may seem inequitable at first blush, it would be difficult to assess them in any other manner because there has been no sale to establish value This exemption serves to create a healthy artistic climate within the State of California After works of art have been sold they are subject to normal taxation

4. GOLF COURSES

In 1960, California voters enacted a special provision for assessment of privately owned, nonprofit golf courses. These courses, if they are 10 acres or more in size and have been used for nonprofit golf course purposes for two prior years, must be assessed on the basis of present use rather than of potential use or highest and best use This provision was added because many of the private golf courses were in areas in which land value and assessments on surrounding property were skyrocketing. If golf courses were to be assessed according to standard methods of assessment, the tax burden would be too great to be met by the revenue they produce There is nothing in the constitutional provision to insure that these courses will be kept in their present use. After a number of years of special assessment and low taxes, the owners of these nonprofit enterprises can sell them for another use and realize a huge profit If the golf course were assessed as other property rather than under the special assessment provision, the county assessors estimate that assessment rolls would be increased over $10 million However, this provision does serve to preserve some vitally needed open space in cities

5. AGRICULTURAL, AIRPORT AND RECREATION LAND

Section 402 5 purports to set up special assessment provisions for land owned and used exclusively for agricultural, airport, or recreational purposes However, as the following Legislative Counsel's opinion indicates, it does not require special assessment but merely reinforces the assessment the assessor would normally apply to these uses:

"Section 402 5 of the Revenue and Taxation Code reads as follows·

> '402 5 In assessing property which is zoned and used exclusively for agricultural, airport or recreational purposes, and as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future, the assessor shall consider no factors other than those relative to such use.'

"We construe Section 402 5 of the Revenue and Taxation Code as having the effect merely of limiting the assessors to a consideration of factors relevant to agricultural, airport or recreational purposes, if there is no reasonable probability in the near future of the removal or modification of the zoning restriction[9] Furthermore, we believe that in so providing the section is consistent with a prior court-sanctioned rule to the effect that in valuing land for tax purposes, it is proper for the assessor to take into consideration every use which would enhance the value of the property As the court stated in *Wild Goose Country Club* v. *County of Butte* (1922), 60 Cal App. 339, 341.

> ' . In arriving at the value of the land it was proper to take into consideration every use to which it was properly adapted and which would enhance its value in the estimation of persons generally The question is not what its value is for a particular purpose, but its value in view of all the purposes to which it is naturally adapted.'

"To the same effect are *H & W Pierce, Incorporated* v *County of Santa Barbara* (1919), 40 Cal App. 302, and *Ballerino* v. *Mason* (1890), 83 Cal 447.

"It appears obvious that if there is no reasonable probability of removing or modifying a zoning restriction applicable to property zoned and used exclusively for agricultural, airport or recreational purposes, it would be improper to use other factors as a basis for valuation This seems implicit both in the rule mentioned and in Section 402 5

"It is to be noted that in the field of eminent domain a zoning restriction may be taken into consideration in determining the value of property in the making of compensation awards (see 17 Cal. Jur 2d 648-649; *Los Angeles City High School District of Los Angeles County* v *Hyatt* (1926), 79 Cal App 270, 272; *The City of Beverly Hills* v *Anger* (1932), 127 Cal App 223, 226-229; *Long Beach City High School District of Los Angeles* v *Stewart* (1947), 30 Cal 2d 763) The effect of such a restriction as a factor in such determination is, however, evidently less than it might be otherwise where there is a reasonable probability that it might be modified or removed in the near future (*Long Beach City High School District of Los Angeles* v *Stewart*, at pp 768-769) Since the value of property for eminent domain purposes has virtually

[9] In assessing property for tax purposes the assessor is bound by a requirement in Section 12 of Article XI of the State Constitution for the use of "full cash value" as the standard of value in carrying out the mandate in Section 1 of Article XIII that all taxable property "shall be taxed in proportion to its value" See *De Luz Homes, Inc.* v. *County of San Diego* (1955), 45 Cal 2d 546, 562

the same meaning that it has for property tax purposes (see *City of Daly City* v. *Smith* (1952), 110 Cal App. 2d 524, 531, and *De Luz Homes, Inc.* v. *County of San Diego* (1955), 45 Cal. 2d 546, 562), it is not unlikely that these rules, even in the absence of Section 402.5, would have a persuasive effect in property taxation. In any event, the section and the rules are clearly in consonance.

"Section 1 of Article XIII of the State Constitution provides that property 'shall be taxed in proportion to its value, to be ascertained as provided by law. . .' Our Supreme Court has said that this provision is not self-executing, but imposes on the Legislature the duty of prescribing a method or the machinery for ascertaining the value of property for tax purposes (*San Pedro, Los Angeles & Salt Lake Railroad Company* v. *City of Los Angeles* (1919), 180 Cal. 18, 21; *McHenry* v. *Downer* (1897), 116 Cal. 20, 24). A similar provision in the 1849 California Constitution (Art. XI, Sec. 13) was construed by the same court as empowering the Legislature to determine the manner in which the value of taxable property is to be ascertained (*Houghton* v. *Austin* (1874), 47 Cal. 646, 661-662). It appears to us that Section 402 5 of the Revenue and Taxation Code manifests a legislative performance of the duty or exercise of the power thus described, and that it is to be construed simply as legislation in implementation of Section 1 of Article XIII.

"The Legislature is also directed by Section 13 of Article XIII to 'pass all laws necessary to carry out the provisions' of the article. Subject to any applicable constitutional limitations, it has, of course, full power to determine what is 'necessary' for such purpose (see *Ex parte Smith and Keating* (1869), 38 Cal 702, 707). Any such limitation on the power is strictly construed, however (*Delaney* v. *Lowery* (1944), 25 Cal. 2d 561, 568), and every presumption is in favor of the constitutionality of legislation enacted pursuant to the power (see 11 Cal. Jur. 2d 407, 'Constitutional Law,' Sec. 74).

"To summarize, we construe Section 402 5 as legislation which merely implements the requirement in Section 1 of Article XIII for the taxation of property 'in proportion to its value,' and as a statutory provision which is consistent with the judicially recognized rule that in the assessment of property an assessor must take into consideration every use of the property that might enhance its value. We perceive nothing in the section which can reasonably be construed as requiring the assessor to assess property zoned and used exclusively for agricultural, airport or recreational purposes at any amount or on any basis different from that which the Constitution requires [10]

III. WORK OF THE ASSESSOR

Most of the criticism of the property tax is directed at the deficiencies in assessing. A tax that is administered so that one taxpayer is

[10] Legislative Counsel's Opinion, #956, written by Edward F. Nowak, September 11, 1963.

treated unfairly in respect to another cannot be defended To safeguard the future of the property tax, assessments must be of the highest quality.

The key to a good property tax system rests with the local assessor in each county in California. This section is devoted to how the local official meets this challenge—the appraisal principles which are used, the problems in keeping appraisals current, the staffing of assessor's offices and extraneous interests which might interfere with impartial assessment administration.

A. *Appraisal Principles*

It is worth spending some time in discussing appraisal principles which are used to determine the value of a given piece of property. Differences in the method of ascertaining value create the greatest problems in reviewing the work of the assessor—particularly in the relationship of one assessment to another.

Section 110 of the Revenue and Taxation Code defines value as " . the amount at which property would be taken in payment of a just debt from a solvent debtor " California's courts have interpreted this to mean the price that property would bring to its owner if it were offered for sale on an open market under conditions in which neither the buyer nor the seller could take advantage of the exigencies of the other. [*De Luz Homes, Inc.* v *San Diego County* (1955) 45 Cal. 2d 546; *A. F. Gilmore* v. *Los Angeles County* (1960) 186 Cal. App. 2d 471]

There are several approaches that are used to find this value. When sales of a given class of property are numerous enough to develop a pattern and these properties are very similar in nature, the value can be determined from an analysis of sales.[11] This does not solve the problem of determining value where there are no sales or where properties to be appraised are dissimilar and cannot easily be compared with those recently sold In such situations, a variety of approaches or combinations thereof can be used Most commonly used are replacement cost minus depreciation; capitalized earnings; value computed from stocks, bonds, and other debts of a company; and historical cost less depreciation. In valuing a single property using these several approaches, it is quite possible to arrive at a number of different conclusions This is one of the fundamental weaknesses of property tax assessment.

A word about each of the approaches which can be used to determine value:

1. SALES ANALYSIS

By maintaining a complete collection of sales prices for properties being sold, an assessor can use sales as an indicator of the value of the property being sold and the value of like property not recently sold In using sales, the assessor must be aware of the limitations of

[11] Some assessors deny that sales prices represent value Hugh Plumb, then Orange County Assessor, told the Assembly Revenue and Taxation Committee that many sales represent future potential and these sales must be discounted to an amount equivalent to present worth Statement to the Assembly Committee on Revenue and Taxation, Los Angeles, November 13, 1963.

the sales approach and make sure that the transaction was at "arms length." When sufficient sales data are available, this is probably the most satisfactory indicator of value

2. CAPITALIZED EARNINGS

The theory of capitalized earnings represents the principle that buyers and sellers of property translate anticipated future income into present capital value In arriving at a purchase price for a property, the buyer converts the future productivity he predicts to current capital value In this manner property worth is calculated from what it will earn. Past earnings have no real importance for assessing value except as they indicate future potential.

3. MARKET VALUE OF STOCK AND DEBT

By accurately assessing the value of stock in a corporation, the assessor can judge its worth The value of corporate stock is determined by knowledgeable investors, so if the stock value can be determined, the worth of the company is known Stock and debt are on the liability side of a balance sheet, but an appraisal of the liabilities represents an appraisal of the property on the asset side. Despite a considerable amount of uninformed buying, market prices of stock are controlled by men who have an understanding of the financial condition of the company in which they invest and who buy if the price goes below their concept of value and sell if it goes above that value. Thus the market price of the stock cannot go far above or below the informed opinion of corporate value This approach to value cannot be used where stock is held closely and there is no market established for it.

4. HISTORICAL COST LESS DEPRECIATION

As seen from the title, this approach to value substracts depreciation from total investment to date To the original investment are added all enlargement and improvement costs and then normal depreciation, based upon the life of the improvement, is subtracted to achieve an assessment This method is normally confined to utility property because the Public Utilities Commission will not knowingly allow a company which it regulates to earn more than a fair return on historical cost less depreciation Depreciated historical cost is a recorded fact on the balance sheet of regulated utilities, making the determination of assessed value much easier than applying an arbitrary schedule of depreciation.

5. REPLACEMENT COST LESS DEPRECIATION

If the assessor applied current prices to all the items that make up a piece of property, he would know the cost of replacing the facilities. In a competitive setting—that is, for residential or commercial properties, but excluding monopolistic enterprises and regulated utilities—replacement cost less depreciation is a sound judgment of value. However, other factors must also be considered in arriving at a final valuation Among these factors are location, available services, and other subjective influences on worth

No one of the systems described above alone meets the test of determining value However, a reasonable combination of them or applica-

tion of factors of each can give a very good indication of what the property would bring on an open market even though a pattern of sales has not been established on which to base a more firm estimate These methods may seem imprecise and arbitrary to the general taxpayer, but no better device has been perfected to firmly establish property worth for tax purposes They have worked to the satisfaction of taxpayer and tax administrator alike, have stood the tests of time and the assault of men who attacked but could provide no more certain method of ascertaining value.

B. Frequency of Reappraisal

An assessor not only has a problem of finding value for a parcel of property but a problem of keeping that value current and up to date from year to year Obviously, the assessor does not have the staff to reappraise on an individual unit basis each parcel of property every year. A survey of this practice by county reveals that most reassess on a continuing four- to five-year rotation period.

Most appraisers use a rotating plan whereby a designated area—such as a supervisorial district, school district, or large city—is reappraised one year and another subpart of the county is reappraised in the subsequent year. The legality of this cyclical reappraisal program has been upheld in the courts. [*Lord* v. *County of Marin* (1953) 214 A.C.A. 25]

See Table II for county reappraisal practices

TABLE II

Time Required to Physically Reappraise All Property Within the County

	Years		*Years*
Alameda	6	Orange	2 to 4
Alpine	12	Placer	6
Amador		Plumas	5
Butte		Riverside	1
Calaveras	5	Sacramento	4 to 5
Colusa	5	San Benito	
Contra Costa	4 to 5	San Bernardino	4
Del Norte	5	San Diego	4
El Dorado	3	San Francisco	1
Fresno	6	San Joaquin	1 to 2
Glenn	4	San Luis Obispo	3
Humboldt	4 to 5	San Mateo	5
Imperial	6	Santa Barbara	on need
Inyo		Santa Clara	1
Kern	5	Santa Cruz	4
Kings	4	Shasta	4
Lake	4	Sierra	
Lassen		Siskiyou	5
Los Angeles (prior to 1963)	5	Solano	2 to 5
Madera	4	Sonoma	6 to 7
Marin	5 to 6	Stanislaus	4 to 5
Mariposa	every yr	Sutter	4 to 5
Mendocino	8	Tehama	4
Merced	7 to 8	Trinity	3
Modoc	as needed	Tulare	4 to 10
Mono		Tuolumne	5
Monterey	5	Ventura	4
Napa	5	Yolo	6
Nevada	5	Yuba	4

SOURCE Computed from material supplied to the Assembly Committee on Revenue and Taxation by the county assessors of California

TABLE III

Time Required to Make a Complete Countywide Reappraisal

	Years
Alameda	6
Alpine	2
Amador	
Butte	
Calaveras	2 to 3
Colusa	5
Contra Costa	4 to 5
Del Norte	5
El Dorado	3
Fresno	6
Glenn	4
Humboldt	4 to 5
Imperial	6
Inyo	
Kern	5
Kings	2
Lake	4
Lassen	3
Los Angeles (reappraisal made as assessed value falls outside tolerance limit)	
Madera	4
Marin	5 to 6
Mariposa	1
Mendocino	8
Merced	7 to 8
Modoc	4
Mono	
Monterey	5
Napa	4
Nevada	4
Orange	2 to 4
Placer	6
Plumas	4 to 5
Riverside	6
Sacramento	4 to 5
San Benito	4
San Bernardino	4
San Diego	4
San Francisco	4
San Joaquin	2
San Luis Obispo	3
San Mateo	5
Santa Barbara	last one—6 yrs
Santa Clara	
Santa Cruz	4
Shasta	4
Sierra	
Siskiyou	5
Solano	4
Sonoma	6 to 7
Stanislaus	100 man-yrs
Sutter	4 to 5
Tehama	4
Trinity	2
Tulare	10
Tuolumne	5
Ventura	4
Yolo	6
Yuba	3 to 4

SOURCE Computed from material supplied to the Assembly Committee on Revenue and Taxation by the county assessors of California.

This assessment procedure has been severely criticized One of the critics, Los Angeles County Assessor Philip Watson, comments as follows:

> "To those who immediately protest that if market value rises we must reflect the increased value, I hasten to wholeheartedly agree. We must, however, reflect any increased value equally and proportionally throughout our jurisdictions, and this is precisely the thing we have failed to do This is precisely where we have procrastinated and made excuses for doing a bad job.
>
> "We have reflected in our assessed appraisals and assessment roll the addition of new construction and the increased value of land, but we have done it by an immoral and devious assessment practice commonly called 'piecemeal assessment.' Piecemeal assessment is a system of dividing the whole county area into a number of geographical subunits and each year confining our reappraisal revaluation program to one of the geographical subunits, until the whole area is reappraised In our county the plan used a five-year cycle. The time varied from place to place, but always with the same result. When one geographical subunit was reappraised, assessments generally were increased from 100 percent to 200 percent on land because in our rising market the previous values were five

years outdated This bad job was justified with the rather poor excuse that it was impossible to reappraise every property in the county each year, that we had to adopt some other kind of plan. What we should have done, was to insist that we have a sufficient number of competent appraisers to do the job each year.

"And what happened as a result? This piecemeal reassessment practice was a working proof of the practical application of Parkinson's Second Law as expounded in his book, *The Law and the Profits.* That law, as stated by Professor Parkinson, is 'Expenditures rise to meet income.' The public, in more basic and realistic terms than Professor Parkinson, usually expresses in this way, 'The government will spend every penny it can get its hands on'

"What I am saying to you, frankly, is that by doing this bad job of reappraisal, by not maintaining assessments at a constant relationship to market value, we assessors provided the ever-increasing tax base which made possible the ever-increasing higher spiraling budgets without an increase in the tax rate. We assessors, therefore, in the public mind, shifted the responsibility and blame, for higher taxes squarely to our own shoulders For example, Los Angeles County, with the five-year plan, each year revalued 20 percent of the properties and increased assessments 100 to 200 percent. The 100 to 200 percent increase on 20 percent of the properties in the county usually produced a total tax roll which was increased some 6–7 percent over the preceding year's tax roll How else could taxes have increased 300 percent with only a 14 percent increase in the tax rate?

"It also had very practical political advantages for, while it is true, the people blamed the assessor for the higher tax bill and called him the 'Tax Assessor,' only 20 percent of the people were angry each year. The other 80 percent were happy—theirs hadn't gone up Next year the second 20 percent were angry, the third year the third 20 percent But those who had been on the inequitable merry-go-round the preceding year were so grateful for no increase they forgot all about the previous increase So, come election time, the assessor was regularly reelected, with, of course, the customary nominal protest vote "[12]

Since becoming assessor, Watson has designed a program to keep his assessment rolls current. In an appearance before the Assembly Revenue and Taxation Committee, Watson explained the changes he had made

> "We have taken the approach in our county which, although not perfect, and which requires us to operate within some limits of tolerance, will, after we complete our initial reappraisal period, permit us to make an annual review of all our properties This continuing review of the ratio in relation to sales price will permit us to keep our assessments current each year within let's say a 10 percent limit of tolerance from the standard I brought with me the approach we have taken to do this We call it a sales ratio study, and in this we do it by field book We have some 2,850 field

[12] Address by Philip E Watson, Los Angeles County Assessor, before the Western States Association of Tax Administrators, September 6, 1963.

books dividing our county into 2,850 areas. We collect the sales data of properties actually sold within the field book areas—compare the sales price to the assessed value of the property, and compute a ratio for each field book We use this to plan our work to plan how we are going to make the appraisals We then chart them—line chart—such as I have here. Draw, if you can see the red line here, this is the 25 percent line. There is a slight green line that you probably cannot see that is a 20 percent line. The properties that fall outside this range in relation to sales price we then say are those areas which need work, which need bringing into the limits, either brought up or brought down. In line with this, in this year we are working on everything below 20 percent in our county—about 425 thousand or 450 thousand parcels throughout the county. We think this system, when we complete our general reappraisal to bring everything within the limits will permit us to constantly maintain it at that level, and we won't have to do it geographically. We realize that it will be fairly hard to convince the individual in this field book whose property will be reappraised that we are not doing it on a sectional basis, I recognized that, but I think we can demonstrate it by getting someone to sit down and look at the way we approach this."[13]

Without proper staffing, frequent appraisal is impossible, and of course it is unreasonable to ask the assessor to do the impossible However, better guidlines relating to reappraisals could be established by the Legislature For example, rather than using supervisorial districts as subunits in a reappraisal program, school districts could be used The use of school districts would even the tax impact of an increase in the assessment as all in the taxing jurisdiction which takes the largest bite from the property tax would be treated the same

C. *The Assessor and His Staff*

The quality of the assessor and his staff will ultimately determine whether the assessments in a given county are reasonably uniform and fair to all or whether they stand as an outrage to every principle of legal, social and moral justice.

Placing a value on property is a technical job requiring great skill and exacting professional qualifications With skillful and dedicated assessors, the property tax system can be made to work in California, without them it cannot

All county assessors in California are independent public officials elected to office by the voters. Much has been written as to the desirability of this method of selecting assessors In *American Public Finance*, Shultz and Harriss observe:

> "Experts favor appointment of assessors, preferably as part of a civil service merit system. The elected assessor is too often a votegetter instead of a competent appraiser and administrator, worse yet, he may be a creature of the local political 'machine' and misuse his office to further the 'machine's' ends. When election

[13] Statement by Philip E Watson to the Assembly Committee on Revenue and Taxation, Los Angeles, November 15, 1963.

puts an honest and able man into an assessor's office, he labors under a heavy handicap He has a wide range of discretion, an ability to grant favors that is great indeed. If he hopes for reelection, he must retain the backing of his party organization and curry favor with the voters Such divided interests reduce his efficiency

"Dangers, however, also lurk in a system of appointment If the office is at the disposal of a county board, it will often be made a political gift, a reward for political effort rather than fitness for the office. This hazard can be reduced by requiring appointment to be made from a list of candidates certified as to fitness by a competent and impartial agency—say, the state tax commission As a further safeguard, the state agency may be empowered to remove appointed assessors upon proof of incompetence or malfeasance. Although the exercise of such removal power might be rare, its existence would help toward maintaining statewide standards of assessment practice Better yet, assessors should be made part of the permanent civil service, as in New York City Tested competence should be the basis of selection and promotion, with examinations open to all." [14]

The Advisory Commission on Intergovernmental Relations, after viewing this situation, reported that,

"Local governments are accustomed to employing trained accountants, engineers, health officers, social workers, and school teachers, but they seem willing to elect as assessor any resident citizen who is old enough to vote and does not have a criminal record, and pay him less than the school janitor Very fortunately this is not the universal procedure, but it is sufficiently widespread to explain in part why assessing is mediocre to poor in many areas" [15]

In some states, the assessor is appointed by local governmental boards Primary district assessors are appointed in Delware, Georgia, Iowa, Maryland, and North Carolina The State of Kentucky has a unique system which retains the elected assessor while at the same time insures he is competent to hold the office Before a candidate can have his name placed on the ballot, he must be certified by the State Department of Revenue that he is qualified for office. [16]

The advisory commission recommends that·

1. "All assessors should be appointed to office, but with eligibility for appointment based on state certification as to qualifications
2. "There should be no requirement of prior residence in the assessment district for appointment to the office of assessor.
3. "Assessors should be appointed by chief executives of local governments when assessment districts are coextensive with such government . ." [17]

However, there are certain persuasive arguments for retaining the assessor as an elective officer Boards of supervisors have a natural af-

[14] William J Shultz and C Lowell Harriss, *American Public Finance*, Englewood Cliffs, N J . Prentice-Hall, 1960, p 375
[15] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Washington, D C, June 1963, p. 104
[16] *Ibid*, p 104–105.
[17] *Ibid*, p 105–106.

finity for high assessment rolls. In this way, they can keep the tax rate low. An appointive assessor may feel pressure to increase the level of assessment to please his bosses. In addition, in most counties, the Board of Supervisors acts as a Board of Equalization to which taxpayers can appeal their assessments. By keeping the assessor and the board divorced, a better judicial atmosphere can be maintained In California the office of assessor is nonpartisan and many assessors first acquire office by appointment There are further arguments for continuing the county assessor as an elective officer. The Kentucky system where assessors are elected by the people but where candidates are certified as to their competence has much to commend it It keeps the office of the assessor independent from the tax rate setting body but insures that a qualified person will be elected.

Salaries paid to county assessors, for the most part, are low. Considering the vital importance of the job of the assessor, the remuneration for the work should be such as to encourage the best possible candidates to compete for the position. In 27 counties, the assessor makes less than $10,000 a year. The average salary of a county assessor is less than $12,000 per year. (See Table IV)

TABLE IV

Salaries of Assessors in California

Alameda	$17,010	Orange	$16,800
Alpine	4,800	Placer	11,500
Amador	9,600	Plumas	7,500
Butte	9,000	Riverside	14,100
Calaveras	8,400	Sacramento	18,000
Colusa	9,000	San Benito	7,200
Contra Costa	18,000	San Bernardino	16,800
Del Norte	8,400	San Diego	18,900–19,845
El Dorado	11,000	San Francisco	25,215
Fresno	15,600	San Joaquin	12,000
Glenn	7,200	San Luis Obispo	9,600
Humboldt	10,200	San Mateo	18,500
Imperial	10,000	Santa Barbara	13,152 (159 84/mo)
Inyo	9,600	Santa Clara	20,400
Kern	14,375	Santa Cruz	11,500
Kings	10,200	Shasta	9,750
Lake	8,000	Sierra	7,200
Lassen	6,300	Siskiyou	9,200
Los Angeles	27,000	Solano	10,861–11,400
Madera	9,000	Sonoma	15,000
Marin	13,500–15,300	Stanislaus	12,600
Mariposa	6,900	Sutter	8,500
Mendocino	10,000	Tehama	7,800
Merced	9,000	Trinity	6,000
Modoc	7,560–8,340	Tulare	12,300
Mono	8,100	Tuolumne	8,600
Monterey	14,400	Ventura	14,400
Napa	11,500	Yolo	10,800
Nevada	9,980	Yuba	9,000

SOURCE. Figures supplied by county assessors and State Board of Equalization, 1964.

Staffing of the county assessor's office is as important as the selection of the assessor The deputies who are out in the field making the appraisals will ultimately bear the responsibility for the quality of the assessment roll. Regardless of the size of the office, the appraisal staff

must be professionally qualified for their responsibilities The Advisory Commission on Intergovernmental Relations recommends that property should be "appraised for taxation only by appraisers certified as to qualifications on the basis of examination by a public agency authorized to perform this function." [18] In California, only 23 counties require the passage of a civil service examination as a condition of employment. (See Table V.)

TABLE V

Hiring Policy of County Assessor's Offices—Is Passage of a Civil Service Examination Required?

Alameda	yes	Placer	yes
Alpine	No answer	Plumas	no
Amador		Riverside	no
Butte	no	Sacramento	yes
Calaveras	no	San Benito	no
Colusa	no	San Bernardino	yes
Contra Costa	yes	San Diego	yes
Del Norte	no	San Francisco	yes
El Dorado	no	San Joaquin	yes
Fresno	yes	San Luis Obispo	yes
Glenn	no	San Mateo	yes
Humboldt	no	Santa Barbara	no
Imperial	no	(aptitude test req)	
Inyo		Santa Clara	yes
Kern	yes	Santa Cruz	yes
Kings	no	Shasta	yes
Lake	no	Sierra	
Lassen	no	Siskiyou	no
Los Angeles	yes	(written exam given)	
Madera	yes	Solano	no
Marin	yes	Sonoma	yes
Mariposa	no	Stanislaus	yes
Mendocino	yes	Sutter	no
Merced	no	Tehama	no
Modoc	no	Trinity	no
Mono	no	Tulare	no
Monterey	no	Tuolumne	no
Napa	no	Ventura	yes
Nevada	no	Yolo	yes
Orange	no	Yuba	no

GRAND TOTAL: 23, yes—31, no

SOURCE Computed from material supplied to the Assembly Committee on Revenue and Taxation by the county assessors of California

Salary will be an important factor in attracting and keeping qualified individuals in staff positions in assessor's offices If an inadequate salary is offered, the most highly qualified candidates will consider other employment. In addition, inadequate salaries result in costly personnel turnover.

The State Board of Equalization has recommended that the salary levels for staff appraisers should be comparable to those paid for similarly qualified personnel by the State of California.[19] The size of a county should make little difference (other than for adjustments in the cost of living) in the salary of an appraiser. An equally qualified person is needed to appraise a residence in a small county as in a big one.

[18] *Ibid*, p 105.
[19] State Board of Equalization, *Property Tax Assessment in Santa Cruz County* (mimeo) 1962, p. 20.

In many counties, particularly the smaller ones, the salary schedule is below comparable salaries paid to appraiser personnel working for the state. In a few cases, the county salary is higher than that of the state. It should be noted that the counties have been making a determined effort to improve their salary schedules over the past few years.

TABLE VI

Salary Schedule for Appraiser I, 1963–64, Selected Counties

Alameda	$517–628/mo.	Riverside	$464–575/mo
El Dorado	436–530	Sacramento	481–584
Fresno	450–563	San Benito	376–458
Humboldt	371–464	San Luis Obispo	419–505
Kern	412–512	San Mateo	519–581
Marin	445–555	Santa Clara	496–603
Mendocino	395–481	Santa Barbara	455–553
Merced	395–481	Shasta	415–505
Monterey	446–552	Siskiyou	407–495
Napa	415–505	Solano	415–505
Nevada	325–395	Sonoma	449–539
Orange	575–715	Stanislaus	436–530
Placer	436–530	Tehama	415–505

SOURCE Information supplied to the Assembly Committee on Revenue and Taxation by county assessors of California

For the year 1963–64, the state salary schedule for junior property appraisers was $440–510/month.[20]

A quality assessment not only depends on a highly trained and competent staff but on a staff which is large enough to effectively fulfill a normal appraisal and equalization program. The size will vary depending on the nature of the county and the number and types of property which must be assessed. Approximately 4,500 people were involved in the assessment of property at the county level in California in 1963.

A breakdown of this total shows:

Administrative	162
Field appraisers	1,619
Marine appraisers	28
Timber appraisers	12
Seasonal personnel	1,010
Clerical	1,667 [21]

On an average, there is one field appraiser for every $20 million of locally assessed value in the state. In a further effort to improve the quality of assessments, most county assessors' offices have an inservice training program. This program is generally oriented toward (1) a review of the "basics," particularly for new personnel, and (2) advancing the professional capabilities of permanent staff members. Over 73,000 man-hours were spent in training in 1963.[22]

[20] The state salary during the second half of the 1963–64 fiscal year was 10 percent higher than the one shown

[21] Figures supplied the Assembly Committee on Revenue and Taxation by the county assessors of California.

[22] *Ibid.*

As the Advisory Commission on Intergovernmental Relations observed:

> "There is no satisfactory substitute for the continuous inservice training, much of it informal, provided by competent, well-equipped state supervisory agencies through provision of manuals, guides, and other assessing tools along with personal instruction in their use by means of field service and regional conferences and schools, collaboration of technical staffs in solving difficult assessment problems, guidance in measuring and analyzing assessing results, and broadening the local assessor's range of professional equipment by acquainting him with the best technical reference material and the wealth of aid available in the publications and services in numerous federal and state government departments and agencies and in the state colleges and universities [23]

Progress in improving the training of deputy assessors is being made by Philip Watson, Los Angeles County Assessor Watson told the committee:

> "By and large, almost exclusively in the past, deputy assessors are trained within assessors' offices There has been very little effort made in the schools to train deputy assessors There are appraisal courses given at the various schools and some real estate courses which bear on it and from which we can build We have our own trainee course. It has been conducted in the office for some time We currently have 81 students in our trainee program Further than that, I have contacted representatives of UCLA, USC, and Los Angeles State attempting to persuade those people of the need for education in this field. Only a week ago, I met with the department head and the President of Los Angeles State They have given us a copy of the program of training they have in the appraisal field, and we are in the process of developing so that they can add to their regular curriculum program of training for deputy assessors in our real estate section I think this has been the first breakthrough, but we definitely see a need for more education But we are on the way with this particular program as well as our inservice training within the department "[24]

The State of Oregon has postwar legislation designed to improve the quality of assessments in the counties in that state. This law provides that only certified appraisers who have passed a state examination may appraise property. In addition, a minimum salary for these appraisers, tied in with the state's salary schedule, is required, and the law further provides that each county must have one certified appraiser for each $30 million in full value. (This compares with an approximate ratio of one field appraiser for every $90 million of full value in California)

According to Kenneth C Tollenaar, Executive Director of the Association of Oregon Counties, there have been no problems with respect to the examination and certification of appraisers. The examinations

[23] Advisory Commission on Intergovernmental Relations, *op cit*, p 122
[24] Statement of Philip Watson to Interim Committee on Revenue and Taxation, Los Angeles, November 14, 1963.

cause little additional work for the State Civil Service Commission, since the examinations are coordinated with those they must administer for state personnel. However, Tollenaar reports that other requirements have presented problems:

> "The second point—minimum salary—has given rise to much misunderstanding and disagreement between the county governing bodies, the county assessors, and the State Tax Commission. Such a provision is contrary to the home rule principle that each locally elected governing body should be responsible to the voters for the expenditure of tax money Moreover, it is in direct conflict with county civil service concepts. The Oregon Supreme Court has ruled that this provision governs only the salary paid for entry-level appraisers, and does not require each county to adopt the state's classification plan. This ruling helped, but there are still a lot of unresolved problems in this situation
>
> "These problems are insignificant in comparison to those which have been stirred up by the third provision—that counties must employ one certified appraiser for each $30 million of true cash value
>
> "The counties have come to regard this statute in the same light as prohibition The law is widely ignored, but it has a nuisance effect which is highly offensive to the counties.
>
> "The counties' objections are numerous The statutory standard is, above all, arbitrary, $30 million of true cash value in central Oregon wheat land or in a single industrial plant constitutes much less of a demand on appraisal personnel than does $30 million in mixed commercial and residential property in small ownerships A given number of identical $20,000 buildings require much more personnel time to appraise if they are dispersed in the wide open spaces of eastern Oregon than if they are located side by side in some residential subdivision $30 million in personal property is a different kind of appraisal job than $30 million in real property.
>
> "There is moreover, nothing magical about the figure of $30 million It was arrived at subjectively by certain individuals when it was written into the law, and even if it had been based on a careful study of statewide averages it would be far out of date today, considering the impact of inflation on property values" [25]

Considering the Oregon experience, California should consider the establishment of a program of certifying appraisers through a system of state examinations As previously noted, the Advisory Commission on Intergovernmental Relations recommends that all states adopt this procedure.

D. Outside Interests of Assessors

Those who conduct the public business must be guided by the highest standards of ethical behavior Because of the great power of an assessor to determine a person's property tax liability by the setting of the assesssment and because the underassessment of a few parcels on a county roll would go completely undetected due to the normal dispersion of assessments, assessors must be of the highest integrity and

[25] Letter to Committee on Revenue and Taxation from Kenneth C. Tollenaar, Executive Secretary, Association of Oregon Counties, March 4, 1964.

maintain conduct beyond reproach In the normal course of events, the assessor's job is a full-time job Outside business activities would hardly be compatible with the public responsibility of the assessor Of particular concern are special situations in which an assessor might be involved.

An assessor who offered his services as a "tax counsel" to taxpayers whose property he assessed would be subject to criticism He would also be subject to criticism if he were in partnership with local taxpayers in business ventures within or without his county. If the assessor did not invest in these ventures in proportion to his participation but was "cut in" by the other parties, a very serious conflict of interest could result.

California's conflict of interest laws do not cover these situations. (See *Government Code*, Section 1090 et seq) Because of the sensitive nature of the assessor's work, it may be desirable for the Legislature to strengthen the conflict of interest laws as they relate to assessors

IV. BOARD OF EQUALIZATION: PROPERTY TAX ACTIVITIES

In addition to the responsibility for collecting most of California's state tax revenue, the State Board of Equalization has important responsibilities in the property tax field Public utilities are assessed by the board Assistance is given to county assessors through the Division of Assessment Standards The board also has the responsibility of determining an assessment ratio for each county. These ratios are used in computation of state school apportionments and as the basis for issuing equalization orders where a county's total assessment ratio is too high or too low. A final function of the board in the property tax field is to hear and decide appeals between governmental agencies with respect to taxable government-owned property

A. Assessment of Utility Property

Section 14 of Article XIII of the State Constitution provides that certain enumerated public utilities—railroads, private railroad car companies, express companies, intercounty pipelines, telephone and telegraph companies, and gas and electric companies—shall be assessed by the State Board of Equalization In 1964, the property of these utilities was assessed by the State at $4,442,129,980 or approximately one-eighth of the assessed value of property on the county tax rolls. As Table VII illustrates, the assessed value of state-assessed utility property increased 90 6 percent since 1954, while the assessed value of all property increased 101 6 percent In the last three years, the percentage increase of the utility roll was markedly lower than that of the total roll

A source of great controversy over the years has been the question of whether the board is assessing utility property at the same ratio to full value as county assessors are valuing locally assessed property. In 1957, the Legislature appropriated over $200,000 to study assessment practices—a study which was primarily devoted to the state and local assessment ratio question This study came to the conclusion that state-assessed property was being assessed at 50 percent of market

TABLE VII

Assessed Value of Tangible Utility Property Compared With Assessed Value of All Tangible Property: 1954–55 to 1964–65

Fiscal year	*Assessed value of all tangible property*		*Assessed value of tangible property of state-assessed utilities*	
	Amount (in thousands)	*Annual percentage change*	*Amount (in thousands)*	*Annual percentage change*
1954-55	$18,220,059	6 2%	$2,330,923	8 5%
1955-56	19,093,440	9 7	2,558,415	9 7
1956-57	21,819,642	9 1	2,854,805	11 6
1957-58	24,308,208	11 4	3,102,728	8.7
1958-59	25,966,688	6 8	3,391,672	9.3
1959-60	27,434,577	5 7	3,639,879	7 3
1960-61	29,600,832	7 9	3,784,455	4.0
1961-62	31,549,630	6 6	4,065,461	7 4
1962-63	33,326,914	5 6	4,206,140	3 5
1963-64	35,066,088	5 2	4,348,391	3 4
1964-65	36,743,364	4 8	4,442,130	2.1
Percentage change 1954-55 to 1963-64	--	101 6%	--	90 6%

SOURCE State Board of Equalization, *Annual Reports*, 1954–55 through 1964–65

value, while locally-assessed property was being assessed at 25 percent of market value.[20] This situation developed from the change in local assessment practices over a period of years. In 1935, when the state first began to assess public utility property, both state and county assessors were using a 50-percent ratio. After the war, the local ratio gradually dropped to 25 percent while the state maintained its ratio at 50 percent.

In commenting on their finding, the committee stated.

> "Several persons in testimony at our hearing questioned this conclusion [the committee's findings]. Their question stemmed in part from the fact that a utility is valued in a somewhat different way than a local property, than a factory for example.
>
> "It should be kept in mind that the basis of property taxation is that properties can be compared by their market value, not by the means of arriving at that market value. In other words, market value is a bridge or a common denominator for comparing unlike things.
>
> "Market value is found in many ways, the exact way depending upon the characteristics of the property being valued For example, depreciated replacement cost is a very significant factor in valuing a home or a factory. But no one would contend that replacement cost has any significance in valuing an out-of-date movie An even more extreme case, there is no such thing as replacement cost for land.
>
> "But a ranch and a factory can still be compared through the common denominator of value. In these cases market value of the building is arrived at by giving depreciated replacement cost considerable weight. The valuation of the ranch takes into consideration such things as productivity and sales. By using the correct

[20] Joint Interim Committee on Assessment Practices, *Final Report*, Sacramento, May 1959, p 30–33.

evidence of value for each, the common denominator of value is arrived at.

"To say that a utility should be valued like a factory is to say in effect that a utility is economically like a factory. But does anyone really believe that a public utility is economically like a factory building? Does anyone really believe that the unique features of a utility—its monopoly, stable income, regulation, limitations on earnings, and all the other features—should be ignored in valuing a public utility?

"It seems clear to the committee that the argument, in effect, that a utility is a factory has completely collapsed. It is wholly unrealistic to think that the many unique characteristics of a utility should be ignored in finding its value

"A variation of the argument is sometimes made to the effect that market value of a utility cannot be compared to that of a common property because somewhat different value indexes are used. The contention is made that a 'different' value is arrived at for a utility because depreciated replacement cost is not given major weight, as it is in some types of locally assessed property The argument is strongly inconsistent on its face It implies first of all that one set of indexes is applied uniformly to all locally assessed property, in effect that farms, factories, homes, stores, and furniture are all valued by one, precise, mathematical formula Nothing, of course, could be farther from the fact

"The local assessor uses the indexes and gives them the weights that in his judgment are correct for finding the value of the particular property being appraised He is not concerned about the fact that he uses depreciated replacement cost as an evidence of value on a factory even though, as mentioned previously, there is no such thing as replacement cost for valuing farmland He recognizes that if he uses the correct indexes for each type of property he will come to figures that can be compared; in short he will find market value

"By the same token, if the correct indexes for valuing utilities are used, market value of the utility will be found and that value can be directly compared to the value of any other property, whether it be a factory, home, ranch, or office building

"This point of comparability of properties of various types through the medium of market value was rather clearly expressed in our consultants' report:

> 'There are economic differences between many types of locally assessed properties Homes are different from apartment houses. These same apartment houses are different from other businesses, which in turn have peculiarities because of being manufacturing, farm or retail Utilities are economically different because of being a regulated industry, with prescribed territories, fixed rates, an exact earning base, and a limited earnings on that base. But all the differences do not prevent an appraiser from arriving at a common basis for taxation. By recognizing the individual characteristics of each class and type of property and by varying his appraisal

method accordingly, he arrives at a true common denominator, "full cash value."

"Whatever the type of property, there is one and only one standard—"full cash value." The prevailing economics for each type of property will determine how the standard will be reached and the methods used to arrive at the standard will be varied. But there is a common denominator for assessment purposes for all types of taxable property and that standard is "full cash value."'

"The committee has found that confusion exists between market value and the rate base found by the Public Utilities Commission. Contentions have been made that the State Board of Equalization uses a method of valuation designed to establish a base for utility rate making. This misunderstanding apparently stems from a lack of knowledge of how the Public Utilities Commission establishes a rate base.

"The Public Utilities Commission uses the cost of each item of utility property when it was first devoted to public service. The summation of all these costs, after appropriate depreciation, becomes the rate base upon which the utility company is permitted to earn a reasonable return

"The Board of Equalization takes this depreciated historical cost into account when it computes the market value of a utility, but much greater weight is given in total to other factors—such as capitalized income, stock and debt values and depreciated reproduction cost Thus, because the rate base of a regulated utility is important in estimating its market value, the board considers depreciated historical cost, but only as one of several pertinent factors and never as the sole factor The board's market value findings can, and often do, differ substantially from the rate base

"Having heard many times the misconceptions analyzed above, we had repeatedly urged that people go beyond them and tell us at our hearings how a utility should be valued. In our announcement of the hearings we again urged it and urged that witnesses apply their ideas to the figures available on various utilities.

"It is highly significant that no witness offered testimony directly on how a utility should be valued. No witness offered to apply his ideas to a particular utility."[27]

According to Board Member Richard Nevins, the assessment ratio for utility property has been gradually reduced in the past few years Nevins told the Assembly Interim Committee on Revenue and Taxation, meeting in Los Angeles on November 13, 1963.

"The board . has been making a gradual adjustment downward of the ratio, doing what Oregon did at a prior time, and I would say the ratio is somewhat in the neighborhood of 42 percent at the present time"

Spokesmen for utility companies confirm the fact that the ratio is being reduced According to Raymond E Marks, general tax commissioner of the Southern Pacific Company, the board has reduced the as-

[27] *Ibid*

sessment ratio on his company's property, beginning in 1959, from 50 percent to 44 percent.[28] E. F. Harding of Pacific Telephone says his company's ratio has dropped to 43 percent.[29] Discrimination against one type of property violates all the principles of tax equity and tax neutrality. All property should be assessed equally regardless of what level of government is doing the assessing. However, a gradual reduction in the state assessment ratio is necessary so as not to destroy local government where the utility roll is a large part of the tax base.

B. Assessment Standards

Through an Assessment Standards Division, the State Board of Equalization offers local assessors help in improving local assessment practices. This division prescribes standard forms for the assessment of property, reviews and makes recommendations on all welfare exemptions, publishes material helpful to assessors and conducts training sessions for county assessors and appraisers.

In 1962–63, it conducted 24 training courses, with 353 participants receiving certificates of successful completion. The division also publishes the *Assessor's Handbook*, a tome of over 2,200 pages, which covers all phases of property taxation in California. This is an invaluable aid to local assessors and has been a great help in standardizing assessment practices within the state.

State law requires the Board of Equalization to:

> "make surveys in each county and city and county to determine the adequacy of the procedures and practices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him by law."[30]

Recent surveys have been limited to studies of personnel, salaries and office procedure, rather than a full evaluation of the work of the county assessor in terms of the equalization of assessments throughout the county, but these studies have been initiated by the county assessor rather than by the state board. Since June of 1959, the division has surveyed 17 counties and filed reports with the Legislature. See Table VIII.

TABLE VIII

Board of Equalization Property Tax Assessment Surveys Made Over the Last Five Years

1959–60	1961–62
Santa Barbara	Ventura
Nevada	Santa Cruz
Fresno	San Luis Obispo
Riverside	Yolo
El Dorado	Tehama
1960–61	Kings
Lassen	1962–63
Kern	Siskiyou
	1963–64
	Merced
	Napa
	Shasta

SOURCE: Letter to Committee on Revenue and Taxation from Ray Mrotek, Division of Assessment Standards, Board of Equalization.

[28] Statement before the Board of Equalization, April 24, 1964, in Pasadena, California.
[29] *Ibid.*
[30] *Government Code*, Section 15640.

C. *Intercounty Equalization*

The reason for the establishment of the Board of Equalization in 1870 was to equalize assessments among the counties This was extremely important at the time as the state was imposing an ad valorem property tax and differences in assessment ratios among counties could mean that counties with high assessment ratios would pay more than their fair share in state taxes

With the withdrawal of the state from the property tax field, this function has assumed a less important role in the board's operations. It is still important to keep county assessment ratios as uniform as possible because many schools and special districts cross county lines and state aid to schools is apportioned on formulae based on district assessed value modified by the Collier factor.

The board has not issued any intercounty equalization orders in two years In 1962, the board ordered Mariposa County to raise the assessed values on its secured roll by 21 percent and Tehama to increase the assessed value on its secured roll by 20 percent.

TABLE IX

Intercounty Equalization Orders Issued by State Board of Equalization: 1955–1964

1955—Alameda	20%[31]	1956—Mariposa	25
Butte	19	1957—None	
Contra Costa	35	1958—None	
Del Norte	21	1959—None	
Humboldt	39	1960—None	
Imperial	37	1961—Amador	25
Marin	26	1962—Tehama	20
Mariposa	29	Mariposa	21
Mendocino	25	1963—None	
San Bernardino	39	1964—None	
San Luis Obispo	35		
Sonoma	19		
Stanislaus	28		
Tulare	23[32]		

SOURCE Board of Equalization, *Annual Reports, 1954–55 and 1963–64*

It should be noted that the board has issued equalization orders only to those counties whose assessment ratio deviates from the statewide average by more than approximately 20 percent [33] Considering that this deviation could result in a 40 percent differential in tax liability on property of the same value, the board should give some thought to reducing the tolerance limits.

Of more significance at the present time is the use of county assessment ratios in computing the amount of state aid school districts are

[31] Figure indicates the percentage increase in the roll as ordered by the board
[32] Tulare did not comply and was sustained by the Tulare County Superior Court
[33] See 1963 assessment ratios
Statewide average assessment ratio 23 1
High ratio Sierra 27 1
Low ratio Nevada 19 1
In this particular example, assume a property is worth (full value) $100,000 In Sierra County it would have an assessed value of $27,100 while in Nevada County it would have an assessed value of $19,100 Assume a junior college district levied a 35¢ tax on both properties Although both are of equal value, the Sierra County taxpayer will pay $94 85, while the Nevada County taxpayer will pay $66 85, a difference of $28 Due to the differences in assessment ratios the Sierra County taxpayer will pay 40 percent more in taxes than the Nevada County taxpayer on the same tax rate to the same unit of government on property with same value

entitled to receive A portion of the money apportioned to California school districts is distributed on the basis of need In measuring need, the "modified" assessed valuation of a district is used A district with a low assessed value may be a "needy district" or it may be a district where a low assessment ratio is being used To insure that all districts are treated equally in the measurement of need, the assessed value in each district is adjusted upward or downward by a factor determined by the county's assessment ratio.

There has been some controversy over the way the board arrives at a determination of county assessment ratios Essentially this process involves sampling and trending techniques Each county is physically appraised once every three years by personnel in the board's Division of Intercounty Equalization The assessment ratio is derived from a trending process based on statistical data In the counties that are physically appraised, a stratified random sample of properties on the county's last completed roll is selected, and the full value of these properties is determined by the board's well-trained appraisers The sample is obtained by dividing the assessments on the local roll into a series of groups For example, all property assessed at less than $2 000 on the secured roll constitute group 1. Properties are then picked at random from among those in each of the groups A relatively smaller percentage of properties in the lower value group are selected, while a relatively higher percentage of properties in the lightly populated groups, which are the high value groups, are picked

By expanding the findings from this sample, an estimate is made of the full cash value of all locally assessed property within the county This estimate is then projected for one, two, or three years The projected full cash value is then compared with the value shown on the county's assessment roll to determine the assessment ratio for the county.

To project the full value estimate, the board uses a statistical process known as trending This trending is done by economic indicators and three are used specifically—school enrollment, sales of retailers, and wages in covered employment These indices are processed into a multiple regression equation to forecast the full cash value of a county for a given year

Counties may formally appeal this assessment ratio only if the Board of Equalization proposes to issue an intercounty order to increase or decrease the county roll. However, the county assessor is privileged at all times to discuss and review with the board's appraisers the assessments which are being made There is also an opportunity for the county assessor to discuss the assessment ratio with the top staff of the board and the board itself during the month of August.

The procedures for the appeal from the findings of the Board of Equalization need to be improved because of the importance of an assessment ratio to a county in the allocation of school funds If the lien date were moved back to January 1 as previously discussed, this would allow adequate time for all counties that wish to appeal to do so Under the present calendar, a substantial number of appeals would either wreak havoc with the operations of the board or result in very perfunctory hearings

Criticisms of the board's work in the determination of assessment ratios are frequently heard from those at the county level. Individual appraisals made by the board's appraisers are always subject to dispute. San Francisco Assessor Russell Wolden, told the Assembly Committee on Revenue and Taxation that the board is "working *from* sales prices which we don't think are value."[34] According to Ronald Welch, the board's Assistant Executive Secretary, for property taxes:

> "A complaint that we frequently hear from assessors is that our men always appraise at the upper end of the range within which differences of opinion are expected of equally competent appraisers. Those of us who hear only of the appraisals with which the assessors disagree tend to feel this way, too, but the best tests we can run do not support the conclusion In a paper that I circulated among you in September, I pointed out that the recent sales-ratio studies of the Bureau of the Census produced results closely comparable to ours for residential properties—by far the most important segment of most county assessment rolls. A second test that we have run in a number of counties is a comparison of sales prices with our appraised values of urban properties that were in one of our triennial surveys and were sold under value-indicative conditions before we next surveyed the county The aggregate sales price of such properties in a county is usually 5 to 10 percent more than the aggregate value ascribed to them by our appraisers Undoubtedly we do overappraise some properties, but I think it can safely be asserted that we underappraise others On balance, it seems probable that the underappraisals at least equal the over-appraisals in number and in their contribution to a county's assessment ratio."[35]

The trending of assessed value for two years for the determination has been attacked as not being statistically valid Mr Welch responds:

> "Oddly enough the criticism usually is that we project too high a full cash value The fact of the matter is that we project too low a full cash value and when we come around and make a new survey, we find that we haven't projected fast enough. I think this is a difficulty that those of us in California face almost constantly. We cannot believe that market values are increasing as rapidly as they are And we have not been able to formulate a mathematical expression that gives effect to this very rapid rise in values that we are experiencing We are still striving to find this answer."[36]

An evaluation of the board's work in the intercounty equalization area was made by the Joint Interim Committee on Assessment Practices. Professor George M. Kuznets, of the Department of Statistics at the University of California, made the study and concluded:

> "1. Control of fieldwork appears to have been adequate enough to insure that significant selection biases did not occur.

[34] Statement to Assembly Committee on Revenue and Taxation, December 16, 1963, in San Francisco.
[35] *A Second Look at Intercounty Equalization*, speech by Ronald B Welch, assistant executive secretary, California State Board of Equalization, for the 1963 Conference of County Assessors of California in Los Angeles, November 20, 1963
[36] Statement by Ronald Welch to the Assembly Committee on Revenue and Taxation on April 15, 1964.

"2. The relative standard errors of estimates of base-year market value of locally assessable property were small, ranging from about 1 to 4 percent.

"3 Stratification by total assessed value was effective in controlling sampling variability. Samples many times larger than those used would have been required to attain the sampling reliability without stratification.

"4. The trending equation appears to have performed satisfactorily as a short-term extrapolation device. While the statistical basis of this procedure is not as well established as that of the sampling estimates, its use was justified by the large savings it made possible.

"It should be emphasized that our review was restricted entirely to the statistical aspects of the board's determinations. We have not examined the validity of the appraisal methods used by the board in the valuation of assessable property." [37]

Although there is no reason to believe that these conclusions are not still valid, in view of the criticisms which continue to be made, it may be wise to restudy this process in depth during the next interim period.

V. CITY DUPLICATION OF PROPERTY ASSESSMENT

Assessment of property for tax purposes is a function of each of the 58 counties in the state At one time all the cities also assessed property, but most have recognized the savings available for local budgets by accepting the figures of the county assessor and having the county collect city taxes. Of the 385 cities in the state with authority to levy 1964–65 taxes, only 54 still had an office of assessor and determined their own assessments for property tax purposes. Records of the Board of Equalization indicate that in the fiscal year 1961–62 these 54 cities spent $1,560,000 to do assessing, a job which their counties would have performed at the maximum statutory rate specified in *Government Code* Section 51514 for $145,000. Since the county had to assess each parcel of property in the city during its own assessment review the process was duplicated by the city.

General-law cities are limited in their bonding capacity to 15 percent of their assessed valuation, but they can raise their debt limit at will by arbitrarily adjusting assessed values. Retaining this assessment function to allow oneself to override a safe bonding capacity is no justification for the duplication; it is another argument for transfer to the county level. The 15 percent bonding limit was put on the books to keep cities from spending themselves into too much debt, but with present loopholes it does not work in practice Last year one city which did not have its own assessor recreated the office and tripled the previous county assessment in order to float a large bond issue As soon as the bonds were safely sold, the assessing job went back to the county

Many of these 54 cities do not actually do the field assessing themselves. They simply take the county roll and use it as-is or factor its values, but all these cities collect their own taxes.

[37] Joint Interim Committee on Assessment Practices, *Final Report*, Sacramento, May 1959, p. 96.

By factoring the county assessed valuations upward the cities create artificially lower tax rates.

> "We are not doing any independent assessing. The county does a lot of it for us Just as a matter of some mechanics, we do wish to inform you that we take the county values and then double them, and apply the tax rate which we have." [38]

If the county assesses a particular piece of property at $5,000 and applies a tax rate of $6 per $100 of assessed value the homeowner pays $300 in taxes. By factoring the $5,000 valuation up to $7,500, the city need levy a rate of only $4 per $100 to derive the same income At first glance the city appears to have lower taxes, but the truth will become apparent when the tax bill arrives In addition, the city bill will contain costs of the assessment roll which they buy from the county, labor and machine time to factor the roll, and the cost of processing thousands of individual bills. The postage alone is a sizeable added expense

No trained group of property assessors is needed by a city which simply adjusts the roll prepared by county technicians One person with the title "assessor" supervises a group of clerks who do the same job as a similar group of clerks at the county level.

> "This does not, in my opinion, reflect a completely satisfactory and current assessment program, and the maintenance of an *adequate* field-assessing staff would certainly add many thousands of dollars to the figure." [39]

The city must prepare bills, meet the cost of mailing the extra bill, and receive, record, deposit, and audit all the payments and accounts The only advantage to be gained by this procedure is a possibility of earlier receipt of funds Since the city tax share is normally only one-fourth of the total tax bill sent by the county, many property owners will pay the smaller separate city bill quickly to get it out of the way. A larger, combined bill means slightly slower payment and because of county administrative procedure distribution of county collected funds to cities may lag collection by individual cities.

Some cities feel that by retaining their own assessment department they can control the distribution of the taxload and thereby favor particular types of development or industry. Due to transportation routes, climate, business opportunity, or some other factor equally difficult to foresee the county seat is not always the largest city in the county In these cases the larger city, which naturally represents a majority share of the total assessed valuation of the county, wishes to retain an assessor to prevent a shift of tax burden This is especially true in agricultural counties where one or two cities fear that the courthouse is dominated by rural interests. One city has said:

> "We have a higher valuation on farm land which is potential subdivision land than the county has Also, two of our major arterials have, within the past five years, gained quite a number of businesses which we have reappraised and the county has not If we

[38] Letter from E Earl Udall, city manager, City of Merced, to Hon Nicholas C Petris, January 6, 1964.
[39] Letter form H D Weller, City Manager, City of Alameda, to Hon Nicholas C Petris, January 6, 1964 (emphasis added)

accept the county roll we would of course realize the same amount of money but the homeowners would be paying tax that has formerly been paid by the farmer and by the new businesses "[40]

However, the opposite may be just as true. In Plymouth, the assessor uses:

". . . the county values but factors them by multiplying land values by 3, improvement values by 1½, and personal property values by 1. This action is designed to penalize the large land owners of the city. In this instance five or six owners of acreage within the city are being excessively taxed for the benefit of homeowners and small businessmen [41]

A survey in 1964 by the State Board of Equalization found that the City of Isleton was apparently assessing property on the secured roll at a level 45 percent higher than that used by the county while the property on its unsecured roll was being assessed at a fraction of the assessed values on the county roll It was found that the overall ratio was not as bad as it appeared on first blush because some of the property that the county assessed on the unsecured roll appeared on the secured roll of the city After adjustments were made for this situation, it was found that the property on the city's unsecured roll was being assessed 9 percent higher than the comparable property was assessed by the county Compare this with the 45-percent figure for properties on the secured roll

The situation really is bad when assessments on individual properties are related A comparison of the assessed values of 53 properties on the county's unsecured roll with the comparable values that the city placed on these same properties disclosed that the city's values ranged from a low of 11 percent to a high of 464 percent of the county values It is impossible to justify such wide deviations There were 16 cases where the city had not assessed personal property Most of these represented boats, but a few involved household personalty City assessments came within 50 percent of those of the county in only 16 cases

It is difficult to understand why a property owner will not register a protest when his property is assessed almost three times as much as it should be and 40 times as much as the property most grossly underassessed on the city roll Perhaps people don't know what steps to take to obtain redress or don't believe enough city taxes are at stake to warrant protesting their assessments and appearing before the city council when it sits as an intracity equalization board

Where assessors are elected and have been political powers in their communities, they naturally expound the view that assessing is one of the strong arms of home rule—a very effective political argument when, as in several charter cities, a vote of the people is necessary to approve a transfer to the county.

In one city still doing its own assessing, the personal property of a city councilman is assessed at $400 while the county has a value of

[40] Letter from Fay C Short, City Clerk and City Assessor, City of Delano, to Hon Nicholas C Petris, January 29, 1964

[41] Letter from John B Marshall, State Board of Equalization, to Raymond R Sullivan, May 22, 1964.

$2,200 on the same property. This city assesses all other property substantially higher than the county.

For many years general-law cities were restricted by law to a tax rate of $1 per $100 of assessed valuation for their general fund revenues This limitation was lifted by the 1961 Legislature by enactment of Section 43072 of the *Government Code.* This new section allows general-law cities to factor their $1 rate limit rather than forcing them to factor the assessed values. This permits these cities to use the county's rolls and effect savings in their municipal budgets. But some cities feel more secure with their $1 rate:

> "The city at present adds 50 percent to the county assessor's figures before calculating the tax bills This enables us to stay within the $1 tax limit for the general fund Although recent legislation allows a tax rate in excess of the $1 limit following the transfer of tax collection functions to the county, the tax rate limit would then be no less arbitrary than the present figure of $1 "[42]

This city has probably had a $1 tax rate since it was first incorporated and hopes never to change it They can point "proudly" to the constant rate. They may never raise their tax rate, but they can change the assessment level every year to accomplish the feat

Cities doing their own assessing are burdened with further administrative procedure which duplicates county programs Applicants for the veterans' exemption and the welfare exemption (which includes religious, hospital, and charitable organizations) must file in both the city and the county In many cases a man eligible for the veteran's exemption at the county level will find himself with the same total assets but ineligible at the city level after the city factors up his assessed valuations These city councils must also sit as boards of equalization every year to hear the complaints of their citizens and explain the difference in city and county assessments on the same piece of property.

The transfer of the assessing function from these 54 cities to their counties would involve no extra work for the county staffs since they already assess each piece of property the city is assessing

> "I feel that the county assessor's office, with its large staff of trained appraisers, can more equitably assess property within the city than any *one* man we might hire as city assessor. The county presently employs eight appraisers who specialize in residential, rural, and commercial property as well as three personal property appraisers In addition, three timber appraisers are employed who would also assess lumber mills within the city The utilization of these specialists as opposed to one full-time general appraiser should result in more equitable assessments throughout the city. . . . This, I feel, reflects the trend to higher quality of service at a lower cost to the city which we hope to achieve for Eureka "[43]

Surveys by the Board of Equalization show that cities could reduce their tax rates an average of 5 percent by discontinuing their assessing

[42] Letter from Race N. Wilt, City Manager, City of Coronado, to Hon Nicholas C Petris, January 24, 1964.
[43] Memorandum from city manager to mayor and council of Eureka, October 18, 1963 (emphasis added).

and collecting programs, and individual cities could slice from 2 percent to 30 percent off their budgets One city is actually spending 30 percent of its property tax income on administration of the tax[1]

Early in 1964 the chairman of this assembly committee wrote to the mayors and managers of the 59 California cities that had assessed and were in the process of collecting 1963–64 taxes, asking them to consider transferring the duties to their counties Seven of the replies indicated that action was being taken to transfer, four said a thorough study was being made of the advisability of continuing local assessing. There seems to be no reason why the few remaining cities which have not transferred cannot do so The only satisfactory argument presented to this committee, in its hearings during the 1963–64 interim period, was that funds were available to the city earlier in the year Almost 400 cities operate now on the "delayed" income basis, and the 54 remaining should recognize the savings available in spite of the minor financial problem to be encountered in the first year after transferring.

After an exhaustive two-year study, the Advisory Commission on Intergovernmental Relations published a detailed report on the property tax and its administration in the 50 states One of their recommendations for improvement in the administration of the levy stated·

> "The geographical organization of each state's primary local assessment districts should be reconstituted, to the extent required, to give each district the size and resources it needs to become an efficient assessing unit and to produce a well-ordered overall structure that makes successful state supervision feasible No assessment district should be less than countywide and when, as in very many instances, counties are too small to comprise efficient districts, multicounty districts should be created All overlapping assessment districts should be abolished to eliminate wasteful duplication of work." [44]

The obvious savings in salaries alone should make the transfer appealing to local government units In many cities the assessor also has several other titles so the savings would not be equivalent to the total budget he supervises; however, the cost of maintaining maps, records, data on property transfers, and the salaries involved in an active and accurate appraisal and reappraisal program with continuous audit seems to indicate a possibility for budget relief in financially beleaguered cities.

One final point deserves note The individual cities do not relinquish any part of their local fiscal control by transferring Although the county assessments are equalized by state law, *cities set their own tax rates* and receive payment from the county treasurers With supervision by the State Board of Equalization, the county board of supervisors, city government officers, and a myriad of citizens' committees, the taxpayer should never fear any loss of home rule If this assessing and collecting function were transferred from the city level to the county level, there would be no loss of autonomy, but there would be substantial savings to local taxpayers

[44] Advisory Commission on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax*, Vol 1, U S Government Printing Office, Washington, D C (June 1963) p 15

TABLE X

Cities Which Still Assess and/or Collect Own Taxes *
and Ratio of City Values to County Values

Alameda	.99	Merced	2 00
Albany	1 00	Montague	1 98
Amador	1 00	Napa	1 18
Benicia	1 83	Orland	1 57
Berkeley	99	Oroville	2 00
Calipatria	2 00	Palo Alto	1 16
Chico	1 13	Pasadena	1 51
Coalinga	1 27	Patterson	1 50
Coronado	1 49	Piedmont	1 20
Crescent City	2 00	Pinole	1 50
Delano	1 43	Plymouth	1 73
Dorris	1 98	Porterville	1 51
El Paso de Robles	1 50	Richmond	1 08
Eureka	93	Sacramento	1 31
Exeter	1 42	San Luis Obispo	95
Healdsburg	1 00	San Mateo	1 91
Hercules	1 00	Santa Barbara	1 38
Holtville	2 00	Shatter	1 44
Imperial	2 00	Sonora	1 00
Ione	1 89	Tehachapi	1 61
Isleton	1 45	Trinidad	1 35
King City	1 00	Tulare	1 40
Lindsay	1 25	Visalia	1 03
Livingston	2 00	Watsonville	1 00
Long Beach	1 22	Williams	1 30
Los Banos	1 20	Willows	1 16
Marysville	1 00	Yuba City	1 52

* From California State Board of Equalization, Mimeo Statement, 1964

TABLE XI

Differences in Assessment, City of Berkeley v. Alameda County

	City assessment	County assessment	Difference: City higher by	Difference: City lower by
INDUSTRIAL PROPERTY				
De Soto Chem Co 1608 4th	$1,009,790	$1,072,200		$62,410
Shand and Jurs 2600 8th	40,290 (LI)	51,800 (LI)		11,500
Shand and Jurs 2600 8th (Parcel Two)	420,960	447,500		26,540
California Packing Co 2600 7th	42,550 (LI)	73,850 (LI)		31,300
Backman Display 914 Grayson	11,410 (LI)	9,550 (LI)	$1,860	
Hyman Labs 2840 8th	55,460	61,650		6,190
Nu-Lite 1030 Carleton	17,460	20,500		3,040
Howell-North 2608 San Pablo	41,000	65,450		24,450
Duhig Warehouse 2321 5th	19,130	22,300		3,170
Specialty Mfg Co 2332 5th	34,230	38,600		4,370
Models of Industry 2100 5th	15,400	11,600	3,800	
Parsh Mailing Service 1000 Pardee	12,950	11,650	1,300	
Physics Int$ 2220 4th	67,660	64,700	2,960	
Diablo Labs 806 Hearst	63,130	62,000	1,130	

TABLE XI—Continued

Differences in Assessment, City of Berkeley v. Alameda County

	City assessment	County assessment	Difference: City higher by	Difference: City lower by
RESIDENTIAL PROPERTY				
Hill Area				
38 Poplar	$3,100	$2,800	$300	
819 Cragmont	3,020	2,400	900	
759 Cragmont	4,470	3,250	1,220	
2929 Forest	5,830	4,550	1,280	
2708 Claremont	8,030	5,900	2,130	
2900 Derby	3,460	3,100	360	
2910 Forest	9,350	5,950	3,400	
1468 Grizzly Peak	6,270	5,500	770	
1448 Grizzly Peak	3,450	1,950	1,500	
1452 Grizzly Peak	6,740	6,650	90	
1877 Thousand Oaks	3,450	4,550	1,100	
1890 Thousand Oaks	7,150	5,450	1,700	
Mid-Berkeley				
1742 Grant	1,070	1,200		$130
1714 Francisco	3,260	3,600		340
1626 Francisco	9 860	5 750	4,110	
1711 Curtis	1,390	1,050	340	
1200 Francisco	3 810	3,400	410	
1732 Chestnut	2,100	1,950	150	
South of University				
2805 Haste	39,300	31,750	7,550	
2409 Bowditch	7,740	4,450	3,290	
2411 Bowditch	8,680	5,800	2,880	
West Berkeley				
1812 Tyler	3,240	3,420		210
1611 Prince	2,900	2 150	750	
1643 Prince	3,610	2,850	760	
COMMERCIAL PROPERTY				
U A Theater 2274 Shattuck	101,280	83,000	18,280	
Thousand Oaks Theater 1881-1887 Solano	69,360	59,300	10,060	
Berkeley Motors 2352 Shattuck	96,740	76,100	20,640	
Jay Vee Liquor 1318 University	74,270	82,900		8,630
Chamber of Commerce 1834 University	12,920	13,250		330
American Trust Office Building 2140 Shattuck	393,960 (LI)	502,600 (LI)		108,640
Harris Men's Clothes 2018 Shattuck	38,800 (LI)	37,800 (LI)	1,000	
Leed's Shoes 2160 Shattuck	48,600 (LI)	40,600 (LI)	8,000	
Sutro & Co 2271 Shattuck	29,700 (LI)	30,800 (LI)		1,100
California Theater 2115 Kittredge	44,620 (LI)	53,200 (LI)		8,500
Berkeley Square Liquor Store & Restaurant 1333 University	11,580	12,600		1,020
Berkeley Theater 2425 Shattuck	25,450 (LI)	19,600 (LI)	5,850	
Berkeley Cyclery 2301 Shattuck	51,560 (LI)	61,600 (LI)		10,040
Jevons Plumbing Supply 1514 University	9,840 (LI)	10,600 (LI)		760
Colvear Motor Sales 1548 University	10,730 (LI)	14,000 (LI)		3,270
Chamber of Commerce 1840 University	3,970 (LI)	4,650 (LI)		680

NOTE (LI) Figures are assessment of land and improvement only

SOURCE Random examination of assessment rolls of Alameda County and City of Berkeley, September 1963

VI. ASSESSMENT UNIFORMITY

Sound tax principles require all property to be assessed equally in relation to value The State Constitution requires that all property be assessed in proportion to value Yet property in California is not being assessed equally. Data available to the committee show wide disparities in assessments of property in some counties. Some people are paying more than their fair share of the tax burden due to a higher than average assessment, while other people are paying less than their share because of a lower than average fractional assessment.

The committee has received some statistical data on property tax uniformity at its public hearings However, the primary sources of information are the United States Census Bureau's 1962 study of taxable property values and information developed from the records of the State Board of Equalization

United States Census Bureau Study [45]

Information about real property that changed hands during a six-month period in 1961 was gathered by the Bureau of the Census on a sample basis From this survey, the sales price, assessed value and the sales assessment ratio of real estate involved in "measurable sales" was determined. This information was published in 1963 as part of the second report of the 1962 Census of Governments

According to the Census Bureau:

> "This survey was undertaken primarily to ascertain the relationship between assessed value and sales price for properties changing hands on an ordinary market basis—i e , between buyers and sellers dealing at arm's length with one another The survey procedures were so planned, therefore, as to exclude transfers between relatives and other types of transactions in which the total money consideration involved might not be reasonably regarded as the current market worth of the property changing hands [46] Necessarily excluded also were (1) those sold properties for which a distinct assessed value amount could not be obtained from local tax records (mainly, pieces of real estate that, as sold, represented only a portion rather than the entirety of an item on the tax roll) ; and (2) those sold parcels for which information on type of property and sales price could not be obtained from the buyer or seller, as more fully explained below under 'Data Sources and Survey Procedures' " [47]

Caution in the use and interpretation of the statistics is urged by the bureau, as certain limitations are inherent in their development Factors that must be taken under consideration include.

> "1. The assessment ratios presented deal directly only with the relationship found between assessed value and sales price for prop-

[45] U S Bureau of the Census, *Census of Governments 1962*, Vol II, *Taxable Property Values*, Washington, D C , U S Government Printing Office, 1963

[46] Standards used to guide this selection process followed closely the recommendations of the *Guide for Assessment-Sales Ratio Studies Report of the Committee on Sales Ratio Data of the National Association of Tax Administrators* (Chicago. 1954).

[47] U S Bureau of the Census, *Census of Governments· 1962*, Vol. II, *Taxable Property Values, op cit.*

erties subject to arm's length sales This is, inevitably, a market-selected group, and it comprises only a relatively small portion of all taxable real property.[48]

"Classification of sales by kinds of property and by assessed-value size classes, as reflected in various tables of this report, is designed to take account of differences that may exist among the several categories, the possibility remains that properties changing hands may have been subject to special influences that make the assessment ratios measured for them not closely representative for such property as a whole.

"2. The percentages of all taxable property of various kinds found to be involved in 'measurable sales' should not be interpreted as measuring the gross turnover rate of realty, since certain transfers that are not meaningful for ratio calculation were necessarily excluded.

"3. Being based on a sample rather than upon coverage of all inscope transfers, the assessment ratios shown in this report are subject to sampling variability Such variability has been measured and reported for the simple sales-based average ratios that appear in various tables. In some instances, it is evident that a relatively large variation is involved "[49]

The findings of the census bureau based on sales data show that there are substantial differences among classes of property in terms of their assessed value and sales prices.

As Table XII indicates, the ratio of assessed value to sales price is almost twice as high for residential property as it is for farms

TABLE XII

Ratio of Assessed Value to Sales Price by Classes of Property: 1961, July–December

	California		*United States*	
Class of property	*No. of measurable sales*	*Statewide size-weighted average*	*No of properties*	*Statewide size-weighted average*
Nonfarm residential	107,730	19 6%	711,679	31 9%
Acreage and farms	11,024	10 9	114,301	18 6
Vacant lots	26,034	13 9	219,381	19 9
Commercial and Industrial	7,499	17.8	40,156	N/C

SOURCE *1962 Census of Governments*

Another measurement of assessment uniformity is the coefficient of dispersion. This shows to what extent individual assessments vary from the average. If all properties were being assessed uniformly at the same percentage of value, the coefficient of dispersion would be zero. Where the assessment practices are very poor and a number of properties are assessed at a high fraction of full value while a number of properties are assessed at a low value, the coefficient of dispersion will be high.

[48] An alternative approach is applied by some state tax agencies, which compare assessments with appraised valuations specially made for this purpose The appraisal method permits preselection of a sample scientifically designed to represent all taxable property subject to consideration, but necessarily involves some degree of subjectivity of individual judgment.

[49] U.S. Bureau of the Census, *Census of Governments: 1962*, Vol. II, *Taxable Property Values, op. cit.*

The procedure used to compute the coefficient of dispersion may be illustrated by the following example·

House	*Ratio* *	*Deviation from median*
A	10%	15
B	20	5
C	25 (median)	--
D	35	10
E	50	25
	Total of deviations	55
	Average deviation	11
	Coefficient (11/25) or	.44 or 44%

* Ratio of assessed value to full value.

The coefficient of dispersion of assessments on nonfarm residential properties during a six-month period of 1961 in selected California counties ranged from a low of 11 4 percent in Merced County to a high of 36 4 percent in Humboldt County.

TABLE XIII

Coefficient of Dispersion from Median Sales Based Assessment Ratio on Non-Farm Residential Property, Six-Month Period, 1961, for Selected California Counties

County	*Number of sales*	*Sales-based median assessment ratio*	*Coefficient of dispersion from median ratio*
Merced	345	22 8%	11.4%
Contra Costa	3,375	22 3	12 1
Santa Clara	4,650	22 7	12 8
Solano	1,000	23 4	13 2
Butte	675	17 3	13 9
Shasta	207	19 5	15 9
Ventura	1,250	19.4	16 0
Monterey	1,300	23 0	16 3
Alameda	4,775	17 3	16 8
Los Angeles	36,552	20 0	17 5
San Mateo	4,300	19 0	17 9
Orange	6,325	21 1	19 4
Santa Cruz	935	19 8	19 7
San Diego	5,125	22 1	19 9
Sacramento	1,650	24 0	20 0
Imperial	288	19 1	20.4
Riverside	2,400	26 2	21 0
Santa Barbara	775	21 8	22 0
San Joaquin	1,475	24 6	22 4
Fresno	1,425	20 0	22 5
Marin	1,325	18 2	22 5
San Bernardino	3,775	22 1	22 6
Sonoma	975	21 9	26 0
Kern	1,675	18 2	26 9
Stanislaus	1,250	18 6	28 0
San Luis Obispo	540	21 8	28 0
Tulare	725	24 4	29 1
San Francisco	2,296	10 8	36 1
Humboldt	420	21 4	36 4

SOURCE U S Bureau of the Census, *Census of Governments. 1962, Taxable Property Values,* p 141.

For 1,356 tax assessment areas of the United States, the median coefficient of dispersion for nonfarm residential property was 25.8 percent, compared with 20 percent for the above counties. Only 30 percent

of the assessment districts in the United States had a coefficient of dispersion less than 20 percent, while almost 50 percent of the above California counties were below 20 percent

TABLE XIV

Coefficient of Dispersion from Median Sales Based Assessment Ratios, Areas Within Selected States: 1961

	*Areas * having a coefficient of dispersion of*						
State	*Less than 15.0%*	*15 1– 19 9*	*20 0– 24 9*	*25 0– 29 9*	*30 0– 34 9*	*35 0– 39 9*	*40 0 & up*
California	5	9	8	5	--	2	--
Arizona	--	--	4	--	--	--	--
Connecticut	6	2	1	1	--	--	--
Illinois	1	4	5	4	4	1	--
Iowa	2	3	2	--	--	--	--
Maryland	3	2	4	1	--	--	--
Michigan	4	1	4	5	1	--	1
Nevada	1	1	--	--	--	--	--
New York	1	--	8	5	2	7	5
Oregon	--	5	2	3	--	--	--
Pennsylvania	2	5	7	5	7	1	3
Tennessee	1	5	1	1	--	--	1
Texas	2	3	11	5	3	1	2
Washington	1	--	5	2	3	1	1
Wisconsin	6	2	--	--	--	--	--

SOURCE U S Bureau of the Census, *Census of Governments· 1962, Taxable Property Values,* pp 141–153

* Areas having at least 80 measurable sales in six-months period

State Board of Equalization Data

As a result of its duty to equalize property assessments among the various counties, the State Board of Equalization has collected data on assessments in each county. From this information, the county assessment ratios are determined, as has been explained The assessment ratios for 1964 range from 18 2 percent in Butte and Lake Counties to 25.9 percent in Yuba County.

Assessments made by the board's appraisers for use in computing county assessment ratios can also be used to compute assessment ratios for classes of property and coefficients of dispersion for each county. At the request of the Chairman of the Assembly Committee on Revenue and Taxation, this information was prepared from board records

We are refraining from a general publication of assessment ratios by classes of property for all counties as the figures developed from the board's sample, while reliable for the county as a whole, are not as highly reliable for a class of property within the county because of the small size of the sample When used, it must be pointed out that the ratio for a class of property does not represent an absolute figure Further, the assessment ratios are for land and improvements (real property) only. According to Ronald B Welch, Assistant Executive Secretary, State Board of Equalization, the ratios for personal property are highly debatable because of the fact that household personalty is virtually impossible to appraise But when the assessment ratio for a class of property in a county exceeds the assessment ratio for another class of property by more than two to one, the figures are of significance—not indicating a definite two-to-one ratio but showing

there may be a serious question of disparity in the equality of assessment on classes of property within the county.

As discussed above, the coefficient of dispersion is also a measure of assessment uniformity A coefficient of dispersion can be computed for each California county from the appraisals made by the board to compute the county assessment ratio Figures prepared for the Assembly Committee on Revenue and Taxation indicate that the coefficient of dispersions in California range from a low of 12 in Santa Clara County to a high of 184 in Lake County. A zero rating would represent complete assessment uniformity. The higher the figure the more the variation in assessment ratios between properties.

TABLE XV

Assessment Ratios, California Counties: 1960–1964

Counties	1960	1961	1962	1963	1964	Counties	1960	1961	1962	1963	1964
Alameda	23 4	24 1	21 7	21 7	21 7	Orange	19 8	22 9	23 6	23 9	19 8
Alpine	22 9	20 5	26 8	26 1	25 7	Placer	21 3	24 4	21 2	22 2	22 8
Amador	21 7	21 0	21 1	22 9	19 5	Plumas	24 1	25 4	21 2	21 6	20 7
Butte	2 04	19 6	19 8	20 2	18 2	Riverside	22 8	22 8	23 8	23 8	23 5
Calaveras	23 6	19 2	23 2	24 4	19 2	Sacramento	20 2	23 3	25 8	23 3	23 2
Colusa	23 1	21 9	21 6	19 5	20 5	San Benito	24 6	23 3	24 9	25 6	20 6
Contra Costa	21 5	22 6	23 1	23 4	23 0	San Bernardino	22 7	21 1	21 8	21 3	20 5
Del Norte	22 9	26 5	25 7	25 7	23 7	San Diego	22 8	23 7	24 8	23 8	23 9
El Dorado	19 3	20 5	24 1	22 4	21 3	San Francisco	23 2	23 5	24 2	21 7	22 1
Fresno	21 0	21 3	20 4	20 7	20 9	San Joaquin	21 9	21 8	23 1	22 6	22 7
Glenn	24 1	20 0	20 2	21 3	20 7	San Luis Obispo	32 7	22 6	20 1	21 7	23 2
Humboldt	21 8	21 3	23 7	25 3	21 4	San Mateo	21 1	21 0	21 4	21 6	19 2
Imperial	20 1	21 1	20 8	20 9	18 5	Santa Barbara	20 3	19 8	20 4	20 2	20 4
Inyo	20 0	23 0	23 5	22 7	23 5	Santa Clara	25 0	26 3	24 7	24 7	24 5
Kern	21 2	22 7	23 7	21 6	20 9	Santa Cruz	24 2	23 6	24 9	21 6	21 8
Kings	27 0	23 5	24 3	24 3	20 3	Shasta	20 8	21 4	23 7	20 4	21 3
Lake	23 2	19 3	21 3	21 7	18 2	Sierra	26 6	24 1	26 6	27 1	21 9
Lassen	22 1	22 9	22 2	22 8	21 4	Siskiyou	21 7	21 5	23 8	23 0	22 8
Los Angeles	23 3	24 4	24 6	24 0	22 7	Solano	23 6	22 9	23 9	24 6	22 5
Madera	20 8	20 8	21 9	20 9	20 8	Sonoma	23 3	25 3	23 0	23 2	22 6
Marin	21 2	21 7	22 3	20 8	21 4	Stanislaus	19 4	19 7	19 8	19 4	19 1
Mariposa	24 5	23 3	21 5	19 7	20 1	Sutter	20 6	20 3	20 9	23 3	22 6
Mendocino	20 1	20 7	24 4	25 5	24 9	Tehama	19 3	19 7	22 4	19 8	20 8
Merced	21 0	21 1	22 5	21 5	22 0	Trinity	23 0	23 1	23 3	20 3	22 6
Modoc	24 0	24 2	25 6	24 1	24 5	Tulare	23 8	22 7	24 1	24 7	20 5
Mono	21 6	21 5	21 8	21 6	19 8	Tuolumne	22 3	19 2	22 6	22 4	21 5
Monterey	24 2	24 1	25 2	25 8	21 6	Ventura	25 6	25 0	22 4	22 5	23 4
Napa	21 6	21 8	21 6	22 6	23 5	Yolo	23 0	20 3	21 8	21 5	22 0
Nevada	23 2	23 9	23 8	19 1	20 8	Yuba	23 3	24 0	23 0	25 0	25 9

	1960	1961	1962	1963	1964
Statewide average	22 6%	23 4%	23 8%	23 1%	22 1%

SOURCE California State Board of Equalization, *Annual Reports*, 1959–1960, 1962–1963

TABLE XVI

Real Property Assessment Ratios by Class of Property: Counties With Ratio on One Class Twice That of Another

		Assessment ratios			
County	*Survey year*	*Residential*	*Rural*	*Commercial*	*Industrial*
El Dorado	1962	23 0%	10 7%	21 2%	--
Riverside	1962	23 0	13 2	24 0	15 4%
San Francisco	1962	10 9	--	20 0	21 7
Santa Barbara	1962	20.4	13 3	17 4	9 3
Shasta	1962	20 9	12.1	20 2	25.3

SOURCE Computed from sample assessments made by State Board of Equalization, Division of Intercounty Equalization.

TABLE XVII

Coefficients of Dispersion of Ratios of Assessed to Full Cash Value of Locally Assessed Real Property, by Property Use-Type

County	Survey year	Coefficient of dispersion	County	Survey year	Coefficient of dispersion
Alameda	1961	16	Orange	1960	13
Alpine	1960	51	Placer	1961	39
Amador	1960	71	Plumas	1961	40
Butte	1960	29	Riverside	1962	32
Calaveras	1960	120	Sacramento	1962	14
Colusa	1961	75	San Benito	1960	41
Contra Costa	1960	19	San Bernardino	1960	27
Del Norte	1961	64	San Diego	1962	18
El Dorado	1962	32	San Francisco	1962	35
Fresno	1961	57	San Joaquin	1961	22
Glenn	1960	28	San Luis Obispo	1961	46
Humboldt	1960	41	San Mateo	1960	34
Imperial	1960	74	Santa Barbara	1962	27
Inyo	1961	84	Santa Clara	1961	12
Kern	1962	104	Santa Cruz	1962	30
Kings	1960	79	Shasta	1962	32
Lake	1960	184	Sierra	1960	59
Lassen	1961	45	Siskiyou	1962	50
Los Angeles	1961	15	Solano	1960	23
Madera	1962	80	Sonoma	1961	44
Marin	1962	19	Stanislaus	1962	29
Mariposa	1961	44	Sutter	1962	34
Mendocino	1961	49	Tehama	1961	72
Merced	1962	28	Trinity	1962	77
Modoc	1962	26	Tulare	1960	77
Mono	1960	42	Tuolumne	1960	44
Monterey	1960	36	Ventura	1961	127
Napa	1962	14	Yolo	1961	81
Nevada	1962	44	Yuba	1961	70

SOURCE Computed from sample appraisals made by State Board of Equalization, Division of Intercounty Equalization

In view of the above assessment ratios and coefficients of dispersion, it is clear that all property is not being assessed uniformly in proportion to its value

Standard Ratio

To provide for more uniformity in assessments, it has been suggested that the Legislature require all property to be assessed at a certain percentage of value more descriptive of actual practice than the present full value requirement. Richard Nevins, member of the State Board of Equalization, who has been advocating a standard ratio for a number of years, cites several reasons why a standard ratio is needed. According to Nevins, protection for the taxpayer is the most important reason for a standard ratio.

> . . . "He is protected two ways. First, he understands how his assessment was made. Second, he is assured that every other taxpayer is being treated the same.
>
> "Let us remember that my board, the State Board of Equalization, was created in 1879, to deal with unequal payment of state property tax In fact, as I understand it, one of the reasons for calling the constitutional convention of that year was to deal with tax abuses.
>
> "People are not too happy to pay any taxes, but they are exceedingly unhappy when they believe that they are paying more

than their share. The property tax is harsh enough—a standard ratio will improve its acceptability."[50]

Los Angeles County Assessor Philip Watson, appearing before the Assembly Committee on Revenue and Taxation, also supported the standard ratio:

"I believe we should have legislation fixing the ratio of assessed value to market value at the level of 25 percent The property owner should be able to determine whether his assessment is equalized with every other assessment in the county. The ability to do so requires that the taxpayer have knowledge of the market value upon which his assessment is based, plus the assessment percentage generally prevailing throughout the assessing jurisdiction Our Supreme Court has ruled in all its recent cases that this is so that the road to equalization is demonstrated by knowledge of these two factors Mr Nevins appeared before you yesterday in support of a standard ratio of 25 percent."[51]

Mr. Watson told the Assessor's Convention, held at Sacramento in September 1964, that·

"It has been the experience of Los Angeles County that since announcement of its 25 percent standard ratio the assessor's task has been made easier to the benefit of all—disputes on the matter of assessments are confined to the value of the property in proportion to the announced ratio. Despite personnel and budgetary considerations which impose limits on the capacity to physically reappraise each parcel of real estate every year, the establishment of a standard ratio raises a public yardstick against which every taxpayer at any time may gauge the equity of his assessments Furthermore, elimination of the guessing game has created greater public understanding, acceptance and confidence "

Opposing the concept of a standard ratio is San Francisco Assessor Russell Wolden:

"Previous witnesses before this committee have recommended amending our State Constitution to remove the full cash value provision and substitute in its place a standard ratio of 25 percent of assessed market value. Your committee rejected such a proposal during the last legislative session. The assessors of California, the State Board of Equalization and the County Supervisors Association have consistently opposed such legislation We are satisfied that establishing such a standard ratio would result in a decreased value of state assessed property and a consequent shift of taxes to local property Additionally, our local tax base would be drastically cut and the victims of this proposal would be homeowners and small businessmen, those least able to pay.

"The present state law dealing with apportionment of state school funds is adequate to equalize any difference in ratio which the board finds to exist between counties. County assessors work-

[50] Speech by Hon Richard Nevins to 59th Annual Conference of the State Association of County Assessors, Palm Springs, October 31, 1961

[51] Statement of Philip Watson to Assembly Committee on Revenue and Taxation, Los Angeles, November 15, 1963.

ing closely with the State Board of Equalization, are constantly improving intracounty equalization procedures It is, therefore, my considered opinion that a mandatory standard ratio would fail to serve any useful purpose.'' [52]

The opposition to a standard assessment ratio by the county assessors is strong. At the assessors' 1964 convention, only two assessors (Watson of Los Angeles and Broemmel of Marin) voted for an amendment which softened a strong antistandard ratio resolution [53]

One of the problems inherent in a standard ratio is enforcement. What if an assessor assesses property at a lower figure? The State Board of Equalization could be required to equalize all counties to a 25 percent figure—with a very narrow tolerance allowed. This would not help intracounty equalization, however, as those properties which are underassessed would continue to be underassessed in proportion to other properties if the entire roll were to be boosted Individuals who are underassessed will not complain about the fact at a county board of equalization hearing However, this flaw is in the administration of the ratio, not in the standard itself The standard ratio, by itself, will not achieve intracounty equalization, although it would be an improvement over the present situation.

As noted above, as an alternate to a standard ratio, the Legislature could insist that the present law requiring full cash value assessments be enforced. This would require the reduction of tax rate and bond limits but it would be easier than the enactment of a standard ratio which might require a constitutional amendment.

Other Suggestions

It has also been suggested that better assessment uniformity might be achieved if the State Board of Equalization were given the authority to go into a county to help rectify a situation where assessment administration has completely broken down. This would be analogous to the power of the Attorney General to move into a county where law enforcement has broken down [54] Board action could be triggered by a finding of an assessment ratio on one of property twice that of another or a coefficient of dispersion of over 100. As this would be used only in extreme cases, it would not solve the problem in the situations where assessment inequalities exist but are not serious enough to necessitate state intervention

It has also been suggested that the board increase the assessment samples it takes in a county so that the results would be statistically sound for all classes of property, then publish the results for the taxpayers of the county to see This would not correct unjust assessments, as the ratios are not published until after the appeal period is over but it would give citizens more information from which to work for improved assessment practices within the county

Another solution to the problem is to make the taxpayer responsible for the accuracy of his assessment and prohibit payments in eminent

[52] Statement of Russell Wolden to Assembly Committee on Revenue and Taxation, December 16, 1963

[53] Assessors from Alpine, Amador, Calaveras, Colusa, Lake, Mariposa, Modoc, Mono, Placer, Plumas, San Joaquin, Santa Clara, Santa Cruz, Shasta, Sierra, Tehama, Trinity, and Yuba Counties were absent or did not vote All others voted no

[54] See *California Constitution,* Article V, Section 21.

domain proceedings exceeding five or six times the assessed value of the property. It is unlikely that this would improve the uniformity of assessments to any great extent, however, as many taxpayers probably would fail to self-equalize in the hope or knowledge that their property would not be required for public purposes during the year

The problems of assessment uniformity are the most baffling in the whole property tax structure and will never be completely solved short of abolishing the propterty tax.

VII. NOTIFICATIONS AND APPEAL OF ASSESSMENTS

In the normal course of reappraising within a county, assessments are often adjusted sharply In most cases of drastic revision, the cause is obvious—new construction since last lien date, extensive remodeling, or mistaken valuation in previous years To warn taxpayers of these reappraisals and in effect to prepare them for their new tax bill, the Legislature has provided that the assessor must notify property owners when their assessment is increased by more than 25 percent of the previous year's value. The local board of supervisors may require notification when increases exceed some lesser percentage of the last assessment but at 25 percent a notice is mandatory throughout the state [55] The notice of increase must also tell the taxpayer how and when to file a protest of the new assessment. Many of these notices go to the bank or lending institution responsible for the tax payment and do not reach the property owner

Beginning on the first Monday in July the county board of supervisors are directed to convene as a county board of equalization to equalize the local assessment rolls This becomes a period of great activity for the board since they must have the equalizing completed by the third Monday in the same month [56] Before this group comes any property owner who feels his assessed value is not equalized or in line with his neighbor's He cannot complain about the value itself, he must confine the request to "equalization." and ask that his assessment in relation to the value of his property be in the same ratio as is generally applied throughout the county. As the court said in *Eastern Columbia, Inc.* v. *Los Angeles County,* (1943) 61 Cal. App 2d 734, the function of the board is to see that all properties in the county are assessed at a constant level of opinion as to market value and have their proper relationship to each other.

Petitioners before the board of equalization may have counsel and must present evidence to support their claim for reduction in assessment. The board is not bound by the ordinary rules of evidence, but may admit and act upon any evidence which has a direct bearing on the question before it. As a practical matter, the assessor and his staff appear at the hearings to answer the questions of the board and explain the assessment on the petitioner's property The board may not raise an assessment without evidence, nor may it deny a reduction based on evidence taken subsequent to the hearing and out of the presence of the property owner. Although the board of supervisors is an elective body whose members require no special technical training, as is expected of a judge, their decision is almost final in assessment equal-

[55] *Revenue and Taxation Code,* Section 619
[56] *Revenue and Taxation Code,* Section 1603.

ization. The question before them is not the size or amount of the assessment, but its equity in comparison with other properties The board reviews one assessment in relation to another.

If the petitioner is not satisfied with the results of his hearing, he may appeal his case in superior court; but his argument must be based upon procedural error by the board He may not question the decision, only the manner in which it was reached. In the absence of fraud or arbitrary use of its powers, the county board is the sole judge of questions of fact and of the values of property The decision of the board upon the evidence cannot be attacked by new evidence on the point in a superior court.[67]

We can see then that complete authority for review and settlement of assessment disputes remains with the county board of supervisors. At first glance this may seem unfair; many people would expect a court to settle these questions. But there is no law in dispute, only a matter of opinion of value—the assessor versus the property owner, and the supervisors as elected responsible citizens should be able to determine if the assessee has shown conclusively that an incorrect assessment has been placed on the property being reviewed However, there has been serious criticism of this method of judging taxpayers appeals

Richard Nevins, member of the State Board of Equalization, has proposed that a system of tax courts be established to deal with the problem of assessment review These courts would take the question from the board of supervisors without sending it to the superior court of the respective county.

> "I think one of the most serious deficiencies in property tax administration in California is the lack of a tax court which would deal adequately with value problems We can see from samples that there are great disparities from the county averages—and it seems to me that the property taxpayer in California needs a court in which to seek redress [68]

At present the courts are limited in their jurisdiction to a review of the procedure used by the board of equalization They cannot review the assessment itself as we stated earlier In *Best et al.* v. *County of Los Angeles* it was stated:

> "The court feels that the plaintiff herein have presented convincing evidence that as between these property assessments in their area . . . and the assessments made in the adjacent areas . . there is substantial inequality. At the outset this court is frank to state that had the plaintiffs' evidence been presented to him in a trial de novo, or had this court been called upon to pass upon the evidence as an officer of the county board of equalization, he would have no hesitancy but to grant assessment reductions to the plaintiffs"

The judge then stated he had no alternative under the law but to deny relief to the plaintiffs

[67] *Bank of America* v. *Mundo* (1951) 37 Cal 2d 1
[68] Hon Richard Nevins to Assembly Committee on Revenue and Taxation, Los Angeles, November 14, 1953.

The State of Oregon has established a tax court whose purpose is to:

> ". . . enable a taxpayer to contest a relatively small disputed assessment before an impartial judge in a manner which involves the lowest feasible expense to the taxpayer at the earliest appropriate stage and at a place reasonably near his residence.[59]

Giving the taxpayer the protection he requires and deserves involves the organization of a really effective review board and a set of comprehensive rules under which it may operate It is obvious that sound standards of review must be established and maintained in order to protect the taxpayer from arbitrary assessments and an unusually constituted board of equalization which is not capable of true equalization

[59] Remarks by Samuel B Steward, Acting Manager, Oregon Tax Research to 44th Conference of the National Tax Association, Seattle, Washington, 1961.

SECTION FIVE

SPECIAL PROBLEMS IN PROPERTY TAXATION

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PART I

BUSINESS INVENTORY TAX

by

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Few taxes have led to such loud outcry as the tax on personal property, including business inventories At the present time business inventories in the State of California are subject to property taxation and are assessed, at approximately 25 percent of their full valuation,[1] on the first Monday in March of each year. Estimates show that this assessed valuation is about $3 billion at the present time [2] Taking an average tax rate of 8 percent, this means that this revenue source yields approximately $240 million to the local governments

INCENTIVES TO TAX AVOIDANCE

The fact that this tax is assessed on a single day each year has led to some ingenious, although not illegal, avoidance behavior on the part of business firms The tax presents a decided incentive for the business firms to have their lowest possible inventory on the first Monday in March The routes to this result are many and varied Most firms draw down their inventories after the first of the year and attempt to get by on the lowest possible stock until the tax date has passed A great many firms have goods stored in transit in other states such as Nevada, where goods stored in transit are tax exempt, until the tax date has passed The tax thus places a burden upon the business community to engage in avoidance techniques.

TREATMENT OF INVENTORIES IN OTHER STATES

California's treatment of business inventories, while not unique, is in the minority among the states in the treatment of goods stored in transit While Nevada is most often mentioned in this connection, every state that borders California has some provision in its laws for the tax exemption of goods stored in transit

Table I lists the special tax treatment afforded business inventories in the several states As can be seen from this table, 35 of the 51 jurisdictions considered have some provision for exemption of business inventories. With the exception of California, the states that do not have any provision for the exemption of business inventories are small and primarily agricultural.

SIGNIFICANCE OF "FREEPORT" PROVISIONS

By far the most prevalent provision is the exemption of property stored in transit In practice, this usually means storage in a warehouse at some point along the regular route to the destination. The property remains under the original bill of lading, thus preserving for the shipper the through or "long-haul" rate There is a limitation of one year on such storage under current Interstate Commerce Commission railroad tariffs The shipper pays a rather nominal fee for this storage in

[1] This percentage varies with counties and runs as high as 50 percent in some areas
[2] A breakdown of assessed value by counties is given in Table III

TABLE I

Business Inventory Tax Exemptions of the Several States

State	*Business inventory tax provisions*
Alabama	No exemption
Alaska	No exemption
Arizona	Property stored in transit is exempt.
Arkansas	No exemption.
California	No exemption.
Colorado	No exemption.
Connecticut	Property held in public warehouse which is owned by non-resident persons or corporations is exempt
Delaware	No personal property tax.
District of Columbia	Property stored in transit is exempt.
Florida	No exemption
Georgia	No exemption
Hawaii	No exemption.
Idaho	Property stored in transit is exempt
Illinois	Property stored in transit is exempt
Indiana	Property stored in transit is exempt
Iowa	Property stored in transit is exempt
Kansas	Property stored in transit is exempt.
Kentucky	No exemption.
Louisiana	Property stored in transit is exempt.
Maine	Property stored intransit, food products produced in Maine while stored for shipment outside the state, pleasure vessels stored in the state by nonresidents are exempt.
Maryland	Tangible personal property of Maryland corporations whose stock is subject to taxation is exempt
Massachusetts	Property stored in transit is exempt.
Michigan	Property stored in transit is exempt.
Minnesota	Property stored in transit is exempt
Mississippi	Property stored in transit; and manufactured products produced in Mississippi for later shipment elsewhere are exempt.
Missouri	Property stored in transit is exempt
Montana	No exemption.
Nebraska	Property stored in transit is exempt.
Nevada	Property stored in transit is exempt.
New Hampshire	Goods for out-of-state delivery, held by the manufacturer after title has passed to the purchaser are exempt.
New Jersey	Property stored in public warehouses is exempt.
New Mexico	No exemption.
New York	No personal property taxation.
North Carolina	Tangible personal property held at any seaport awaiting shipment to a foreign port is exempt; as are farm products stored in public warehouses.
North Dakota	Property stored in transit is exempt.
Ohio	Property stored in transit is exempt.
Oklahoma	Property stored in transit is exempt
Oregon	Property stored in transit is exempt
Pennsylvania	No personal property tax.
Rhode Island	No exemption
South Carolina	Property stored in transit is exempt
South Dakota	No exemption
Tennessee	Property stored in transit is exempt.
Texas	Property stored in transit is exempt.
Utah	Property stored in transit is exempt but it can only be stored for 12 months.
Vermont	No exemption
Virginia	No exemption.
Washington	Property stored in transit is exempt.
West Virginia	No exemption

State	*Business inventory tax provisions*
Wisconsin	Property stored for out-of-state shipment; and property shipped into the state which is stored in public warehouses is exempt
Wyoming	Property stored in transit is exempt but it can only be stored for 9 months

SOURCE: Commerce Clearing House, *State Tax Guide (Second Edition), All States,* Commerce Clearing House, Inc (Chicago 1964).

transit. For example, Tariff 264-I, which provides for storage in transit in Nevada and Arizona on shipments to California, contains the following rates.

Item 3580 Household Appliances ..... $135 per hundred lbs
Item 3445 Heating or Cooking Apparatus .. $135 per hundred lbs. $35 71 minimum per carload

These rates mean that storage in transit can be provided on these items for $35 to $40 per carload When this is measured against the value of a carload of appliances and against the inventory tax that would have to be paid on these goods, it can be seen that this is a very small amount For items with a higher value-to-weight ratio there is even more advantage to be gained by storage in transit. Conversation with railroad officials indicates that it is not unknown for a taxpayer to load up a boxcar with his inventory before the tax date, ship the boxcar to Phoenix, leave it on a siding and then bring it back after the first Monday in March Other shippers have their goods routed by a zigzag route (at no extra charge) so that they arrive after the first Monday in March.

CONSEQUENCES OF TAX AVOIDANCE

All of these maneuvers, taken solely for the purpose of tax avoidance, reduce the productivity of the firms involved and represent a burden upon them in the nature of the costs incurred If there were at hand some method of obtaining the same amount of tax yield without causing this tax avoidance burden, then the costs to the business community would be greatly lessened without reducing the revenue received by the local government units Some of the consequences may be enumerated.

(1) The $3 billion estimate cited above relates to the inventories actually on hand on the first Monday in March We know that some inventories are *exported* temporarily to avoid the tax. It seems apparent that the actual inventory figure on that date would be much higher in the absence of the present tax How much higher is a matter for much interesting speculation but it cannot be easily estimated. A moment's reflection will show that the distribution of the burden of the business inventory tax is both uncertain and inequitable The amount of tax burden that a particular firm must bear is a function not of its sales or even of its lack of sales, but of the *flexibility* of its inventory. This is determined partly by the nature of its business Some businesses, such as motor vehicle parts sales, must keep an inventory on hand of thousands of different items A firm in this business may be able to draw its inventory down to only a few of each item, but the firm would still have

to have a huge inventory if the doors were to be kept open at all. Another firm may sell only a few types of items This firm would be able to draw down its inventory to almost nothing when the tax date rolled around Another important variable would be the supply practices of the particular industry If a new supply of goods can be obtained in 24 hours, the inventory level can be drawn down much lower than if three months' lead time is required The burden of the tax is distributed, not according to the ability to pay or any other principle, but simply by the nature of the business involved. This hardly seems to be an equitable type of taxation.

(2) The *customer* suffers an immeasurable loss where the selection available to him is reduced on account of the tax He really ends up on a lower level of utility.

(3) It should also be noted that an inventory tax falls most heavily on the firm that has not been able to sell its stock rather than on the firm that has been able to sell its goods The tax then falls on the firm that is *least able* to pay it. The inequity of this feature of the tax hardly needs comment Unlike the sales tax, the inventory imposes a a penalty on *not* selling; unlike the income tax, the inventory tax imposes a penalty on *not* making a profit

The great lengths to which most firms go to avoid the inventory tax seems to indicate that the firms believe that the tax cannot be wholly shifted Therefore, at least part of the final burden of this tax is borne by the firms upon whom it is levied The capriciousness of this burden distribution has been noted above.

While we are concerned with questions of equity, we cannot ignore the claim made that the elimination of inventory taxation "would free many classes of business from the only form of local taxation to which they are presently subject "[3] Even assuming the literal validity of this statement, it refers only to "local" taxation A new or increased state tax (e g, income tax) collected in behalf of localities could, for all practical purposes of equitable revenue burden, make up the difference.

(4) In an open economy such as that of California, it is quite easy for some firms to avoid a tax such as the business inventory tax as indicated above Other firms cannot avoid it, except at prohibitive cost. It is impossible, therefore, for such a tax to be equitable The tax *discourages* business from locating here and particularly causes a great deal of warehousing activity which otherwise would take place in California to be shifted elsewhere[4] This causes a loss of both jobs and income to the state

The following specific example of the effect of the tax on warehousing activity was presented at the committee's hearing in San Diego on June 26, 1964[5]

> Recently the Burroughs Corp announced that they were moving their warehousing to a neighboring state because one computer

[3] Statement to the Assembly Interim Committee on Revenue and Taxation by San Diego County Chief Administrative Officer, San Diego, June 26, 1964

[4] Presentation of Jack Dawson, Executive Manager, Pacific States Cold Storage Warehouseman's Association before Assembly Interim Committee on Revenue and Taxation, San Diego, June 25, 1964

[5] Presentation of John Nagy, President, Statewide Homeowners Association, p. 8.

in a crate carried a tax of $6,500 That's just one, and they had a warehouse full.

The claim of an unfavorable impact on warehousing activity in the state is consistent with the data on unemployment As shown in Table II, compensated unemployment in public warehousing in California in 1963 was 7 1 percent of covered employment whereas it was only 4 8 percent for all industries. (It should be noted that statistics are available only for "public warehousing" as a separate industry and not for warehousing generally)

The seasonal fluctuations within the year are not so convincing The present business inventory tax may be expected to cause increased unemployment in the California warehouse industry during February and March when firms are drawing down their inventories to the lowest possible level Data on employment and unemployment in the public warehousing industry in California together with similar data for all California industries, as shown in Table II, do not indicate such fluctuation Warehousing unemployment does rise in February and March from the January figure, both in absolute and relative terms However, if this were substantially caused by the business inventory tax, we would expect this unemployment to level off quickly after the March assessment date This is not the case The peak of unemployment in fact is during the months of July and August. Covered employment went up by 2 workers from February to March while unemployment went up by 28 workers, in April, when we would expect the warehouse business to pick up if the business inventory tax were having great effects upon it, we find that unemployment drops by 8 workers while employment drops by 341 workers

The figures for all industries show that February, March and April have the highest relative unemployment of the entire year The relative rise in unemployment at that time can certainly not be attributed entirely to the business inventory tax There are a great many other factors which cause a seasonal dip in business activity at this time in California and throughout the country In short, if the inventory tax has a seasonal effect on warehousing, the effect is submerged in strong seasonal factors which affect business and industry as a whole

The above discussion has been concerned with the possibilty of the warehousing industry leaving the state on account of the business inventory tax How much other business and industry leaves the state —or is discouraged from ever entering it—we cannot say It takes little insight, however, to imagine that a tax that penalizes those who cannot transfer their inventory out-of-state over assessment day, and penalizes those businesses that fail to sell and accordingly fail to make money, must act as a damper on plans to locate in this state This is not inconsistent with the well-established view that enlightened business looks at what services it gets for its state and local taxes before deciding where to locate[6] We are dealing with a particular, peculiar tax whose "incentive" power is out of proportion to its magnitude.

[6] As well outlined in the presentation on behalf of the Commissioner of the California Economic Developement Agency, Lewis M Holland, before the Assembly Interim Committee on Revenue and Taxation, San Diego, June 25, 1964.

TABLE II

Employment and Compensated Unemployment * for All Industries and in Public Warehousing: 1963

1963
California

Period	All industries			Public warehousing industry		
	Total covered employment	Compensated unemployment* Total	Compensated unemployment* Percent of covered employment	Total covered employment	Compensated unemployment* Total	Compensated unemployment* Percent of covered employment
1963	4,216,531	201,291	4 8	5,486	387	7 1
January	4,058,774	239,266	5 9	5,627	332	5 9
February	4,040,900	247,322	6 1	5,562	382	6 9
March	4,102,165	247,292	6 0	5,564	410	7 4
April	4,126,570	246,572	6 0	5,223	402	7 7
May	4,171,899	222,451	5 3	5,137	393	7 6
June	4,242,459	180,329	4 2	5,216	450	8 6
July	4,274,065	180,327	4 2	5,171	467	9 0
August	4,325,603	166,886	3 9	5,186	467	9 0
September	4,338,278	149,415	3 4	5,343	400	7 5
October	P4,308,807	150 759	3 5	5,667	402	7 1
November	P4,281,486	172,036	4 0	6,107	250	4 1
December	P4,328,067	214,161	4 9	6,023	280	4 6

* Weekly average weeks compensated for regular unemployment insurance
P = Preliminary

SOURCE California Employment and Payrolls
Unemployment Insurance Payments by Industry, Report 96A Tabulations
From Report SIU #239, State of California, Department of Employment, Research and Statistics, July 20, 1964 (Table 1).

SOME POSSIBLE SOLUTIONS

Solution: Changing Assessment Date

It has been suggested that "the first Monday in March" is a particularly awkward assessment date for most businesses because it does not coincide with the end of either the business or fiscal year. A change to "the last day of February" or the end of the firm's fiscal year has been suggested [7] On the other hand, this would fall on different days of the week, which also involves certain inherent disadvantages In any case, a change of this sort is of secondary importance In fact, a nearby month-end or fiscal year-end inventory is often used as the basis of the March 1st assessment. Moreover, the change would not deal with any of the fundamental problems discussed above

Solution: Averaging

It has been suggested that many of the faults of the present single date tax system can be avoided by the institution of some type of average inventory. County Assessor Philip Watson presented a comprehensive summary of the argument at the 1964 assessors' convention·

> "Historically, the fixed lien date for assessing was established in an agricultural economy. Assessment law and administration were developed in the 19th century, with assessment date in the

[7] Presentation of Mr. Dewey Dunn, Director, California Automotive Wholesalers Association, before Assembly Interim Committee on Revenue and Taxation, San Diego, June 25, 1964.

spring when the assessor could get out in his buggy after a long, hard winter Payment date was in the fall after the crops were harvested These dates correlate poorly with a modern industrialized, urban economy Assessment dates that differ from state to state afford considerable opportunity for interstate taxpayers, like chain stores, to manipulate inventories so as to have a minimum stock on hand in a particular state on its assessment date.

"The present system of inventory taxation as it applies to merchants is criticized as unfair and inequitable. The theory of the assessment as of a single day seems to be that much capital is constantly in motion and, as in the game of musical chairs, someone will halt the procession for a moment and take account of the situation. At that moment the usual amount of capital will be about and in somebody's hands Since the property tax is an impersonal tax, it makes little difference in whose hands it is found. If a livestock shipper happens to have on hand a large consignment of stock, even for only a day—assessment day—he can be assessed upon this property. The merchant who sells agricultural machinery may be heavily stocked on a spring lien date, whereas the merchant who sells coal may be virtually "cleaned out" at that time This does not mean that one has more business or capital than the other or that one has more "ability to pay" or "benefits received" than the other. It is thus alleged that a snapshot picture of all businesses on a particular day gives no fair evidence of their taxpaying power. The contention is that a time exposure might give a very different picture In view of the fact that the day of the snapshot is advertised in advance most merchants try to have as little on hand as possible. Where merchandise in the hands of merchants is assessed as inventory, active retail selling campaigns requiring more wholesale purchases are postponed until after assessment day so as to avoid large inventories on the lien date Commercial storage warehouses, when their contents are assessable, may experience a rapid falling off in business about assessment time, particularly when they are in competition with warehouses in states which exempt such properties from taxation

"(However, with the announcement of a standard ratio and with encouragement by the Los Angeles County Assessor's Office to study the cost of moving inventory as compared to tax savings, commercial warehouses experienced a minimum of falling off of inventory in 1964. For example, in the cold storage business in prior years, occupied space fell to about 40 percent of capacity on the lien date, but in 1964 occupied space on the lien date was 91 percent)

"As applied to merchants, the present inventory tax is.

(1) Usually erratic in gauging inventory values, because of assessment as of a particular day.

(2) Prejudicial to the merchant with a slow inventory and high capital investment (e g a retail furniture store), as he is unable to "unload" as easily as a fast turnover business.

(3) Discriminatory against the small independent merchant as compared with the chain store since the chain store as a rule operates with a *relatively* small stock and a rapid rate of turnover. There may not be very much in such a store at any one time but a great deal passes through during the year.

(4) Creates considerable movement of inventories, with resultant disruption of business.

"As a partial remedy for some of these difficulties, certain states now attempt to assess merchants on the basis of their average inventories for the year. This appears to be a sound innovation but is dependent, of course, upon keeping of accurate books Moreover, the average inventory is not very easy to calculate. If it is interpreted to mean the average of the inventories on hand during the first day of each month, merchants can still manipulate their stock to some extent if they take the trouble to watch 12 days instead of 1. No simple method of calculating an average for all 365 days of the year has yet been devised.

"However, it is argued that an average inventory may be more equitable than a fixed date inventory. The business which is at the peak of its activity on the lien date would be averaged downward; the one which is at a low point on the lien date would be averaged upward While certain inequities may remain under the proposed system, the overall inequity would be minimized as well as some of the criticisms of the ad valorem property tax as regards business inventories. The most severe criticism of the present fixed inventory tax is the great disruption of the ordinary flow of business which it causes.

"An average inventory would eliminate any reason for storing goods outside the state, and avoid any disruption of business that now occurs at lien date time. The effect of this reform would be to reduce assessments for those businesses whose seasonal operation demands peak stocks on or near lien date time—for example, the textile or the farm machinery business In the case of the business that can cut its stocks to the bone as the lien date approaches, the annual average would result in some increases—for example, the fuel oil or coal business in areas dependent on them for winter heating.

"Some of the ADVANTAGES of the average inventory are.

"(1) It would prevent inequities arising from high as compared to low seasonal inventories required on a single specific lien date.

"(2) Business enterprises would not have to rely on planned stock depletion on the lien date to minimize taxes.

"(3) It would maintain a more even flow of purchases and sales which would tend to stabilize economic activity in the county

"(4) Demurrage expense now paid by firms to delay the receipt of stock in interstate commerce would be eliminated.

"(5) May result in higher assessments. Most unseasonal retail businesses deplete their stocks in January and February. It would be difficult to 'unload' every month.

"A number of states have recently studied and favored repeal, reduction or separate treatment of inventories for ad valorem tax purposes. Colorado recently considered abolishment, with a turnover tax as a substitute; however, strong reaction by retail and chain store pressure groups prevented this. Other states recently considering revision have been Florida, Michigan, Minnesota, Wisconsin, and Connecticut.

"However, no specific recommendations were made because of revenue considerations.

"Some states now using average inventories are Ohio, New Jersey, Kansas, Colorado, Nebraska, Arkansas, New Mexico, Washington (optional), and Oregon (optional).

"Legislation was introduced at the 1963 session to allow permissive or optional use in California of the average inventory method. This we opposed It would benefit only those taxpayers whose lien date inventories are unreasonably high, and while it would afford a measure of tax relief to personal property taxpayers in this classification, it would not bring any corresponding increase in tax from those personal property taxpayers whose lien date inventories are at a low level, and who would be permitted to continue to report their inventory value as of that date

"Though it is not anticipated that the assessment of average inventories would precipitate a sizeable increase in the tax base, we believe it would prove more equitable to all taxpayers

"*We recommend legislation requiring the assessment of inventories on an average basis, without option.*"

The average proposal would require that inventories be taken 4 or 12 times per year and the tax levied upon their arithmetic mean level This proposal creates many new problems, some of which may be quite far reaching in their consequences.

First, the annual average method would have to be compulsory unless it is to be a device for reducing the tax base If it is not compulsory, it would only be elected by those firms whose tax bills would be reduced by so doing The assessor would then be faced with 4 or 12 inventories per taxpayer to check on rather than the present one This would almost certainly raise the compliance costs of both the taxpayer and the assessor [8] Physical inventory-taking on a frequent basis would be very costly, and mere estimates would lead to much dispute

If the system were a quarterly one, it would seem to encourage drawing down the inventories four times a year rather than one This would be expensive but might nevertheless occur More important, the attrac-

[8] Presentation of Mr Eugene Wilson, Resident Counsel, California Retailers Association, before Assembly Interim Committee on Revenue and Taxation, San Diego, June 25, 1964.

tiveness of free port warehouses in Nevada would be greatly increased The low storage-in-transit rates, two examples of which were cited above, indicated that if annual averaging were instituted in California, the amount of storage in transit would undoubtedly increase greatly. Firms that stored a large quantity of goods in transit in either Nevada or Arizona would be able to report low annual average inventories and avoid most of the tax It might be that annual average inventory taxation would produce even a lower yield than the present system. On the other hand, it would help stabilize wholesaling in the state [9]

Solution: "Free Port" Provision

Since California is such a huge final market for goods, exemption of goods in transit would *not* deal with the problem for this state. Only a negligible portion of inventories held in this state is "in transit" and would benefit from a "free port" provision.[10]

Solution: Reduced Rates

The measures taken to avoid this tax do involve cost to the firm. If the tax rate were gradually lowered as some have suggested, the tax base would be found to broaden after some given point This would result from the fact that the lower tax rate becomes less than the costs of avoidance States that have taxed "intangible" personal property (stocks and bonds) have found that a nominal tax yielded a higher revenue than a substantial tax

Solution: Exemption of Business Inventories

As indicated above, the yield of the present business inventory tax has been estimated at about $240 million in California Thus, complete exemption of business inventories would cause a substantial loss of revenue. Its magnitude may be judged by comparing it with compensating changes in other taxes For instance, exemption of all business inventories from taxation could be offset by a 3 3 percent surtax on the business income tax (Since the present 5 5 percent business income tax rate yields about $400 million per year, the surtax would have to be about 3 3 percent in order to produce $240 million per year to offset the revenue loss, assuming no other effects.) This surtax would have to be levied by the state and then distributed to the various local governments according to some type of formula

Another approach would be to exempt business inventories entirely and make up the lost revenue from a completely different tax source The sum of $120 million is the estimated yield from a 5¢-per-pack increase in the cigarette tax and would partially compensate for the loss of revenue. This tax revenue, of course, would then have to be distributed in some manner to the local governments

Merely to exempt business inventories without making alternative sources of revenue available would result in shifting the burden to other forms of property through higher property tax rates

[9] Presentation of Mr Bernard Coyle, Southern California Beverage Distributors, similarly

[10] Mr Dawson, in response to question by Assemblyman William Stanton, June 25, 1964.

TABLE III

Assessed Value of Business Inventories by County: 1963

Counties		*Counties*	
Alameda	$160,416,034	Orange	$62,041,920
Alpine	2,620	Placer	2,775,100
Amador	--	Plumas	1,500,000
Butte	Not Available	Riverside	50,098,095
Calaveras	250,000	Sacramento	65,000,000
Colusa	850,000	San Benito	2,460,730
Contra Costa	117,092,300	San Bernardino	30,000,000
Del Norte (est)	2,000,000	San Diego	186,527,290
El Dorado	2,440,000	San Francisco	247,341,910
Fresno (est)	45,501,000	San Joaquin (est)	24,140,000
Glenn	1,649,430	San Luis Obispo	9,000,000
Humboldt	12,561,970	San Mateo	90,000,000
Imperial	18,000,000	Santa Barbara	18,000,000
Inyo	--	Santa Clara	105,000,000
Kern	30,994,400	Santa Cruz	9,281,000
Kings	1,912,550	Shasta	4,501,320
Lake	1,400,000	Sierra	--
Lassen	875,000	Siskiyou	15,000,000
Los Angeles	1,416,532,000	Solano	10,114,370
Madera	5,250,000	Sonoma	10,000,000
Marin	6,297,070	Stanislaus	20,000,000
Mariposa (approx)	350,000	Sutter	5,200,000
Mendocino	4,712,310	Tehama	2,092,855
Merced (actual)	4,971,920	Trinity	500,000
Modoc	340,000	Tulare	5,250,000
Mono (est)	500,000	Tuolumne	1,000,000
Monterey	30,000,000	Ventura	12,464,110
Napa	10,141,290	Yolo	3,000,000
Nevada	631,000	Yuba	2,000,000
		GRAND TOTAL:	$2,869,959,594

SOURCE: Information supplied to Assembly Committee on Revenue and Taxation, by county assessors of California, Fall, 1963

PART II

ASSESSMENT AND TAXATION OF HOUSEHOLD GOODS

DAVID R DOERR

and

RAYMOND R. SULLIVAN

INTRODUCTION

Of all the weaknesses of the property tax, the assessment of household goods and furnishings is the most glaring. Assessment of this type of property is completely inequitable and administratively impossible. The requirement that household personalty be assessed in proportion to its value is an invitation to every assessor to violate the Constitution of the State of California.

According to an assessor's manual, "The Assessment of Household Personalty," published by the State Board of Equalization in 1961:

> "Household furniture and personal effects vary so widely in purpose, make, and quality, the quantity of such items is so different from one home to another, and they are so encrusted with sentimental value that their valuation for property tax purposes is one of the most baffling problems faced by assessors.
>
> "The potential revenue from such property is not large enough to warrant a painstaking appraisal, and such an appraisal would probably produce unfavorable public reactions even if it were economically justified For these several reasons, many assessors have developed simplified procedures for valuation of this property that are designed to produce a reasonable degree of accuracy at reasonable costs."

REVENUE IMPACT

Property taxes on household goods and furnishings raised an estimated $43 million dollars in revenue for local governments in 1963—less than 2 percent of the total amount raised from the property tax The net assessed value of household goods and furnishings in 1963 amounted to approximately $548 million, based on estimates received from county assessors.

TABLE I

Assessed Value of Household Goods and Furnishings by County: 1963

(In thousands)

County	*Gross*	*Net* *	*County*	*Gross*	*Net* *
Alameda	$56,000	$30,300	Kings	4,200	2,700
Alpine	20	11	Lake	1,300	800
Amador	700	400	Lassen	760	400
Butte	5,100	2,000	Los Angeles	230,000	130,000
Calaveras	900	500	Madera	2,200	1,200
Colusa	1,000	640	Marin	11,900	7,900
Contra Costa	11,000	None	Mariposa	250	100
Del Norte	730	300	Mendocino	2,100	1,218
El Dorado	3,250	2,200	Merced	4,200	2,450
Fresno	17,897	8,011	Modoc	720	500
Glenn	1,100	646	Mono	330	250
Humboldt	5,100	2,500	Monterey	13,000	8,000
Imperial	4,700	3,000	Napa	4,900	3,260
Inyo	580	336	Nevada	2,500	1,800
Kern	15,000	7,000	Orange	54,000	33,200

County	Gross	Net *	County	Gross	Net *
Placer	$4,000	$2,500	Sierra	300	230
Plumas	830	500	Siskiyou	2,600	1,600
Riverside	20,700	12,000	Solano	8,000	4,500
Sacramento	49,000	35,245	Sonoma	4,100	None
San Benito	1,300	818	Stanislaus	11,000	6,500
San Bernardino	22,713	11,516	Sutter	3,360	2,697
San Diego	95,000	67,000	Tehama	1,600	900
San Francisco	37,000	12,500	Trinity	500	270
San Joaquin	18,000	11,700	Tulare	9,200	4,750
San Luis Obispo	5,500	2,800	Tuolumne	900	475
San Mateo	55,000	42,000	Ventura	13,800	8,800
Santa Barbara	14,000	8,000	Yolo	5,600	3,900
Santa Clara	68,000	51,000	Yuba	3,250	2,250
Santa Cruz	3,000	None			
Shasta	4,500	2,900	Total	$918,170	$548,973

* After $100 constitutional exemption

SOURCE Estimates made by staff of Assembly Committee on Revenue and Taxation based on figures furnished by county assessors and other statistical data available to the committee

Most assessors do not physically appraise household goods and furnishings. No longer does a deputy assessor go door to door attempting to find out the contents of each domicile In response to a questionnaire [1] county assessors reported a great variety of methods are being used to value household personalty Most use the "educated guess" method—either basing the value on the number of rooms or the value of the improvement (the house).

Obviously this is completely inequitable and probably unconstitutional There is no perfect correlation between the number of rooms or the value of the improvement and the value of the household goods in a given house By guessing, an assessor cannot be sure that all property is "assessed in proportion to its value." [2]

Use of a "per room" method gives rise to other major inequities:

1. Homes of modest construction are generally not as well furnished as homes of superior quality (A lesser value per room could be applied)
2. The number of rooms is not always a good indicator of the quantity and type of furniture.
3 The recent trend toward "built-ins" which are included in improvement value may result in a double assessment

Where a percentage of assessed value of the improvement is used, there are almost as many different schedules in use as there are assessors Some counties use a flat percentage rate (10 percent is popular), while others have a progressive sliding scale The state board has recommended the percentage guide shown in Table II.

[1] May 3, 1963

[2] *California Constitution*, Article XIII, Section 1.

TABLE II

Percentage Guide for Assessing Household Personalty

Assessed value of residential improvements	*Percentage guide*	*Assessed value of household personalty*	
		Gross	*Net*
Under $2,500	4 0	$100	--
2,500– 2,999	6 3	190	$90
3,000– 3,999	8 7	350	250
4,000– 4,999	10 2	510	410
5,000– 5,999	11 1	675	575
6,000– 6,999	11 7	820	720
7,000– 7,999	12 3	990	890
8,000– 8,999	12 7	1,150	1,050
9,000– 9,999	13 1	1,315	1,215
10,000–10,999	13 4	1,475	1,375
11,000–11,999	13 5	1,625	1,525
12,000–12,999	13 7	1,790	1,690
13,000–13,999	13 9	1,950	1,850
14,000–14,999	14 0	2,100	2,000

If the assessed value of the residential improvements exceeds $15,000, a physical appraisal of the furnishings is recommended

SOURCE State Board of Equalization, *Assessor's Handbook,* "Appraisal of Residential Personalty," August 1961

In addition to the fact that this method is just a guess, borne out by averages in general, there are a number of inequities which arise from using a schedule based on percentage of value

1. The house may be completely unfurnished, or it may be furnished in Japanese style with a very minimum amount of furniture
2. Due to its size a well-kept older house may have more furniture than a newer house with a higher improvement value Yet this new house will have a higher personalty assessment than the older one.
3 The value of "built-ins" may be included both in the improvement price and the percentage figure used to compute the value of the personalty without a physical appraisal There is no way of knowing what is built in and what is moveable
4 A residence in a commercial zone may have a high land assessment and low improvement assessment due to location. Yet, the value of the personalty is probably the same as a house of equal value in an area where the land value is not as high.
5 When a homeowner moves from a less expensive to a more expensive home but does not purchase any appreciable amount of new furniture, he still sees his personal property assessment increase substantially This is unjust and unconstitutional

Some counties still use the traditional method of assessing household goods by onsite inspection If a good job is done, the administrative costs in making the assessment will probably exceed the revenue derived therefrom Even under these circumstances, an appraiser has an exceedingly difficult job in establishing a value for household personalty. What is residential personal property worth? Should it be valued at the price it might bring if the owner wished to sell it? Under these circumstances, the value will be almost nil, as those who have attempted

to sell secondhand furniture can verify It is almost impossible to sell secondhand clothing and other personal effects To compound the problem, there are few sales from which comparative values can be derived.

In most instances, onsite assessments are not this thorough, rather, the extent of these appraisals is a peep through a window or door half-blocked by a hostile housewife or a judgment based on the evidence of a TV aerial.

INEQUITIES

Under any system of assessment—onsite inspection or percentage of value—many inequities exist in the taxation of household furnishings Much of this property escapes assessment—such as jewelry, silverware, watches, stamp and coin collections, works of art, antiques, and rare books Even when an onsite inspection is made, it is a rare appraiser who can value all of these items with any pretense of accuracy

It is also widely believed that the tax on household furnishings is regressive—at least as regressive as the property tax in general and even more so where a percentage of improvements is not used.

Assessment of Household Personalty in Other States

Many states have abandoned the assessment and taxation of household goods At last report (1963), 18 states exempt household goods and furnishings entirely [3] A number of others have such high exemptions as to effectively exempt household goods [4]

Recommendations on the Taxation of Household Goods

A number of recommendations have been made for the complete exemption of household goods in California At least one county assessor—E. F. Wanaka of Contra Costa County—has granted a de facto exemption to household goods in his county Wanaka told the Committee on Revenue and Taxation that:

> "Contra Costa County has, wherever possible, included those portions of the household goods, such as drapes, built-in stoves, built-in refrigerators, built-in coolers, wall to wall carpets, etc as a part of the real estate Now this is a growing trend in the last 10 years All of these are built in So we have considered this a part of the real property and in most cases considered the cash value of the remaining personalty to be covered by the $100 householder's exemption We believe that this is probably as equitable as any method in use, and results in a considerable savings to the taxpayer through the elimination of additional budget that would be required by the assessor if he were to hire the number of qualified people necessary to inspect and appraise household personalty and do it right " [5]

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[3] Colorado, Connecticut, Delaware, Hawaii, Idaho, Kentucky, Louisiana, Maine, Mississippi, New Hampshire, New York, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Washington, Wisconsin

[4] Vermont has a $3,000 exemption, Massachusets a $5,000 exemption, Michigan a $5,000 exemption, and Florida and Tennessee a $1,000 exemption

[5] Statement of E F Wanaka, Assessor of Contra Costa County, to Assembly Committee on Revenue and Taxation, October 4, 1963

Los Angeles County Assessor Philip Watson, a strong advocate of a property tax exemption for household goods, told the committee·

> "I advocate the elimination of the assessment and taxation of household furnishings and personal effects in private residences. The tax is in the nature of a nuisance It does not yield enough revenue to justify its continuance. It is impossible, under any kind of system so far devised, to equitably appraise household furnishings and personal effects which may represent a great investment on the part of the property owner but which may have little or no market value due to the personal nature of such items. About 10 percent of our budget in the assessor's office in Los Angeles County is devoted, even under our improved system, to household furniture assessments and less than 1 percent of the total revenue from ad valorum property taxation is derived therefrom . . . The only argument which has heretofore been presented against eliminating assessment and taxation of household furniture in private residences is the age-old, trite and hacknayed argument that we must prevent erosion of the tax base. I believe we must now ask why. Here's one exemption which would apply to the public in general, and it is vastly different from the special interest exemptions which are presented to the Legislature each year. Every homeowner would benefit "[6]

The Advisory Commission on Intergovernmental Relations recommends that,

> ". . . to protect the integrity of its tax system, no state should retain in its property tax base any component that it is unwilling or unable to administer with competence."[7]

This recommendation would appear to apply directly to the assessment and taxation of household goods

A statement in favor of continued assessment and taxation of household goods was made to the committee in San Francisco by Assessor Russell Wolden·

> "I do not favor the elimination of the personal property tax on household goods The Assessors' Association of the State of California is on record against this proposal."[8]

The County Supervisor's Association is also on record as opposing any new property tax exemptions

CONCLUSION

The evidence is overwhelming in support of an exemption for household furnishings and personal effects It is impossible to achieve equitable assessment of this type of property The discovery and valuation of the property and collection of the tax is fraught with difficulties. Great expenditures of time and money result in a relatively small amount of revenue. Exemption of residential personal property will eliminate one of the blights on the integrity of the property tax.

[6] Statement of Philip Watson to the Assembly Committee on Revenue and Taxation, Los Angeles, November 15, 1963

[7] Advisory Commission on Intergovernmental Relations, *Role of the States in Strengthening the Property Tax*, Vol 1, Washington, D C , June 1963, p 9

[8] Statement of Russell Wolden to the Assembly Committee on Revenue and Taxation, San Francisco, December 16, 1963.

PART III

HOMESTEAD TAX EXEMPTIONS FOR THE AGED WITH SPECIAL REFERENCE TO THE REVENUE EFFECTS OF ALTERNATIVE EXEMPTION LAWS IN CALIFORNIA

by

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A. Introduction

The years following the Second World War have witnessed an increasing concern with the economics of an aging population in the United States. One phase of the concern relates to the economic problems of the aged (defined generally as the age group 65 years and over). Tax policies at all levels of governments have mirrored such a concern

In income taxation, both the federal and state governments have accorded tax favors to the aged Additional personal exemptions for the aged were first provided in 1948 in the federal individual income tax. Other provisions have been added in 1950, 1954, and 1964 At the state level, on the other hand, among the 35 states (including the District of Columbia), many have additional personal exemptions or credits, liberalized deduction requirements for medical expenses and expenses for medicine and drugs. (See Appendix A) Moreover, many state legislatures have in recent years either considered adopting some of these provisions, or liberalizing their existing provisions for the aged

Under property taxation, state and local governments, following the practice of homestead tax exemptions for small homeowners and for veterans, have instituted homestead tax exemptions for the aged. (See Appendix A) Many states have under consideration in recent sessions a variety of property tax concessions to the aged.

This study is concerned with homestead tax exemptions for the aged. The first section presents the existing and the proposed legislation in an effort to indicate both the present status and the dominant trend in this area The second section discusses two of the commonly required conditions of eligibility for tax concessions—income limitation and exemption limitation.

The third section indicates the fiscal significance of property taxes in state and local government finances in California It also shows the relative importance of single-family houses and of the owner-occupied single-unit properties headed by the aged, variously defined. The fourth section estimates the property taxes which the aged groups contributed in California in 1960 It deals with (1) the estimated distribution of taxes, (2) the household income status of the aged among the age-of-head groups, and (3) the average tax per housing unit and the average tax-income ratio

The fifth section discusses the revenue effects of several possible exemption schemes for California Finally, a summary of the highlights of the study is offered.

B. Present Status of Property Tax Concessions to the Aged [1]

This section first catalogs the existing laws in the states which offer property tax concessions to the aged It then presents some representative pieces of legislation which have been proposed in recent years in a number of states considering similar tax measures The emphasis in both cases is to indicate their major features.

1. EXISTING PROVISIONS

There are at present three principal forms of property tax relief for the aged: tax exemption, tax deferment, and tax credit Indiana, Massachusetts, and Oregon use tax exemptions Oregon alone offers, in addition to tax exemptions, tax deferment to certain aged New Jersey grants tax credits; Maryland authorizes its county governments to grant tax credits; and Wisconsin provides property tax relief in the form of income tax credits and refunds New Jersey and Maryland, it may be added, have abandoned, for different reasons, the use of tax exemptions.

Indiana grants an exemption of $1,000 in assessed valuation to a resident 65 and over who owns and occupies a homestead (ownership for at least one year) assessed at $5,000 or less, whose total annual gross income from every source plus that of his spouse, if any, does not exceed $2,250 a year, and who receives no other property tax exemptions.

Maryland passed in 1963 a law which gave its county governments the authority to grant a tax credit or a limited property tax rate based on age or income. (The Acts of 1964 deleted all references to limited rates) The law repealed all previous tax exemption provisions of county governments [2] There are 24 major political subdivisions in Maryland comprising Baltimore City and 23 counties Baltimore and 15 counties have granted tax credits under the provisions of the Acts of

[1] For verifying existing provisions and collecting proposed laws, two sets of questionnaires were sent to legislative reference agencies in the states, in addition to using the *State Tax Reporters* and *State Tax Review*, both published by the Commerce Clearing House, Inc The author is grateful for the assistance from the following persons Charles M Cooper (Alabama), Jules M Klagge (Arizona), Marcus Hallbrook (Arkansas), Kenneth Pettitt (California), George W Oberst (Connecticut), Maurice A Hartnett, III (Delaware) Frank E Blandenship (Georgia), Dick Macrorie (Hawaii), Loren M Bobbitt (Illinois), Russell W Smith (Indiana), Allan E Reyhons (Iowa), Richard Ryan (Kansas), Samuel H. Slosberg (Maine), Carl N Everstine (Maryland), Herman C Loeffler (Massachusetts), William R Nelson (Missouri), Samuel A Alito (New Jersey), Lauren A Glosser (Ohio), Dick Jones (Oklahoma), Robert W Oliver (Oregon), Edwin W Tomkins (Pennsylvania), and Kathleen R Kepner (Wisconsin) Although unfortunately no response was received from Michigan, Minnesota, New York and Rhode Island, information relative to the legislative activities in these states was gathered from other sources

[2] Homestead exemptions for the aged began to appear on the Maryland scene in 1957 It was always on a county basis Prior to the 1963 law, some 15 counties (listed below) had provided tax exemptions for the aged The change from the provision of exemptions to that of credit was occasioned by the persistent complaints of assessors about the constant change in assessed valuation depending upon whether the owner was or was not above the specified age Under the new law, the assessors will not have to change the assessment on a particular piece of property when ownership changes *Letter* to the author by Carl N Everstine, Director, Maryland Department of Legislative Reference, November 13, 1963

According to the *State Tax Reporter* for Maryland, Commerce Clearing House, the following jurisdictions had exemption provisions as of July 1, 1964 Allegany, Anne Arundel, Baltimore, Carroll Charles Frederick, Harford, Howard, Montgomery, Prince Georges, Saint Marys, Somerset, Washington, Wicomico, and Worcester

1963 The amounts of credit and the conditions under which the credit is granted are not known at present but are expected to be available in the near future [3]

Massachusetts exempts $4,000 of assessed value to persons 70 and over who have lived in the state for the preceding 10 years, who have owned and occupied the homestead (for at least five years) which is assessed at $14,000 or less[3], and whose net income from all sources, both taxable and nontaxable, does not exceed $5,000 for a married couple and $4,000 for a single person.

New Jersey grants a tax credit of up to $80 against the property tax on the self-owned dwelling of persons 65 and over who are citizens and residents of the state (for at least three years) and whose annual income does not exceed $5,000 Income is defined to include money from whatever source, including but not limited to realized capital gains and the entire amount of pension, annuity, retirement, and social security benefits

This current provision was implemented by the Laws of 1963 following the passage of a constitutional amendment. Previously, however, the Laws of 1961, likewise following a constitutional amendment, provided an exemption of $800 in assessed valuation for homeowners 65 and over with income not exceeding $5,000.[4]

Oregon offers tax exemptions for the aged with gross receipts less than $2,500. It exempts a percentage of the first $10,000 of the true cash value [5] of the principal personal residence of persons 65 and over meeting the income test Gross receipts include but are not limited to pensions, disability compensation, retirement pay, public welfare and social security payments, and receipts from sales or services rendered. The percentage of the true cash value exempt from taxation is allowed according to age of the taxpayer, or of the oldest of the taxpayers sharing the residence· 10 percent for those 65 to 68, 30 percent for those 69 to 71, 50 percent for those 72 to 74; 70 percent for those 75 to 77; 90 percent for those 78 to 79; and 100 percent for those 80 or more In other words, the amount of the true cash value exempted is $1,000, $3,000, $5,000, $7,000, $9,000, and $10,000 to persons in these respective age groups

Those who are unable to obtain a complete exemption may arrange for tax deferment And those with income over $2,500 may do the same. The homestead for which the deferment is claimed must not be income-producing property and there must not be any delinquent property taxes on the property The deferred taxes become a lien against the

[3] Information on the amounts of credit and eligibility requirements in these political subdivisions will soon be assembled by the State Department of Assessments and Taxation, according to William H Riley, Chief Supervisor of Assessments *Letter* to the author, June 17, 1964

[4] The 1963 constitutional amendment was proposed and adopted as a result of a New Jersey Supreme Court decision In 1962, the court in *Switz v. Kingsley*, 182 A 2d 841, held that the tax exemptions for the aged must be computed by deducting the amount of the exemption ($800) from the *true* value of the property and not the *assessed* value Since most of the municipalities in the state assessed their real property at a fraction of their true value, this court interpretation meant a reduction in tax advantage for the aged The new law, implementing the latest amendment to the state constitution, allows up to $80 against property taxes otherwise liable in place of the $800 exemption on the assessed value *Letter* to the author by Samuel A Alito, Research Director, Division of Legislative Information and Research, Law Revision and Legislative Services, State of New Jersey, June 8, 1964

[5] The true cash value is generally interpreted to mean a fair market value, as of the assessment date.

property until the death of the owner, or the sale of the home, or a status change of the property (i e , when it is no longer a homestead or becomes income-producing). An interest rate of 6 percent per annum is charged on the deferred taxes

Wisconsin law (effective June 10, 1964 and applicable to taxes for 1964) provides income tax credits and refunds to persons 65 and over as a relief from property taxes The relief is available to both homeowners and renters, but the maximum appropriation is set at $10,300,000 a year from 1965 on [6]

For an aged homeowner with household income of $1,000 or less, the relief amounts to 75 percent of the property tax (up to $300) in excess of 5 percent of the household income If his household income is over $1,000, the relief is 50 percent of the property tax (up to $300) in excess of 5 percent of the household income [7] Household income means income of all the persons who are related to and live with the aged taxpayer Income means adjusted gross income, plus alimony, pensions (less the return on investment), social security payments, and nontaxable interest, except gifts and income in kind up to $300.

Moreover, an aged renter likewise benefits from the same provisions as described above, except that his property tax liability is assumed to be 25 percent of his gross rent The gross rent is defined as the payment solely for the right of occupancy, exclusive of charges for utilities and the like.

Finally, refunds are issued to an aged homeowner or renter if the amount of property tax relief for which he is qualified exceeds the income tax otherwise payable (or when his income does not require him to file an income tax return).

It can be seen from the above that no two laws are identical. But similar characteristics may be noted All have an age test—with the exception of Massachusetts, 65 years of age is the requirement All have a resident test—the dwelling unit must be owner-occupied, except in Wisconsin where renters are also qualified for the relief All require a test of income, but differ in both the definition and the amounts of allowable income Furthermore, all impose a limit on the exempt property value, but again differ in the amounts exemptable from taxation These latter two eligibility requirements—income limitation and exemption limitation—give rise to some difficulties which will be discussed in the following section.

Among the provisions in the existing laws, the following are of special interest First, in terms of the age requirement, Massachusetts' is the most stringent; and Oregon's is uniquely elaborate, since it grants greater concession as age advances The Oregon law, secondly, is more elaborate because it offers tax deferment to some aged, and this feature is also unique.

[6] The most important reason for the use of a system of credits and refunds through the income tax is the constitutional requirement of a uniform property tax which makes any homestead tax exemptions for a certain class of taxpayers unconstitutional A constitutional amendment, as was adopted by New Jersey, would have been required if homestead tax concessions were to be carried out under the property tax Regarding the maximum annual appropriation, there are, however, no provisions relative to years in which claims exceed that amount

[7] It is widely understood that, due to a drafting error during the rush of legislative actions, the law as now written would offer more concessions to the aged taxpayers The error occurred in connection with the income test in the law It is also widely understood that this error will be corrected (by a corrective bill) when the Legislature convenes later this year The provisions reported in the text reflect the law as it is. (August 1964)

Thirdly, Wisconsin law deserves some mention It appears at first as if it is an income tax, rather than a property tax, relief It is in fact, however, a property tax concession requiring a *different form of income test.* Another noteworthy feature of the Wisconsin law is that, if the amount of property tax relief allowable to an aged person is greater than his income tax liability, he would receive the difference from the state treasury with which to pay his property taxes. Lastly, still another distinctive feature is that renters will benefit as well

2. PROPOSED LEGISLATION

In the last few years, more than one-half of the states in the union have considered property tax concessions to the aged They include Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Ohio, Oklahoma, Oregon, New Jersey, New York, Pennsylvania, Rhode Island, and Wisconsin Many of the proposals resemble the existing laws noted above. They are basically of the same varieties: tax exemption, tax deferment, and tax credit. However, there are significant differences between and among the proposals A survey of proposed legislation in the various states regarding property tax concessions offers the following illustrations In reading the exempt assessed values in these bills, it will be well to keep in mind the wide range of assessment ratios among the states For the states reported below, assessment ratios in 1961 ranged from about 13 percent in Arkansas to some 54 percent in Delaware. This point is significant when interstate comparisons regarding the "generosity" of tax exemptions are made; it is not relevant, however, when different bills in the same state are compared.

In *Arkansas,* there was one proposal which would exempt the first $5,000 in full market or actual value on the homestead of a resident 65 or over, with no other qualifications. Age constitutes the sole test Another bill would exempt the first $10,000 of actual value on the homestead of a resident 65 or over who is retired and not gainfully employed Here the unique feature is the explicit requirement of retirement A third bill would exempt the first $5,000 of assessed value of the homestead of a resident 65 or over. Assessed value rather than actual value is specified in this proposal.

Among some 20 pieces of legislation introduced in the *Connecticut* Legislature in 1963, the following five are of interest. One bill would limit property tax savings to $125, and in addition it contained the usual requirements of age (65 or over), of income (not exceeding $4,000), and of exempt assessed value ($3,000). Another proposal would exempt $20,000 of assessed value of homes owned and occupied (for at least 10 years) by a person 75 years of age or over Here, while the age test is more stringent, the amount of assessed value exempt is more generous, compared with existing laws and most proposed legislation. The third one would exempt assessed valuation of $2,000 and $3,000 to homeowners 65 to 71 and 72 and over respectively—a variant of the Oregon law noted above.

The fourth bill would provide an exemption equal to 30 percent of the tax levied on the home (and land on which it stands) owned and occupied by a person 65 or over (either owner or spouse) who has been

the owner for the preceding three years and who has no children attending school in or below the 12th grade Benefit principle seems to underscore this proposal, since the stated purpose was to relieve homeowners over 65 from the burden of maintaining schools (The bill was also advocated to discourage the migration of senior citizens to other states with tax exemptions for the aged)

Still another proposal worth mention is one which would exempt $3,000 in assessed valuation of homeowner-occupier 65 or over who is a U S. citizen and who receives less than $600 income annually therefrom either as rent or from the sale of produce grown thereon Further, it provided exemption of all assessed value if it is below $3,000, no exemption if assessed value is over $15,000, and amounts of exempt assessed value are graduated at $200 intervals from $2,400 down to $200 as the assessed value increases from $3,000 to $15,000, at $1,000 intervals.[3] Noteworthy features in this bill are. (1) the requirement of U S. citizenship; (2) the allowance of income-producing element for an owner-occupied home; and (3) the incorporation of the vanishing exemption arrangement, relating, in this case, the exempt amount of assessed value to the assessed value.

Delaware had in 1963 two proposals exempting the homestead of persons 65 or over from school levies ($10,000 of assessed value and all assessed value respectively). Two features deserve mention. First, one proposal was as generous as to exempt all assessed value. Second, both would apply to school levies alone. A third bill would exempt from taxation no more than $5,000 in assessed valuation of homes owned and occupied by a resident (for a period of three years) who is 65 or over and whose annual income is less than $3,000. Income is defined to mean all income from whatever source derived including, but not limited to, realized capital gains and the entire amount of pension, annuity, retirement and social security benefits

Among the resolutions proposing constitutional amendment in *Georgia* was a bill which would exempt $6,000 in assessed valuation of a home owned and occupied by a retired person 65 or over whose income from any source does not exceed $3,600 per year, exclusive of social security benefits and payments from any retirement or pension system to which the State of Georgia, or its political subdivision has contributed funds. This definition of income provides a contrast to the one chosen by Delaware cited above.

Included among a number of proposals in *Hawaii* was one which would grant full exemption from property tax on the homestead of persons 60 and over who are retired, provided that the assessed valuation does not exceed $10,000. Deserving mention are the low age requirement, the rather generous amount of exemption, and the retirement test. Another bill would offer total exemption for a 10-year period to a homeowner 60 or over. This is unique because it specifies a definite time period for tax forgiveness.

[3] Some examples: (1) If the assessed valuation of a property is over $3,000 but not over $4,000, $2,400 of the assessed value would be exempt (2) If the assessed valuation is over $4,000 but not over $5,000, $2,200 of the assessed value would be exempt (3) If the assessed valuation is over $14,000 but not over $15,000, $200 of the assessed value would be exempt.

Iowa considered in 1963 a bill allowing homeowners 65 and over a homestead tax credit twice the amount now allowed all owner-occupiers of a homestead of an assessed value of less than $2,500, with the tax credit not exceeding 25 mills for each dollar of eligible homestead valuation. The distinctive feature of this proposal is that the tax credit for the aged would double the existing tax credit for all homeowners, resembling the double personal exemption in the federal and some state income taxes.

One of the proposals in *Kansas* was to grant a tax credit of up to $150 against taxes otherwise due on a homestead and personal property of persons 65 and over who receive no more than $1,200 annually in addition to pensions and no more than $3,000 per year from all sources including pensions This bill is interesting for three reasons One, it would grant a tax credit in place of a tax exemption. Next, it would include personal property of the aged under the tax relief measure Finally, it implicitly specified that income from pensions might not exceed $1,800.

In *Massachusetts* where property tax relief is in effect as noted earlier, several bills were considered One proposal would provide for a reduction of one-half of the tax assessed on the dwelling of an owner-occupier of 70 or over (having resided in the state for 10 years) with a maximum of $400 This relief would also be granted to renters 70 or over. Tenants of rented property, who are 70 or over and have resided in the state for 10 years, would receive from the assessors certificates of credit not to exceed $400 which shall be equal to one-half of the tax assessed upon the property and attributable to rented portion of the property. These certificates would be accepted in payment of rent by the owners of the property and would be valid as abatements of the taxes levied on the property. Another bill would exempt $5,000 of assessed value on the homestead of persons 65 or over with no taxable income under the federal individual income tax

The special features of these bills are. (1) forgiveness of 50 percent of property taxes up to $400; (2) renters would receive benefits This provision is unique among the bills in the several states and it is highly commendable in its spirit; (3) the required income test is also unique because it will be affected by changes in the federal income tax law

Under a bill considered in 1960 by the *Michigan* Legislature, the homesteads of persons over 65, who have resided in the state for at least 10 years and whose annual income is less than $2,000, would be exempted from taxation to the amount of $3,000 of the state equalized value unless such value should exceed $7,500 This bill mentioned equalized value, as opposed to market value or assessed value

In 1961 the *Missouri* General Assembly considered a bill which would grant an exemption of no more than $500 in assessed valuation in the case of personal property (ownership for more than six months), and an exemption of not more than $3,000 in assessed valuation in the case of real property (owned and occupied) to a person over 65 years of age This proposal would exempt certain amounts of both personal and real property form taxation

A 1963-64 legislative bill in *Ohio* would put an upper limit on the rate of taxation and on the true assessed value on the homestead of

persons whose sole means of support is from pensions, social security, or other regular retirement allowances The upper limit would be the rate of taxation and the true assessed value which were in effect when the above-mentioned payments became the sole means of support This form of tax relief is unique, for it freezes the rate of property taxation and the assessed valuation at the level when a person completely retires. Another point worth emphasis is the lack of an explicit age requirement. Also, the retirement test is most stringent

Among the bills introduced in the *Wisconsin* Legislature in the last two years, which adopted a bill reported earlier, mention should be made of the two approaches represented. One was to grant an income tax credit or refund as a relief from property taxes, which embodied most of the features of the law just passed (Effective June 10, 1964)

The other was to allow property tax deferment Unlike the law in Oregon, the Wisconsin proposal would provide tax deferment as the sole means of assisting the aged There were two proposals—one would allow 50 percent and the other 100 percent tax deferral on the homestead property tax to persons 65 and over. The deferred taxes would be charged with an interest rate of 5 percent per annum; they would become a lien on the homestead until the death of the owner or the sale of the home Moreover, the amount of taxes deferred, under one proposal, may not exceed the amount of equity on the home

This bill is similar to the existing law in Oregon described previously with one important distinction. There is no mention in the Oregon law on the maximum amount of accumulated taxes deferrable on the homestead of the aged

Property tax deferment plans have also been considered in the *California* Legislature. One bill in 1961 would allow postponement of taxes on the homestead until the sale of the property or the death of the owner if the property had an assessed valuation of less than $5,000 and if it is owned by a single or married male over 65, or an unmarried widow over 60 The distinguishing feature of this proposal is the different age required of male and female aged taxpayers

Another bill introduced in 1963 was of the same variety. It proposed granting a loan (with which to pay real property taxes) to any person 60 or over who owns and occupies the home if the gross annual income of all persons who occupy and maintain the home does not exceed $2,500 No loan would be made in case one of the coowners of the property is under 60 years of age. Further, no loan would be made if the total of the amounts loaned on the home exceeds an amount equal to 50 percent of the full cash value of the property. There are three noteworthy features. (1) the age requirement of 60; (2) the requirement that coowners must be at least 60 years of age; and (3) loans can only be granted up to one-half of the property value.

The above represents a sketch of the major and interesting characteristics of the existing and the proposed pieces of legislation in a number of states regarding property tax concessions to the aged. This sketch reveals the wide diversity of provisions that are in force and under proposal Of special significance among these provisions are the income limitation and exemption limitation which the following section will discuss.

C. Income Limitation and Exemption Limitation

Variety of Income Limitation. One of the usual conditions of eligibility is the so-called income test, which sets the upper limit of income a taxpayer may have and still qualify for a tax privilege Although some bills (e.g, one in Arkansas) require no income test, all existing laws and most proposals stipulate some test of income. The allowable income ranges from $2,250 (Indiana) to $5,000 (New Jersey). There are a few bills which, while requiring income test, do not explicitly spell out the amounts of income allowable. For instance, a bill in Arkansas simply requires the taxpayer to be "retired and not gainfully employed." A bill in Hawaii requires simply retirement, which presumably implies low income or lower than preretirement income. "No taxable income under the federal income tax" is the condition under a Massachusetts bill.

Just as the amount of income allowable by each law or bill differs, so does the definition of income. Some laws or bills, such as in Indiana, New Jersey, Oregon, and California specify *gross* income; but others, such as in Massachusetts, designate *net* income; and Wisconsin chooses adjusted gross income plus other items. They differ in addition in the treatment of social security benefits, retirement payments and other nontaxable incomes Some (e g, in Massachusetts, Oregon, Delaware, Kansas) specifically *include* these receipts as income. One bill in Georgia, on the other hand, explicitly *excludes* from the definition of income receipts from social security system and from the retirement or pension system of the state and its subdivisions Further differences in defining income may be noted. The New Jersey law and a Delaware bill define income to include realized capital gains. Some bills in other states such as in Indiana simply mention "income from every source," and in other cases, "income from all sources." Apparently, formal regulations or informal rulings would be required in these latter cases to determine precisely what receipts constitute income. Moreover, some laws and bills, such as Indiana, include spouse's income, if any, in the allowable amounts of income, others do not The Wisconsin law and a bill in California represent a third approach in that they consider the combined income of all household members.

Problems with Income Limitation Income limitation is often resisted on emotional grounds for it is a means test and is therefore considered distasteful by some In addition, there are technical problems associated with the test of income The first two difficulties arise out of the definition of income itself First, when income is defined to *exclude* nontaxable sources of receipts, the income test becomes ineffective because it fails to "discriminate", as it is intended to do, against those taxpayers with sufficient income who are presumably not in need of tax privileges. On the other hand, if income is comprehensively defined to *include* all types of income, then the ascertainment of income appears highly difficult because it will require "self-assessment"—a problem becoming more acute in view of the "notch" problem pointed out below.

Another problem with the present arrangements of the income test is the so-called "notch" problem. Since there will be no tax advantage if income is beyond a specified upper limit, the abrupt termination of

tax privilege is undesirable. It is undesirable because the economic differences between two persons with incomes above or below the specified level by small amounts are not such as to justify tax benefits for one but not for the other It is undesirable also because the abrupt termination of tax benefits makes strong the temptation, in the case of self-reporting of income, to under-report income.

Variety of Exemption Limitation Another frequent eligibility condition deserving some analysis relates to the limitation on the exemptable assessed valuation

In addition to the diverse amounts of assessed valuation (ranging from $1.000 in Indiana to $20,000 in Connecticut) exemptable under different laws and bills, the forms of tax exemptions are also different Property tax exemptions may be differentiated as: conditional, uniform, and vanishing exemptions

First, a conditional property tax exemption may be defined as one under which the assessed value below the exemption level is fully exempt, but the entire amount of assessed value will be subject to tax if it is above the exemption level A proposal in Hawaii to grant, as reported in Section B, full exemption if the assessed value does not exceed $10,000, falls into this category A variant of such an arrangement is found in the laws in Indiana (exempting $1,000 of an assessed value of $5,000 or less), and in Massachusetts (exempting $4,000 of an assessed value of $14,000 or less) [9]

Secondly, a uniform property tax exemption may be defined as one under which a given amount of assessed value is exempted, regardless of the total amount of assessed valuation Belonging in this category are the law in Oregon (exempting the first $10,000 of the true cash value), the bills in Arkansas (exempting the first $5,000 and the first $10,000 of assessed values respectively), in Connecticut (exempting the first $20,000 of assessed value), in Delaware (exempting the first $5,000) and in Georgia (exempting the first $6,000) and in Missouri (exempting the first $3,000)

Thirdly, a vanishing property tax exemption may be defined as one under which the amount of exemptable assessed value declines as the assessed valuation advances over the amount of exemption, until the exemption disappears The only example from the survey reported in the previous section is the one proposal in Connecticut The bill, as described earlier, would grant full exemption on an assessed value below $3,000, but no exemption on an assessed value above $15,000 And for the assessed values between $3,000 and $15,000, the amounts of exempt assessed value are graduated at $200 intervals from $2,400 down to $200 as the assessed value increases from $3,000 to $15,000 at $1,000 intervals

Problems with Exemption Limitation. Briefly, conditional property tax exemptions present, as do personal exemptions in some U S municipal income taxes, a "notch" problem—the tax privilege will be abruptly removed when the assessed value is above a certain level This feature is undesirable because the differences in economic circumstances

[9] What exists in Indiana and Massachusetts may be described as a mixture of uniform and conditional arrangements.

of two persons as reflected by the small differences in assessed valuations above or below the specified level do not seem to require tax benefits for one as opposed to the other Moreover, it may be considered undesirable from the standpoint of assessment, for the assessor is burdened with an additional psychological factor His technical judgment of property value may succumb to the emotional involvement, resulting in assessing the property either substantially above or below, when the property value being assessed is near, the statutory amount

Uniform property tax exemptions, on the other hand, have the disadvantage of offering tax privileges to everyone, regardless of the amount of assessed value which may be taken to reflect partially the economic circumstances of homeowners This characteristic is similar to the personal exemptions in the federal and state income taxes. These exemptions are criticized for granting tax benefits to some persons who are not in need.

As in the case of personal exemptions in income taxes, vanishing property tax exemptions are to be preferred to either the conditional or the uniform variety The major advantage of vanishing exemptions lies in the fact that the tax relief can be related to the presumed economic positions of taxpayers.

The preceding comments on the income limitation and exemption limitation strongly suggest that most of the laws and proposals to date leave much to be desired on both counts The obvious remedy is that income should be defined comprehensively and both income and assessed value be used as indices of the economic position of the taxpayer. Ideally, the vanishing feature, as discussed above, should be incorporated in both eligibility requirements—allowable maximum income and exemptable assessed value.

Since exemption laws, by definition, would reduce the tax base, a logical question relates to the revenue effects of property tax exemptions for the aged The remainder of this paper is intended for such an inquiry.

D. Fiscal Significance of Property Taxes in State and Local Finances in California [10]

In order to appreciate the revenue effects of property tax relief measures for the aged, it is instructive to analyze first the fiscal importance of property taxes in the revenue structure of state and local governments What follows is to indicate (1) the importance of property taxes in the general revenue of the state and local governments combined *and* of the local governments alone, and (2) the importance of property taxes from the homesteads.

The importance of property taxes in state and local government finances in California can be seen in Table I. In 1960, the combined state and local property taxes ($2,114 million) constituted nearly 50 percent of all taxes ($4,409 million) and over 40 percent of all general revenue from own sources ($5,197 million). Revenue from real property $1,602 million) constituted more than 75 percent of property taxes and over 35 percent of all taxes.

[10] See Section Two for a more detailed discussion of this subject.

Table I also shows that property taxes provide little support to the state treasury and they are very strong supporters of local finances, as expected. Local property taxes ($1,989 million), represented in 1960 some 87 percent of all taxes ($2,285 million) of local governments in California. They represented more than 70 percent of all the general revenue from local sources ($2,835 million) in 1960 Real property taxes ($1,602 million) represented nearly 80 percent of the local property taxes and about 70 percent of all local taxes.

The preceding suggests the significant position which property taxes occupy in the state and local *and* in the local revenue structures. It also suggests the important contribution which real property taxes make to the property tax revenue Since this report is concerned with the taxes on homesteads of the aged, it is necessary to inquire as to how much residential properties (particularly those of the aged) account for the real property tax base.

The fiscal importance of nonfarm residential properties can be observed in Table II. In 1960, they accounted for almost 63 percent of the local real property taxes and over 50 percent of the total local property taxes in California Table II also demonstrates the importance of single-family houses They made up almost 88 percent of the nonfarm residential property tax base; nearly 55 percent of the local real property tax base; and over 40 percent of the total local property tax base.

Furthermore, as also shown in Table II, the owner-occupied single-unit nonfarm residential properties headed by the aged (hereafter referred to as "aged homesteads") contributed not insignificantly to the property tax revenue If the aged is conventionally defined as those 65 and over, the tax contribution of aged homesteads is estimated at about $121 million in 1960 This amount represented almost 14 percent of the taxes attributable to all the nonfarm residential single-family houses, and approximately 12 percent of the taxes from all nonfarm residential properties.

If the aged is generously defined as those 60 and over, they were estimated to have contributed approximately $180 million in 1960. This amount constituted over 20 percent of all the single-family nonfarm residential property taxes, and about 18 percent of the total taxes on nonfarm residential properties.

If, thirdly, the aged is defined rather restrictively to include only those 75 and over, the tax contribution in behalf of aged homesteads is estimated at approximately $35 million in 1960 This amount still accounted for almost 4 percent of the taxes on all the nonfarm residenial single-family houses and about 3 5 percent of all the taxes on nonfarm residential properties

The foregoing paragraphs serve to indicate that the aged, excepting when they are defined as 75 and over, are important contributors to the local property tax base, especially as it relates to nonfarm residential properties This being the case, it appears necessary to investigate how each of the aged groups (i e., 60–64, 65–74, and 75 and over) is affected by the property tax, both in terms of the absolute amount of property taxes on aged homesteads and in terms of the relationships between property tax payments and household incomes. (See Addendum B.) The following section is devoted for this purpose This aspect of prop-

erty tax contributions by the aged is particularly important because of the implications which it holds for the selection of property tax schemes for the relief of the aged.

E. *Property Tax Contributions of Aged Homesteads in California: Estimates for 1960 on the Basis of 1960 Data*

In order to analyze the property taxes on aged homesteads contributed by different age-of-head groups, Tables III, IV, and V are prepared.

Table III shows the estimated distribution of property taxes of the aged by household income (see Appendix B for definition) and by age-of-head groups The 60–64 group contributed some $59 million in property taxes in 1960. Only 6 percent of this amount came from households with incomes less than $1,000; about 5 percent each from households with incomes between $1,000 and $1,999 and between $2,000 and $2,999 Next, the 65–74 group contributed some $86 million in 1960. Nearly 10 percent of this amount came from households with incomes less than $1,000, about 14 percent from those with incomes between $1,000 and $1,999; and approximately 12 percent from households with incomes between $2,000 and $2,999 Thirdly, the 75 and over group was called upon to contribute some $35 million in 1960 About 18 percent of this amount came from households with less than $1,000, almost 22 percent from those with incomes between $1,000 and $1,999; and some 14 percent from those with incomes between $2,000 and $2,999.

In other words, while only less than 17 percent of the taxes paid by 60–64 group was contributed by those with incomes less than $3,000, the proportion increases to 36 percent for the 65–74 group, and to 54 percent for the 75 and over group. It may be said that, comparatively, the 75 and over group was worse off than the 65–74 group and the 65–74 group was in turn worse off than the 60–64 group in terms of the proportion of those with incomes below $3,000 in each group who contributed to the property tax payments of the group.

Table IV records the estimated number of aged homesteads by household income and by age-of-head groups Thus, this table enables a broad view of the household income status of these units While 21 percent of these houses headed by those 60–64 belonged to households with income less than $3,000 in 1960, the corresponding proportion for the 65–74 group was 45 percent, and that for the 75 and over group was almost 65 percent.

If $3,000 of household income may serve as a benchmark for delineating groups in terms of economic welfare, the above comparative figures seem to suggest that the 75 and over group fared less well than the 65–74 group and the 65–74 fared less well than the 60–64 group in terms of household income. It must be borne in mind, however, that the household income is measured by *current money* income which may not be an adequate measure of the economic wellbeing and hence the taxpaying ability of the household. (More on this later.) Even with this important qualification, the comparative figures quoted above for the three aged groups are still meaningful for suggesting the relative economic circumstances of these groups in terms of the same measure, household income.

Lastly, Table V presents some estimates for the average property tax per unit and for the average "property tax-household income" ratio. It is interesting to observe that the average tax per unit first declined as income increased from less than $1,000 to $1,000–$1,999 and then increased as income advanced beyond $2,000. On the other hand, the average tax-income ratio decreased as income increased throughout the income range. This somewhat inverse movement between the average tax and the average tax-income ratio holds true for all three age-of-head groups.

For the 60–64 group, the average tax moved from $274 down to $253 as income moved from less than $1,000 to $1,000–$1,999. The average tax then climbed up from $253 to $267, $277, and $367 as income moved upwards from $1,000–$1,999 to $2,000–$2,999, $3,000–$4,999, and $5,000 and over This general trend can be noted for the other two groups as well

In terms of average tax-income ratios, it is significant to point out that the ratio declined from, for the 60–64 group, some 36 percent down to 17 percent, 11 percent, 7 percent, and only 4 percent, as income advanced from less than $1,000 to $5,000 or over This general trend can also be found for the other age groups.

These average tax-income ratios seem to confirm a widely held belief that property taxes are regressive. However, cognizance must be taken of the fact that the measure against which the tax is compared is the current money income of the household By definition, the current money income does not include nonmoney income such as the imputed service value of the owner-occupied house, nor does it include the value of income "in kind," such as goods and services produced and consumed in the home Moreover, this measure of income does not allow for the value of income in the form of tax concessions to the aged Finally, this measure of income may be inadequate as a gauge for the taxpaying ability of a household, for it fails to include other indices of economic welfare, such as asset and wealth holdings and family budgetary responsibilities In short, while the average tax-income ratios as estimated above are revealing, care must be taken in any interpretation of these figures for purposes of policy formulation

From the standpoint of policy, care must also be exercised in the selection of tax measures for the relief of the aged, because alternative measures will produce diverse results in terms of revenue losses and with respect to the number of the aged who would benefit. The following section will discuss this important phase of the inquiry

F. Revenue Effects of Alternative Exemption Schemes in California: Estimates for 1960 on the Basis of 1960 Data

1. CONDITIONAL EXEMPTIONS

As defined in Section C, under the conditional exemption, the assessed value below the exemption level is fully exempt, but the entire amount of assessed value will be taxable if it is above the level of exemption.

Table VI indicates the estimated remaining homestead tax attributable to aged homesteads under alternative exemption levels and eligible age-of-head groups for the conditional variety of exemption.

First, the tax accountable for by the the age-of-head group 75 and over may be examined. Without exemption, this group contributed, as earlier indicated, some $35 million in property tax in 1960 If $1,000 of assessed value were exempt, 0 5 percent of this tax or some $172,000 would be reduced If, on the other hand, $6,250 of assessed value were exempt, almost 75 percent of this tax or some $26 million would be reduced.

Secondly, the tax assignable to the age-of-head group 65 and over may be studied. This group was responsible for some $121 million of property tax in 1960. If $1,000 in assessed valuation were exempt, 0.4 percent of this tax or some $435,000 would be removed. If, however, $6,250 in assessed valuation were exempt, more than 70 percent of this or some $87 million would be removed.

Thirdly, the tax contributed by the age-of-head group 60 and over may be analyzed. This group accounted for some $180 million in property tax in 1960 If $1,000 of assessed value were exempt, 0 3 percent of this tax or some $550,000 would be lost If, alternatively, $6,250 of assessed value were exempt, slightly more than 70 percent of this tax or some $126 million would be lost

2. UNIFORM EXEMPTIONS

Under the uniform exemption, as defined previously, a given amount of assessed value is exempt, regardless of the total amount of assessed value.

Table VII shows the estimated remaining homestead tax attributable to aged homesteads under alternative exemption levels and eligible age-of-head groups for the uniform type of exemption.

First, consider the age-of-head group 75 and over. The tax accountable for by this group, as noted above, was $35 million in 1960 If $1,000 of assessed value were exempt, this tax would be reduced by almost 7 percent or by $2.4 million If $6,250 of assessed value were exempt, this tax would be reduced by more than 90 percent or by nearly $32 million.

Next, consider the age-of-head group 65 and over The tax assignable to this group, also noted above, was $120 million in 1960. If $1,000 in assessed valuation were exempt, this tax would be reduced by more than 6 percent or by nearly $8 million. If $6,250 in assessed valuation were exempt, on the other hand, this tax would be reduced by almost 90 percent or by some $108 million.

Thirdly, consider the age-of-head group 60 and over The tax contributed by this group, as noted previously, was $180 million in 1960. If the exempt assessed value were $1,000, approximately 6 percent of this tax or some $11 million would be removed If, on the other hand, the exempt assessed value were $6,250, almost 90 percent of this or some $160 million would be removed

It is of significance to note that uniform exemptions would require greater revenue loss than do conditional exemptions, comparing the foregone revenues under these two exemption methods The reason is that the former offer benefits to those properties with assessed values above the exemption level as well as to those with assessed values up to the level of exemption It may be mentioned in passing that the uniform type of exemption tends to offer tax privileges to some homeowners who, with high assessed values, presumably do not require tax relief.

3. VANISHING EXEMPTIONS

The vanishing exemption is a tax scheme, also defined in Section C, under which the amount of exempt assessed value declines as the assessed value advances over the amount of exemption, until the exemption disappears.

Three variants of the vanishing exemption may be differentiated: type A, exemptable assessed value declines as the assessed value increases; type B, exemptable assessed value declines as the household income of the homeowner increases, and type C, exemptable assessed value declines as both the assessed value and the household income of the homeowner increase.

Table VIII exhibits the estimated remaining homestead tax attributable to aged homesteads under alternative exemption schemes and eligible age-of-head groups for the vanishing sort of exemption

First, the group 75 and over. This group was responsible for $35 million in property tax in 1960. Type A vanishing scheme would remove this tax by more than 40 percent or by $14 5 million Type B vanishing scheme would remove this tax by 45 percent or by almost $16 million. Type C vanishing scheme would only remove some 23 percent of this tax or $8 million

Secondly, the group 65 and over. This group contributed $120 million in property tax in 1960 If type A scheme were used, this tax would be reduced by about 38 percent or by some $46 million If type B scheme were used, this tax would be reduced by about 35 percent or almost $42 5 million If type C scheme were used, this tax would be reduced by only 17 percent or by $21 million.

Thirdly, the group 60 and over Some $180 million in property tax came from this group in 1960 Type A scheme would remove from taxation nearly 37 percent of this tax or $66 million. Type B scheme would remove from taxation almost 30 percent of this tax or $52 million Type C scheme, finally, would remove from taxation only approximately 14 percent or $25 million

Preceding discussions of different revenue effects under various exemption programs may fruitfully be followed by two considerations. The first is a summary of the losses in revenue under alternative schemes to permit comparisons in more convenient form The other consideration is an analysis of the number of housing units among the aged groups which would not benefit from the alternative schemes under consideration.

Table IX permits a comparison of revenue effects between conditional and uniform exemptions of an identical amount, e g , $1,000 It also enables selections of different combinations of exemption level and eligible age group with revenue effects in mind For instance, for a revenue loss of about $15 5 million in 1960, it was possible to adopt either a conditional exemption of $2,500 in assessed valuation to those 65 and over, or a type B vanishing exemption (vanishing according to household income) to those 75 and over

If the sustainable sacrifice of property tax revenue were approximately $20 5 million in 1960, there existed a choice between granting a conditional exemption of $2,500 in assesed valuation to those 60 and

over and granting a type C vanishing exemption to those 65 and over And there are other possible comparisons

It is of interest to observe the widely differing amounts of revenue loss which different tax schemes would produce. The scheme that would result in the least revenue loss is granting a conditional exemption of $1,000 of assessed value to those 75 and over, for an estimated amount of $172,000 in 1960 The scheme that would bring forth the most revenue loss is, on the other hand, adopting a uniform exemption of $6,250 of assessed value to those 60 and over for an estimated amount of $160 million in 1960.

It is also interesting to state again that uniform exemptions would reduce more revenue than conditional exemptions for every exemption level within each age group The least amount of revenue loss would be $172,000 in 1960 in the case of $1,000 conditional exemptions to those 75 and over. The greatest revenue loss would be $160 million in the case, as cited above, of $6,250 uniform exemptions to those 60 and over.

Also worthy of note is the fact that vanishing exemption schemes benefit all but the most favorably placed in terms of assessed valuation, or of household income, or of both. (Benefits may accrue to all if the vanishing scheme is such that those most favorably placed are not precluded from tax privileges) The most commendable feature of vanishing exemption schemes is that they offer more benefits to the less favorably situated and less to the more favorably situated, either in terms of assessed valuation, or income, or both. Mention must be made, however, of the fact that it is not altogether an effortless task to devise a scheme that "vanishes" practicably and reasonably But the difficulty in devising a practicable and reasonable vanishing scheme should in no case discourage the use of vanishing method for tax concessions, if the vanishing method is accepted in principle

Aside from the fact that diverse amounts of revenue loss would result from different exemption methods, it must be emphasized that the amounts of foregone taxes are also an important function of the age group eligible for the tax privilege, as amply evidenced in Table IX. Therefore, the selection of the cutoff age, like the choice of the exemption device, should be a matter requiring serious consideration

Not only are the revenue losses importantly affected by the employment of specific exemption method and the stipulation of eligible age group, the number of housing units which would or would not benefit from a certain tax measure is likewise determined Under the uniform type of exemption, all units would receive tax favors. Of course, the amount of tax benefit which each unit would receive will depend upon its assessed valuation For instance, if the exemption level were $2,500 in assessed valuation, units with assessed values of $2,500 or less would receive full exemption, but those with assessed values over $2,500 would receive partial exemption

On the other hand, under the conditional and vanishing varieties of exemption, the number of affected units is subject to considerable variation As shown in Table X, if conditional exemptions were used, the number of units without tax benefits would range between 9 percent and 95 percent of the total units in the age group, for exemptable assessed values ranging from $6,250 to $1,000 in assessed valuation

If, alternatively, vanishing exemptions were used, the number of units with no tax savings would vary from 9 percent to 44 percent of the total units in the age group, for the three different types of vanishing scheme.

G. *Summary*

The major findings of this study may be summarized as follows.

(1) The existence of property tax concessions to the aged is noticeable and the sentiment and movement toward tax relief measures for the aged is worthy of attention. Although there exists wide diversity in both the existing and the proposed laws, there are three principal forms in which tax favors are offered: tax exemption, tax credit, and tax deferment. Tax exemptions are in use in Indiana, Massachusetts, and Oregon; tax credits are offered in Maryland, New Jersey, and Wisconsin; and tax deferment as a supplement to the exemption law, is in force in Oregon for certain aged.

(2) Among the provisions of these relief measures, both in existence and under proposal, income limitation and exemption limitation bear special emphasis. Income limitation refers to the maximum amount of annual income which a taxpayer may have and still is eligible for the tax favor. Exemption limitation, on the other hand, relates to the maximum amount in assessed valuation of a homestead which is excused from taxation. Both provisions have as their purpose to accord tax privileges only to those who are presumed to require tax relief. This purpose is commendable in spirit But in terms of the ways in which these limitations are imposed, they leave much to be desired.

So far as the income limitation is concerned, three major problems exist One concerns the definition of income Another relates to the ascertainment of the defined income The third difficulty with existing arrangements is the so-called "notch" problem—the tax privilege will be abruptly removed when the income is above a certain level

With regard to the exemption limitation, there are three variants: conditional, uniform, and vanishing exemptions. Conditional exemptions present a "notch" problem; namely, the tax benefit will be withheld when the assessed value is above the specified amount They also may create a circumstance under which the assessor will be burdened with an additional psychological factor in assessing the homes of the aged.

Uniform exemptions are also looked upon with disfavor for the reason that they offer tax advantages to all taxpayers, with no regard for the assessed valuation of their houses, which may reflect in part their economic circumstances

Thirdly, vanishing exemptions have the merit of attempting to relate tax benefits to the economic status of the taxpayer, according to some chosen criteria It must be added, however, that there are a number of relevant criteria for the measurement of economic circumstances and that the task of selecting the most relevant of criteria and weighing the relative importance of each is highly difficult But the difficulties encountered in devising a rational and workable vanishing scheme should not form a barrier, as long as the vanishing method is accepted as a principle.

(3) While the state government in California does not rely on property taxes, property taxation looms large on the financial scene of local governments Of the local property tax, over 80 percent comes from real property Among the sources of the local real property tax, nonfarm residential housing units constitute almost two-thirds of its revenue Moreover, of the nonfarm residential property tax, nearly seven-eighths of it come from single-family houses. The fiscal importance of residential housing properties is thus readily seen.

Also can be appreciated is the fact that aged homesteads (defined as the nonfarm residential owner-occupied single-unit properties headed by those 60 and over, or 65 and over, or 75 and over) constitute a considerable part of the local real property tax base attributable to nonfarm residential properties and to single-family houses alone, except when "75 and over" is taken to denote the aged.

(4) In terms of the estimated property taxes on aged homesteads in 1960, the 60–64 group contributed some $59 million; the 65–74 group, some $86 million; and the 75 and over group, some $35 million. The total contribution amounted to approximately $180 million by the group 60 and over This amount represented about 18 percent of all the local property tax from nonfarm residential properties. Even when aged is defined to include only those 65 and over, taxes in behalf of aged homesteads were still some $121 million, which constituted about 12 percent of all the local property tax from nonfarm residential properties. Only when "75 and over" is taken as the aged do aged homesteads contribute relatively insignificantly to the local real property tax.

(5) From the standpoint of property taxes in relation to household income (defined in Appendix B), there existed considerable differences among the aged groups in terms of the proportion of property taxes which came from those with income less than $2,000 in 1960. Only 11 5 percent of the taxes contributed by the 60–64 group came from those with income below $2,000, but the proportion became 24 percent for the 65–74 group and nearly 40 percent for the 75 and over group.

This pattern holds true also for those with income less than $3,000. Whereas less than 17 percent of the taxes from the 60–64 group was contributed by those with income below $3,000, the share was more than 36 percent in the 65–74 group and 44 percent in the 75 and over group

(6) Also from the standpoint of property taxes in relation to household income, there existed some evidence of the regressiveness of property taxes *in terms of income* Generally speaking, the average of property tax-household income ratio declined from over 30 percent to about 15 percent, to about 10 percent, to about 7 percent, and finally to about 4 percent as income moved up from less than $1,000, to $1,000–1,999, to $2,000–2,999, to $3,000–4,999 and $5,000 or over, respectively. This pattern holds true for all the three age groups.

Care must be taken, however, in reaching policy conclusions on the basis of the above information The principal reservation to keep in mind is that the economic status of taxpayers (aged or otherwise) must be viewed in the context of many variables, of which income is only one, affecting the economic welfare of a household or an individual

Variables such as asset and wealth holdings, family responsibility, and budgetary requirements should logically be taken into account.

(7) Finally, alternative exemption programs have been suggested. And the effects of each of these measures on property tax revenue and on the number of the affected units have been estimated for the alternatively defined age groups. Revenue effects are presented for both the remaining tax base and the revenue losses under the various schemes. These figures will not be repeated here. One of the outstanding impressions from a perusal of the calculations relating to the revenue effects and the number of affected units is that alternative exemption measures and eligible age groups will bring forth, at times, vastly different results. The policy implication of this observation is that a large amount of attention must be given to the determination of both the exemptable assessed valuation and the allowable income, as well as the eligible age of the taxpayer.

Although these calculations relate specifically to the various possible exemption laws, it should be added, these figures may easily be used to shed some light on the likely effects of other forms of property tax relief, such as tax credit and tax deferment for the same aged population in California.

TABLE I

Fiscal Importance of Property Taxes in the General Revenue of State and Local Governments in California, by Levels of Governments: 1960

(In millions)

Sources of revenue	State and Local governments [a]	State government	Local governments [c]
All general revenue from own sources	$5,197	$2,362 [b]	$2,835
Charges and miscellaneous general revenue	788	237 [c]	550
All taxes	4,409	2,124 [d]	2,285
Other taxes	2,295	1,999 [d]	296
Property taxes	2,114	126 [e]	1,989
Intangibles *	4	---	4 [f]
Tangibles *	2,111	126 [e]	1,985
Real property *	1,602	---	1,602
Personal property *	509	126 [e]	383

SOURCES:

[a] *From Governmental Finances in 1960* (G-GF60 No 2), U S Bureau of the Census, p 25, excepting the items with the asterisk (*). The breakdowns on property taxes are taken *from Communication* to the author *by Ronald* B Welch, California State Board of Equalization, dated October 15, 1964

[b] From *Compendium of State Finances in 1960*, U S Bureau of the Census, p 12, by subtracting intergovernmental revenue ($685 million) from the total general revenue

[c] From *ibid*, p 12.

[d] From *ibid*, p 13

[e] This amount is made up of $124 million on motor vehicles and $2 million on private railroad cars From Welch, *op cit* According to the *Annual Report*, 1962–63, of the California State Board of Equalization, about 96 percent of the motor vehicle tax, which yielded about $147 million in fiscal 1963, was remitted to local governments, p 6 According to the same source the tax on private railroad cars, assessed by the board on rolling stock operated on the state's railroads but not owned by railroad companies, is the "state's one property tax "

[f] By subtracting state figures from the state and local totals for the respective items

* This amount represents the only remaining tax on intangible property in California It is imposed on the "full value of credits arising out of the sale of goods and services less debts of the like character owed to California residents" The rate is 10 cents per $100 of the full value of such credits *Annual Report*, 1962–63, *op cit*, p 7

NOTE: Details may not add to totals due to roundings

TABLE II

Fiscal Importance of Aged Homesteads in the Local Real Property Tax in California: 1960

(In millions)

I. Local Real Property Tax (100%)*	$1,602
A Commercial Property (15 02%)†	241
B. Industrial Property (6 92%)†	111
C. Acreage and Farms, Vacant Lots, etc. (15 54%)†	249
D. Nonfarm Residential (62 51%)†	1,001
Single-family Houses only (87 95% of D)†	880
a Aged Homesteads when aged is defined as 65 and over (12% of D)‡	121
b. Aged Homesteads when aged is defined as 60 and over (18% of D)‡	180
c Aged Homesteads when aged is defined as 70 and over (3 5% of D)‡	35

NOTES

* From Table I

† Estimated on the basis of the division of assessed valuation among the several types of property as reflected by the respective assessed values shown in U S Census of Governments, 1962, Vol II, *Taxable Property Values*, p 32

‡ a, b, and c refer to three alternative definitions of the aged The taxes attributable to each age-of-head group are estimated by the author, as reported in Table III See Appendix B for further information

TABLE III

Estimated Distribution of Local Property Taxes Derived from Aged Homesteads in California by Household Income and by Age-of-head Groups: 1960

(In thousands)

	Estimated distribution of taxes by age-of-head groups					
	60–64		65–74		75 and over	
Household income*	Taxes	Percent within group	Taxes	Percent within group	Taxes	Percent within group
Less than $1,000	$3,573	6 0	$8,464	9 9	$6,317	18 0
$1 000–1,999	3 209	5 4	12,048	14 1	7 624	21 7
2,000–2,999	3,198	5 4	10 506	12 3	4,985	14 2
3,000–4,999	8,254	13 9	15 650	18 3	5,108	14 6
5,000 or over	41 169	69 3	38,702	45 5	11 046	31 5
Total†	$59,403	100 0	$85,550	100 0	$35,080	100 0

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* See Addendum B for definition

† The total local property taxes contributed by these three groups are estimated at $180 million, which is the sum of the three totals for the groups See Addendum B for further explanations

TABLE IV

Estimated Distribution of Aged Homesteads in California by Household Income and by Age-of-head Groups: 1960

Household income*	Estimated distribution of aged homesteads					
	60–64		65–74		75 and over	
	Number	Percent within group	Number	Percent within group	Number	Percent within roup
Less than $1,000	13,059	7 3	32,938	11 8	28,165	20 7
$1,000–1,999	12,660	7 1	51,484	18 4	35,128	27 7
2,000–2,999	11,962	6 7	41,513	14 8	20,451	16 1
3,000–4,999	29,847	16 7	54,121	19 3	17,112	13 5
5,000 or over	111,204	62 2	100,171	35 7	27,851	22 0
Total†	178,762	100 0	280,247	100 0	126,605	100 0

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* See Addendum B for definitions

† The total number of aged homesteads is estimated at 585,614 units in 1960 if aged is defined as 60 and over, the total becomes 406,852, if aged is defined as 65 and over, and the total is further reduced to 126,605, if aged is defined as 75 and over See Appendum B for further explanations

TABLE V

Estimated Average Local Property Tax per Aged Homestead and Estimated Average Property Tax–Household Income Ratio in California, by Household Income and by Age-of-head Groups: 1960

Household income*	Age-of-head groups					
	60–64		65–74		75 and over	
	Average tax per unit†	Average tax-income ratio*†	Average tax per unit†	Average tax-income ratio*†	Average tax per unit†	Average tax-income ratio*†
Less than $1,000	$274	36 5%	$257	34 3%	$241	32 1%
$1,000–1,999	253	16 9	234	15 6	217	13 5
2,000–2,999	267	10 7	253	10 1	245	9 8
3,000–4,999	277	6 9	289	7 2	295	7 5
5,000 or over	367	4 1	388	4 3	397	4 4

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* The average tax per housing unit is obtained by dividing the estimated taxes for each age and income group (in Table III) by the number of units for the corresponding age and income group (in Table IV)

† The average tax-income ratio is derived from dividing the average tax per unit by the midpoint of household income intervals The midpoint of the "less than $1,000" is assumed to be $750, and the midpoint of the "$5,000 or over" is assumed to be $9,000 See Appendum for further explanations.

See Addendum B for definitions

TABLE VI

Estimated Remaining Aged Homestead Tax in California Under Alternative Exemption Levels and Eligible Age-of-head Groups, 1960: Conditional Exemptions

(In thousands)

Exemptable assessed value	Age-of-head groups					
	75 and over		65 and over		60 and over	
	Tax	Percent of tax I	Tax	Percent of tax II	Tax	Percent of tax III
None	(I)*$35,080	100 0	(II)*$120,631	100 0	(III)*$180,034	100 0
$1,000	34,908	99 5	120,196	99 6	179,483	99 7
2,500	29,356	83 7	105,039	87 1	159,534	88 6
5,000	12,659	36 1	47,628	39 5	74,893	41 6
6,250	8,928	25 5	33,728	28 0	53,499	29 7
All	0	0 0	0	0 0	0	0 0

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* See Addendum B

TABLE VII

Estimated Remaining Aged Homestead Tax in California Under Alternative Exemption Levels and Eligible Age-of-head Groups, 1960: Uniform Exemptions

(In thousands)

Exemtable assessed value	Age-of-head groups					
	75 and over		65 and over		60 and over	
	Tax	Percent of tax I	Tax	Percent of tax II	Tax	Percent of tax III
None	(I)*$35,080	100 0	(II)*$120,631	100 0	(III)*$180,034	100 0
$1,000	32,659	93 1	112,560	93 6	168,834	93 8
2,500	13,467	38 4	49,808	41 1	76,791	42 7
5,000	4,871	13 9	18,381	15 2	29,084	16 2
6,250	3,448	9 5	12,648	10 5	20,062	11 1
All	0	0 0	0	0 0	0	0 0

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* See Addendum B

TABLE VIII

Estimated Remaining Aged Homestead Tax in California Under Alternative Exemption Levels and Eligible Age-of-head Groups, 1960: Vanishing Exemptions

(In thousands)

Vanishing exemption schemes	Age-of-head groups					
	75 and over		65 and over		60 and over	
	Tax	Percent of tax I	Tax	Percent of tax II	Tax	Percent of tax III
No exemption	(I)†$35,080	100 0	(II)†$120,631	100 0	(III)†$180,034	100 0
Type A*	20,552	58 6	74,528	61 8	113,872	63 3
Type B*	19,276	55 0	78,166	64 8	127,026	71 1
Type C*	27,089	77 2	99,975	82 9	155,179	86 2

SOURCE Calculated from data specially tabulated for California by the U S Bureau of the Census

* Type A refers to the scheme under which the exemptable assessed value declines as the assessed value increases, type B, the exemptable assessed value declines as the household income of the homeowner increases, and type C, the exemptable assessed value declines as both the assessed value and the household income of the homeowner increase The estimated figures for the remaining tax are based on the scales shown in Appendum C

† See Addendum B

TABLE IX

Summary of Estimated "Revenue Losses" in California Under Alternative Exemption Programs and Eligible Age-of-head Groups: 1960

(In thousands)

Type of exemption	Exemption programs	"Revenue losses" (due to aged homestead tax exemptions)*		
		75 and over	65 and over	60 and over
Conditional	$1,000†	$172	$435	$551
	2,500†	5,727	15,592	20,500
	5,000†	22,421	73 005	105,141
	6,250†	26,152	86,903	126,535
Uniform	$1,000†	2,421	7,781	11,200
	2,500†	21,613	71,023	103,243
	5,000†	30,209	102,250	150,160
	6,250†	31,732	107,983	159,972
Vanishing	Type A‡	14,528	46,103	68,162
	Type B‡	15,804	42,465	52,108
	Type C‡	7,991	20,658	24,856

SOURCE Calculated from data specially tabulated for California by the U.S Bureau of the Census

* See Addendum B

† These amounts refer to the exemptable assessed values

‡ See footnote * in Table VIII

TABLE X

Estimated Number of Aged Homestead Units in California with No Tax Benefits Under Alternative Exemption Programs and Eligible Age-of-head Groups: 1960

I. Conditional Exemptions

Exemptable assessed value	Age-of-head groups: 75 and over — Units without benefits	75 and over — Percent of I (all units in group)	65 and over — Units without benefits	65 and over — Percent of II (all units in group)	60 and over — Units without benefits	60 and over — Percent of III (all units in group)
None	(I)*126,605	100 0	(II)*406,852	100 0	(III)*585,614	100 0
$1,000	117,624	92 9	384,080	94 4	556,900	93.1
2,500	83,055	65 6	289,839	71 2	432,559	73 9
5,000	20,361	16 1	76,459	18 8	119,760	20 5
6,250	11,671	9 2	44,089	10 8	69,934	11 9
All	0	0 0	0	0 0	0	0.0

II. Vanishing Exemptions

Vanishing schemes	Age-of-head groups: 75 and over — Units without benefits	75 and over — Percent of I (all units in group)	65 and over — Units without benefits	65 and over — Percent of II (all units in group)	60 and over — Units without benefits	60 and over — Percent of III (all units in group)
No exemption	(I)*126,605	100 0	(II)*406,852	100 0	(III)*585,614	100.0
Type A†	11,671	9 2	44,089	10 8	69,934	11 9
Type B†	27,851	22 0	128,022	31 5	230,226	40 9
Type C†	32,855	26 0	143,678	35 3	259,763	44 4

SOURCE: Calculated from data specially tabulated for California by the U S Bureau of the Census.

* These are also the total number of units in the respective age groups See Addendum B for further explanations

† See footnote * in Table VIII.

H. Addendum A:

PREFERENTIAL TREATMENT OF THE AGED IN INCOME AND PROPERTY TAXATION: A STATEMENT OF THE PROVISIONS IN THE UNITED STATES

Tax policies at all levels of governments in the United States have reflected a growing concern over the economic problems of the aged, a concern which has occupied the increasing attention of the public policy-maker and the academician alike, particularly since the end of World War II. Preferential provisions for the aged are found in both federal and state income taxation. Provisions benefiting the aged are also found in property taxation.

At the federal level, additional personal exemptions for the aged were first provided in the Revenue Act of 1948. Another provision, the

liberalized treatment of deductible medical expenses and expenses for medicine and drugs, was enacted in 1950 Still another provision, retirement income credit, was adopted in 1954 The trend to accord special treatment to aged taxpayers was continued in 1964, when the new Revenue Act added (1) additional minimum standard deduction and (2) certain capital gains exclusion, and liberalized (1) the treatment of deductible expenses for medicine and drugs and (2) the computation of retirement income credit. Social security and railroad retirement benefits have been exempted since the beginning of these programs.[1]

In state income taxes, special provisions for the aged are common. Twenty-five of the 35 states (including District of Columbia) imposing state income taxes have old age exemption or credit provisions Nineteen of the 35 states allow liberalized medical deductions for the aged. Moreover, social security benefits are not taxable in nearly all of the states In addition, Hawaii taxes income from Hawaii sources only for those individuals establishing residence in Hawaii after the age of 65 and California provides a retirement income credit.[2]

Provisions favoring the aged exist in property taxes as well Property tax concessions are granted in six states. The principal forms of these measures are: Tax exemption, tax deferment, and tax credit. Indiana, Massachusetts, and Oregon use tax exemptions. Oregon alone offers tax deferment, in addition to tax exemptions, to certain taxpayers New Jersey grants tax credits. Maryland authorizes its county governments to grant tax credits. And Wisconsin provides property tax relief through a system of income tax credits and refunds.

Although the existence of these provisions is noticeable, and the interest in the aged is widespread, an inventory of existing tax provisions under both income and property taxation is not readily available in convenient form. Designed to fill such a gap, this statement presents the up-to-date information in the following six tables.

[1] It may be of interest to compare the treatment of certain income tax items concerning the aged in the United States with that in Canada The only tax favor in the federal and (ten) provincial income taxes on individuals in Canada is the so-called "age exemption" for persons 65 and over in the amount of $500 (Basic personal exemption is $1,000) There is no liberalized medical expenses deduction for the aged Medical (including medicine and drug) expenses are deductible only when the total of the allowable expenses exceeds 3 percent of "net income" and only the amount in excess of 3 percent of "net income" may be deducted While there is no social security system in Canada comparable to that in the United States, all taxpayers in Canada pay an old age security tax, which contribution is not deductible from income, although the subsequent pension (paid at age 70) is taxable income *Letter* to the author by H F Herbert, Director, Planning and Development Branch, Taxation Division, Department of National Revenue, the Government of Canada, June 18, 1964

[2] In California, "the maximum [retirement income] credit is $15 24 per taxpayer or $30 48 in the case of a married couple Under a 1964 amendment the credit was increased for certain married couples from $15 24 to $22 86 The increase applies to a married couple filing a joint return, if both are over 65 where one spouse fails to meet the earned income test The increase is based on allowing one-half ($762) of the existing $1,524 maximum to the spouse not meeting the earned income test" *Letter* to the author, by James W Hamilton, Senior Counsel, Franchise Tax Board, the State of California, June 16, 1964

TABLE XI

Tax Provisions Specifically Affecting the Aged Under the Federal Individual Income Tax: 1964

Category	*Provisions*
1. Additional minimum standard deduction	$100 per aged (65 or over)
2 Additional personal exemption	$600 per aged.
3 Deduction for medicine and drug expenses	Fully deductible.
4 Deduction for medical expenses	No floor, with ceiling. $5,000 (single), $10,000 (couple), $20,000 (with 2 or more dependents), $15,000 (single and disabled), and $30,000 (couple and disabled).
5 Social security or railroad retirement benefits	Excluded from gross income.
6 Retirement income credit	[a]
7 Capital gains from personal residence	Exclusion from taxable income any gain attributable to $20,000 of sales price [b]

SOURCES Compiled from *President's 1963 Tax Message*, and *The 1964 Revenue Act and the Elderly Taxpayer* (TP-3), U S Treasury Department, March 1964.

NOTES

Items 1 and 7 are new provisions under the Revenue Act of 1964 Item 3 is affected by the new act since it removes the one-percent floor requirement in the prior law Item 6 is also affected by the new act, as explained in (a)

[a] Persons over 65 are allowed a tax credit on retirement for investment or pension income which they receive. However, the income taken into account for this credit must be reduced for tax-exempt social security or railroad retirement income and, for those under age 72, for income derived from work above a specified income level The income eligible for the credit is to be multiplied by the tax rate on the first $2,000 of taxable income Under previous law, this rate was 20 percent

The new act, however, splits the single person's first bracket of $2,000 into four brackets of $500 each and applied four tax rates ranging from 16 to 18 percent in 1964 and from 14 to 17 percent in 1965 Therefore, to keep the rate in computing the credit at the rate *applicable to the first $2,000*, the new law provides that the rate in computing the credit is to be 17 percent in 1964 and 15 percent in 1965 This is approximately the average of the four rates applicable to the first $2,000 of income

Previously, an aged person was allowed to take a tax credit on retirement income up to a maximum of $1,524 provided he had ample work experience (at least 10 years) His spouse, however, who did not have such work experience, was not allowed a similar credit even though she may have had some retirement income

The new act allows the couple to elect to combine their retirement incomes and it increases the maximum to $2,286, on which the couple may compute their retirement income credit

[b] Assume a capital gain of $9,000 from selling a residence, which cost $21,000, for $30,000 Since the sales price is one third larger than the allowable $20,000, only two-thirds of the gain (i e, $6,000) can be excluded from taxable income Then one half ($1,500) of the remaining gain ($3,000) is subject to tax

This tax privilege is available only once in a lifetime, and it requires ownership of residence of at least five years

TABLE XII

Old Age Exemption or Credit Provisions in State Personal Income Taxes: 1964

State [a]	Provision	
	Exemption [b]	Credit [b]
1. Alaska	$600	—
2. Arizona	1,000	—
3. Colorado	750	—
4. Delaware	600	—
5. Georgia	600	—
6. Hawaii	600	—
7. Idaho	600	—
8. Indiana	500	—
9. Iowa	—	15
10. Kansas	600	—
11. Kentucky	—	20
12. Maryland	800	—
13. Minnesota	—	10 [c]
14. Montana	600	—
15. New Jersey	600	—
16. New Mexico	600	—
17. New York	600	—
18. North Dakota	600	—
19. Oregon	—	12
20. South Carolina	800	—
21. Vermont	500	—
22. Virginia	600	—
23. West Virginia	600	—
24. Wisconsin	—	5
25. District of Columbia	500	—

SOURCES: Compiled from *State Tax Guide*, Commerce Clearing House, and verified by tax agencies in the respective states

[a] This list excludes New Hampshire and Tennessee which impose an income tax on interests and dividends alone Of the 35 states (including District of Columbia), 25 states are currently granting tax exemptions or tax credits for the aged (65 or over) Those 10 states without such tax considerations are Alabama, Arkansas, California, Louisiana, Massachusetts, Mississippi, Missouri, North Carolina, Oklahoma, and Utah

[b] These exemptions or credits are granted the aged (65 or over) in addition to the exemptions or credits allowable for all taxpayers

[c] This amount is for an unmarried aged person For a married individual living with spouse, the credit is $15 for each spouse 65 or over

TABLE XIII

Treatment of Medical Expenses [1] of the Aged in State Income Taxes: 1964

A. Allowing *liberalized* medical deductions for the aged (19 states)

Alabama *	Maryland *
Alaska *	Massachusetts *
Arizona	Montana *
California *	New Jersey *
Delaware	New Mexico *
Georgia	New York *
Hawaii *	Vermont *
Idaho *	Virginia
Iowa *	West Virginia *
Kentucky *	

B. With *no liberalized* medical deductions for the aged (13 states)

Arkansas	Missouri
Colorado (full deductions for all taxpayers) [2]	North Dakota (full deductions for all taxpayers)
District of Columbia	North Carolina
Kansas (amount over $50 deductable for all taxpayers)	Oklahoma
Minnesota (full deductions for all taxpayers)	Oregon
	South Carolina
	Utah
	Wisconsin

C. With *no deductions* for *any* taxpayer (3 states)

Indiana
Louisiana
Mississippi

SOURCES: *State Tax Reporter* for the respective states, Commerce Clearing House, and verified by tax agencies in the respective states

[1] Medicine and drug expenses are included in medical expenses in full except in those states marked by *, which deduct 1 percent of adjusted gross income from drug expenses before including them in medical expenses. This provision is the same as in the federal individual income tax prior to the Revenue Act of 1964. Some of the states will presumably treat this item as does the new act. It is known that New York follows automatically the Internal Revenue Act and California has removed the 1 percent floor by law.

[2] For taxable years after December 31, 1964, Colorado will follow the federal income tax treatment of medical expenses deduction.

TABLE XIV

State Income Taxes with Liberalized Medical Deductions for the Aged: 1964

State (19)	*Provisions in Summary*
1. Alabama	Same as federal income tax treatment *
2. Alaska	Same as federal income tax treatment.*
3. Arizona	Maximum deductions are $2,500 for individuals and $5,000 for married couples. No maximums for the expenses of the taxpayer and spouse if either is 65 or over.
4. California	Medical deductions in excess of 3 percent of adjusted gross income are allowable. Expenses for taxpayer and spouse if either is 65 or over, and expenses for dependent parents 65 or over, are not subject to 3 percent rule. Maximums of $1,250 for individuals and $2,500 for couples are applicable to all taxpayers except that it is $15,000 if either, $30,000 if both, taxpayer or spouse is at least 65 and disabled.

TABLE XIV—Continued

State Income Taxes with Liberalized Medical Deductions for the Aged: 1964—Continued

State (19)	*Provisions in Summary*
5 Delaware	Medical expenses which exceed 5 percent of gross income are deductible. If taxpayer or spouse is 65 or over, their expenses are not subject to the 5 percent rule
6 Georgia	Expenses for the medical care of (a) dependents who are 65 or over and parents of taxpayer or spouse, and (b) taxpayer and spouse either of whom is 65 or over, are not subject to the rule which allows deductions only for that in excess of 3 percent of adjusted gross income. If either taxpayer or spouse is 65 or over and disabled, it is possible to qualify for maximum limitations greater than the usual $2,500 per person up to $5,000
7 Hawaii	Follows I R C except (a) provision for dependent parents 65 or over does not apply, and (b) maximum limitations are the same for all ages except it is $15,000 if either, $30,000 if both, taxpayer or spouse is 65 or over and disabled
8. Idaho	Same as federal income tax treatment.*
9 Iowa	Same as federal income tax treatment.*
10 Kentucky	Generally follows federal provisions except that *3 percent rule still applies to "dependents" 65 or over*
11 Maryland	Expenses for medical care of taxpayer and spouse, if either is 65 or over, are not subject to the rule which limits deductions to that in excess of 3 percent of gross income. Maximums of $1,250 for individuals and $2,500, couples, are the same for all ages
12 Massachusetts	Same as federal income tax treatment *
13 Montana	Same as federal income tax treatment *
14 New Jersey	Same as federal income tax treatment *
15 New Mexico	Same as federal income tax treatment *
16 New York	Same as federal income tax treatment *
17 Vermont	Same as federal income tax treatment *
18. Virginia	Expenses for medical care of taxpayer and spouse, if either is 65 or over, are not subject to the rule which limits deductions to that in excess of 5 percent of adjusted gross income Maximums for all taxpayers· $1,250 per person up to $5,000 except it is $15,000 if either, $30,000 if both, taxpayer or spouse is 65 or over and disabled [$15,000 limit on each]
19 West Virginia	Same as federal income tax treatment.*

SOURCES *State Tax Reporter* for the respective states, Commerce Clearing House, and verified by tax agencies in the respective states

* Some states follow automatically the Internal Revenue Code and others require new legislation to conform to the federal law, in case of future changes (Cf footnote 1 in Table XIII)

TABLE XV

Treatment of Social Security and Railroad Retirement Benefits [1] and Employee Contributions [2] in State Income Taxes: 1964

A. Social security benefits nontaxable and employee contributions for social security and railroad retirement nondeductible (29 states)

Alaska	Indiana	North Dakota
Arizona	Iowa	Oklahoma
Arkansas	Kentucky	Oregon
California	Maryland	South Carolina
Colorado	Minnesota	Utah
Delaware	Montana	Vermont
District of Columbia	New Jersey	Virginia
Georgia	New Mexico	West Virginia
Hawaii	New York	Wisconsin
Idaho	North Carolina	

B. Social security benefits nontaxable and employee contributions for social security and railroad retirement deductible (5 states)

Alabama	Louisiana	Missouri
Kansas	Massachusetts	

C. Social security benefits taxable and employee contributions for social security and railroad retirement nondeductible (1 state)

Mississippi [3]

SOURCES: *State Tax Reporter* for the respective states, Commerce Clearing House, and verified by tax agencies in the respective states

[1] Title 45, Section 228L of the United States Code Annotated disallows the taxation of railroad retirement benefits by any state, territory, or District of Columbia
[2] Employer contributions are deductible in all cases
[3] Social security benefits in excess of the contributions to social security constitute a part of the gross income for Mississippi state income tax purposes

TABLE XVI

Property Tax Concessions to the Aged: 1964

	State	*Form of concessions*	*Provisions in summary*
1	Indiana	Tax exemption	(a) Exempts $1,000 in assessed valuation to a homestead assessed at $5,000 or less, (b) Owned and occupied by a resident 65 and over (ownership at least one year), (c) If his total annual gross income from every source (plus that of his spouse) does not exceed $2,250
2	Maryland	Tax credit	[1]
3	Massachusetts	Tax exemption	(a) Exempts $4,000 in assessed valuation to a homestead assessed a $14,000 or less, (b) Owned and occupied (for at least five years) by a person 70 and over (having lived in the state for the preceding 10 years), (c) If his net income from all sources, both taxable and nontaxable, does not exceed $5,000 for a married couple, and $4,000 for a single person

TABLE XVI—Continued

Property Tax Concessions to the Aged: 1964

State	*Form of concessions*	*Provisions in summary*
4 New Jersey	Tax credit	(a) Allows a tax credit of up to $80 against the property tax on, (b) Self-owned dwelling of a citizen and resident (for at least three years) 65 and over, whose (c) Annual income does not exceed $5,000, defined to include money from whatever source, including but not limited to realized capital gains and the entire amount of pension, annuity, retirement, and social security benefits
5 Oregon	1 Tax exemption and 2 Tax deferment	(1a) Exempts first $10,000 of the true cash value (interpreted as a fair market value) of (1b) The principal residence of persons 65 and over, with (1c) Gross receipts less than $2,500, defined to include but not limited to pensions, disability compensation, retirement pay, public welfare and social security payments, and receipts from sales or services rendered (1d) The true cash value exempt from taxation is allowed according to age of the taxpayer, or the oldest of the taxpayers sharing the residence 10% for 65 to 68 30% for 69 to 71 50% for 72 to 74 70% for 75 to 77 90% for 78 to 79 100% for 80 and over. (2a) Allows tax deferment to those who are unable to obtain a complete exemption or those whose income is over $2,500 (2b) To claim tax deferment, the homestead must not be income producing, nor have any delinquent property taxes on the property (2c) The deferred taxes become a lien against the property until the death of the owner, or the sale of the home, or a status change of the property (i.e., when it is no longer a homestead or becomes income producing) (2d) The deferred taxes are charged with an interest rate of 6 percent per annum
6 Wisconsin	Tax credit	(a) Grants property tax relief in the form of income tax credits and refunds to (b) persons 65 and over, (c) either homeowners or renters (d) For the homeowner with household income of $1,000 or less, the relief amounts to 75 percent of the property tax (up to $300) in excess of 5 percent of the household income. The relief is 50 percent of the property tax (up to $300) in excess of 5 percent of the household income, if the household income is over $1,000.

TABLE XVI—Continued

Property Tax Concessions to the Aged: 1964

State	Form of concessions	Provisions in summary
		Household income is defined as income of all the persons who are related to and live with the aged taxpayer.
		(e) Income means adjusted gross income, plus alimony, pensions (less the return on investment), social security payments, and nontaxable interest, except gifts and income in kind up to $300
		(f) An aged renter also benefits from the above provisions, except that his property tax liability is assumed to be 25 percent of his gross rent (i.e., the payment solely for the right of occupancy)
		(g) In cases where the amount of property tax relief exceeds the income tax otherwise payable, refunds are issued to the aged owner or renter

SOURCES. Compiled from *State Tax Reporter* for the respective states and verified by legislative reference agencies in the respective states

[1] Maryland passed in 1963 a law giving its county governments the authority to grant a tax credit or a limited property tax rate based on age or income (The Acts of 1964 deleted all references to limited rates.) The law repealed all previous tax exemption provisions of county governments. There are 24 major political subdivisions in Maryland comprising Baltimore City and 23 counties. Baltimore and 15 counties have granted tax credits under the provisions of the Acts of 1963. The amounts of credit and the eligibility requirements in these political subdivisions are not known at present but are expected to be available in the near future, according to William H. Riley, Chief Supervisor of Assessments. *Letter* to the author, June 17, 1964.

According to the *State Tax Reporter* for Maryland, Commerce Clearing House, the following jurisdictions had exemption provisions as of July 1, 1963: Allegany, Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, Prince Georges, Saint Marys, Somerset, Washington, Wicomico, and Worcester.

I. Addendum B: METHODOLOGICAL NOTES

The analyses in Sections E and F are based on the specially tabulated data for California by the U.S. Bureau of the Census. The special tabulations are a part of the 1960 Census of Housing, but its volume VII, *Housing of Senior Citizens* does not contain the information necessary for a study such as this.

Specifically, Sections E and F rely on the tabulations of the number of *units* of nonfarm residential single-unit properties owner-occupied by those 60–64, 65–74 and 75 and over, which are respectively cross-classified by house value [1] and household income.[2]

[1] House value is the respondent's estimate of how much the property would sell for on the market in April 1960. A property generally consists of the house and the land on which it stands. The estimated value of the entire property including the land was reported, even if the occupant owned the house but not the land, or the property was owned jointly with another owner. According to Census Bureau officials, the respondent's estimate of his house value is generally regarded as fair. One indication of the fairness in the self-estimate is that the Bureau has not received complaints from users of these estimates. Another piece of evidence supporting the belief that these estimates are fair comes from the probing which the Census Bureau conducted for internal use with reference to the 1950 Census of Housing. It was found that the "errors" in the estimated house values ranged from $1,000 (for lower value houses) to $2,000 (for upper value houses).

[2] Household income refers to income of the primary family or primary individual occupying the household unit. (A primary family refers to the head of a household and all persons in the household related to him by blood, marriage or adoption. A primary individual, on the other hand, refers to the head who lives alone or with nonrelatives only.) Specifically, household income consists of the sum of the income of the head of the primary family and all other members of the family 14 years old and over, or the income of the primary individual, during the calendar year 1959. The inclusion and exclusion of specific sources of

For our purposes, market values of these units as tabulated have been converted into assessed values by dividing the former by a factor of four, because the average assessed valuation has been estimated at about 25 percent of the market value.[4] Property taxes on these units, on the other hand, have been derived by multiplying the assessed value of the unit by a factor of 0 0765, on the basis of the estimated average tangible property tax rate for 1961–2.[4]

Since the basic tabulation shows only the number of units belonging to each value-income category, and since both value and income are given in intervals, it was necessary, in obtaining the market values of these units, to multiply the number of units belonging to a specific value interval by the midpoint of the interval. For the "less than $5,000" interval, $4,000 was assumed to be the average and for the "$25,000 or more" interval, $40,000 was the assumed midpoint. Both figures were chosen in consultation with the Census Bureau.

With reference to the basic tabulation of the number of units, a word of explanation is in order. According to Census Bureau officials, the figures on housing units headed by the aged groups (i e, 178,762 units by those 60–64, 280,247 by those 65–74, and 126,605 by those 75 and over) were underestimated by 3 percent However, the underestimation, they emphasized, was unbiased; namely, underestimation occurred across the board.

In light of the above information, the more accurate estimates of the number of units belonging to the above groups should be 184,125 for the group 60–64, 288,654 for the group 65–74 and 130,403 for the group 75 and over (cf Table IV) Next, the number of units belonging to the group 60 and over should be 603,182 instead of 585,614; to the group 65 and over, 419,058 instead of 406,852; and to the group 75 and over, 130,403 instead of 126,605. (cf. Table IV's footnote)

By the same token, the more accurate estimates of tax contributions by the 60–64 group should be $61,185,000 rather than $59,403,000; by the 65–74 group, $88,117,000 rather than $85,550,000; and by the 75 and over group, $36,132,000 rather than $35,080.000. (cf. Table III)

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money receipts in the definition of income can best be appreciated from the following

Total income—the sum of money received, less losses, from the first three sources below (before deductions for personal income taxes, social security, bond purchases, union dues, etc), excluding the sources of income not counted

Wage or salary income—total money earnings for work performed as an employee, includes wages, salary, pay from armed forces, commissions, tips, piece-rate payments, and cash bonuses earned

Self-employment income—net money income (gross receipts minus operating expenses) from a business, farm, or profession

Income other than earnings—money income from sources other than the above two, such as net income (or loss) from rents or receipts from roomers or boarders, royalties, interest, dividends, and periodic income from estates and trust funds social security benefits, pensions, veterans' payments, military allotments for dependents, unemployment insurance, and public assistance or other governmental payments, and periodic contributions for support from persons who are not members of the household, alimony, and periodic receipts from insurance policies or annuities

Excluded sources of income—money from sale of property, unless the recipient was engaged in the business of selling such property the value of income "in kind" (e g, free living quarters or food produced and consumed in the home) withdrawals of bank deposits money borrowed, tax refunds gifts and lump sum inheritances or insurance benefits

The above is summarized from *Special Text, Housing of Senior Citizens* (1960 Census of Housing), p 8

[3] Statement by Dr Ronald Welch, in *California's Tax Structure, 1964—A Major Tax Study Part I* Assembly Interim Committee on Revenue and Taxation, California Legislature, Volume 4, No 8, January 1964 p 113

[4] *Annual Report*, 1962–63, California State Board of Equalization, p 8

Next, the tax contributions estimated for the 60 and over group should be $185,435,000 in place of $180,034,000, for the 65 and over group, $124,250,000 in place of $120,631,000; and for the 75 and over group, $36 132,000 in place of $35,080,000. (cf. Table II, VI, VII, and VIII)

Similar adjustment would be necessary also for the estimates of revenue losses (cf Table IX) and of the units without benefits under different exemption schemes (cf Table X).

But Table V on the average tax per unit and the average property tax-household income ratio would be unaffected by the underestimation because both the numerator and the denominator are underestimated by 3 percent Simultaneous upward adjustment by the same percentage will result in the same quotients

For this study, however, the *unadjusted* or the originally tabulated figures are used for the following reasons (1) Although the Census Bureau believes that there were no important biases in the underestimation, it remains possible that some biases still exist If this suspicion holds, then upward adjustment of all figures by 3 percent would nevertheless bring forth inaccurate estimates. (2) The correction of 3 percent across the board will not alter the analyses that are based on relative terms, such as tax contributions by income groups, the average tax per unit, and the average tax-income ratio. (3) Since the estimates of the possible revenue effects under alternative exemption laws are intended to be no more than an educated guess, a difference of 3 percent, as long as it is borne in mind, does not appear to be detrimental And (4) to increase all figures by a certain percentage is a time-consuming task. But given time, it will be a simple matter and can be accomplished when the need for such a conversion is felt

Finally, in connection with (3) above, an explanation is also in order regarding the estimates which are done for 1960. The principal reason for presenting estimates for 1960 is twofold. First, to project tax contributions, average tax per unit, average tax-income ratio, revenue losses and the like into the future (e g., for 1965 or 1970), on the basis of the 1960 census data, will require assumptions relating to the number of units in each value-income category, the average assessment ratio, and the average property tax rate It will require some time to develop reasonable assumptions Secondly, the presentation of estimates for 1960 will permit users of this study and the writer himself to attempt at projections at a later date.

J. *Addendum C:*

NOTES ON THE SCALES FOR THE VANISHING EXEMPTION SCHEMES

The calculations presented in Section F with respect to the three types of vanishing schemes are based on the following table Specifically, for the type A scheme, which vanishes according to assessed valuation alone, the percentages used are 100, 90, 80, 65, 55, 45, 35, 25, and zero, corresponding to the assessed value intervals ranging from "less than $1,250" to "$6,250 or more " For the type B scheme, secondly, which vanishes according to household income without regard for the assessed value, the percentages used are 100, 75, 50, 25, and zero, corresponding to the household income intervals ranging from "less than $1,000" to "$5,000 or over." Thirdly, all the percentages in the table are used for each value-income category only in the case of type

C scheme, which vanishes according to both assessed value and household income. The percentages other than those in the first column (vertical percentages) and the first row (horizontal percentages), which are chosen arbitrarily, are derived from multiplying the vertical percentage by the corresponding horizontal percentage, for a particular combination of value and income. Thus, the percentage of 67 50 for the category falling into the value range of $1,250–$1,850 and the income range of $1,000–$1,999 is the product of multiplying 90 percent by 75 percent. The percentage of 6.25, as another example, for the category belonging to the value range of $5,000–$6,250 and the income range of $3,000–$4,999 is the product of 25 percent times 25 percent.

TABLE XVII

Percent of Exemptable Assessed Value According to Levels of Assessed Valuation and Household Income

	Household income				
Assessed value	*Less than $1,000*	*$1,000–$1,999*	*$2,000–$2,999*	*$3,000–$4,999*	*$5,000 or over*
Less than $1,250	100 00%	75 00%	50 00%	25 00%	zero
$1,250–$1,850	90 00	67 50	45 00	22 50	zero
$1,850–$2,500	80 00	60 00	40 00	20 00	zero
$2,500–$3,100	65 00	48 75	32 50	16 25	zero
$3,100–$3,750	55 00	41 25	27 50	13 75	zero
$3,750–$4,350	45 00	33 75	22 50	11 25	zero
$4,350–$5,000	35 00	26 25	17 50	8 75	zero
$5,000–$6,250	25.00	18 75	12 50	6 25	zero
$6,250 or more	zero	zero	zero	zero	zero

The scale represents one of the numerous possible ways of tailoring tax benefits according to the economic position of the taxpayer. While there are other indices of economic status of the taxpayer such as family size and budgetary requirements, only assessed value and household income are recognized here.

The intervals for both the assessed value and the household income indicated above are based on the cross-tabulation intervals of the Census Bureau. It is possible to combine adjacent intervals, however. For example, in place of assessed values between $1,250 and $1,850 and between $1,850 and $2,500, we can have an interval between $1,250 and $2,500. Similar grouping can be achieved on household income. Then, percent of exemptable assessed value can be applied to them. Of course, if the number of intervals is reduced, the differences in the exemptable percentages between adjacent intervals will be larger than the ones that are shown in the above table In this case, "notch" problem will become more significant

This statement represents a part of the factual findings of the author's research project on the taxation of the aged, which was supported by a Brookings research professorship, 1963–64, from the Brookings Institution, while on leave from Seattle Pacific College No comments on the advisability and adequacy of the special provisions for the aged are here attempted Together with other information, this statement forms a basis for an analytical volume on the preferential tax treatment of the aged

The information in Tables II through VI was first gathered from publications of the Commerce Clearing House *(State Tax Guide* and *State Tax Reporter)* and then verified by the tax agencies (in the case of income tax provisions) and the legislative reference agencies (in the case of property tax provisions) in the states concerned The verified information is presented here The author is grateful to the following individuals for their assistance For income tax provisions: E A Erwin (Alabama), M C Kennedy (Alaska), Robert L Merrill (Arizona), Roby Bearden (Arkansas), James W Hamilton (California), Stanley B Schwartz (Colorado), Charles A Glennon (Delaware), Fred L Cox (Georgia), John A. Bell (Hawaii), Floyd West (Idaho), R. Stanley Beaman

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PART IV

PROPERTY TAXATION AND LAND USE

DAVID R. DOERR and RAYMOND R SULLIVAN

A. Introduction

In any discussion of the relationship of the property tax to land use, one must keep in mind that there are a great many social, economic, and psychological factors which influence land use patterns. Many treatises on planning and urban ecology have been written discussing these factors.

Among the factors which influence land use patterns are public improvements bought with tax money and the tax policies instituted by various levels of government Particularly germane are the income, inheritance, and property taxes. Relatively little is known of the interaction of these various taxes and public spending patterns as they affect land usage and urban development.

In Dr Corrine Gilb's report on Income Tax Conformity[1] published by this committee in September, 1964, some attention was given to the provision of the state and federal income tax laws which bear on land use—particularly depreciation and capital gains provisions. Dr. Gilb also noted the interrelated impact of various taxes and suggested a major study to fully develop the effect of governmental tax and expenditure policies in shaping the environment.

Considering the interrelationships of various types of taxes on land use and the need for a comprehensive study in that area, this section will review only briefly the general impact of the property tax on land use More attention is given to the problem in which the property tax plays a central role—the shifting of agricultural land into urban uses A summary of the arguments for and against a proposal to tax only land, which was before the interim committee for study, is also included.

B. Impact of Property Tax on Land Use

For the most part, the property tax is not the major factor affecting land use patterns within an area These patterns will develop as a result of a great many economic and social forces, aided and abetted by governmental decisions in the area of public expenditures, planning and zoning.

Tax rates and assessment practices may determine the location of commercial and industrial enterprises in marginal cases. In some cases, the property tax may act as a restraining influence on a decision to add improvements to property or to repair and improve existing buildings A homeowner contemplating the addition of a room to his improvement may feel that this addition will cause a reassessment of his entire property. At our San Francisco hearing, E. Robert Scrofani said:

> ". . . we discovered that very often when homeowners wanted to make repairs that the feeling was a great deal that the best way to have your home reassessed was to take out a building permit, no matter how small. And we feel that neighborhoods of any com-

[1] California Legislature, Assembly Interim Committee on Revenue and Taxation, *Conformity of State Personal Income Tax Laws to Federal Personal Income Tax Laws*, Vol. 4, No 10, California State Printing Office, 1964

munity constitute a very large and important asset, and that capital maintenance and rehabilitation of the buildings in the neighborhood are essential, of course, to the economic health of the community, and when they decline, not only is it a serious loss to the community, but then we have to call in the experts like Mr. Herman to take care of them."[2]

Businessmen face the same dilemma. To put extra money into developing attractive buildings will result in higher property taxes. The businessmen must decide whether the goodwill created by an attractive building is worth the increased tax cost.

Land is assessed in proportion to its value. Value may reflect the contemplation of a use for the site other than its present use. Under these conditions, the property tax will accelerate the changing land use—from lower to higher use—because the changed assessment which reflects the higher use may result in a much higher tax. Where a house is located on land assessed as potential commercial use, the owner must decide whether to pay the higher tax or move to another house where the tax reflects the lower value. A farmer will face the same decision when his farm is assessed in proportion to a value that reflects its residential or commercial potential.

Perhaps the most significant impact of the property tax on land use stems from the desire of local governmental units to expand their tax bases In far too many instances, local communities have granted zoning concessions to industrial or commercial developments or apartment house complexes because of the high assessed value of these improvements compared with the assessed value of existing land uses, irrespective of good planning principles or of the needs of the community or region Property tax considerations influence the decision of communities to expand As an example, many cities and counties in the San Francisco Bay area are anxious to expand into San Francisco Bay to increase their assessed value subject to property taxation. This expansion requires filling portions of the bay despite the adverse effects of filling on economic and open-space resource needs of the Bay Region. Thus the desire for more property tax base can breed bad planning—bad zoning and produce a chaotic land use pattern.

C. *Assessment and Taxation of Property in the Urban-Rural Fringe Area*

During the 1963–65 interim period, the Assembly Committees on Revenue and Taxation and Agriculture held two joint meetings to consider the extent and seriousness of the problem stemming from the assessment of agricultural properties in the urban fringe areas. Testimony on the problem was received from all interested parties—from farm groups and planners to tax administrators and assessors.[3]

The problem is a simple one In the absence of effective planning and zoning controls, farm land in a close-in rural area is purchased by a developer who is interested in relatively cheap land for a subdivision development. Once the urban intrusion is made, other farmers in the

[2] Statement by E Robert Scrofani to the Assembly Committee on Revenue and Taxation, San Francisco, December 16, 1963 (Mr. Herman is executive director of the San Francisco Redevelopment Agency.)

[3] Meetings were held in Fresno on January 30, 1964, and in San Jose on July 2, 1964.

area also sell to developers. They are primarily motivated by the opportunity to make a large profit on the sale which will be taxed at a favorable capital gains rate or the fear that the developing urban uses will be reflected in high assessments and tax rates As a result of urban encroachment, the assessed value of farm land in rural-urban fringe areas must, by law, be increased by local assessors to reflect increased value as potential residential land The new assessment, reflecting potential urban values, and higher tax rates reflecting the urban communities' need for new schools and other governmental services may put the farmer's property tax liability in excess of farm income. Thus, the property tax adds to the pressures that force land out of agriculture long before it is ready for another use

The situation in the prune industry in Santa Clara County is an illustration of property taxes rising to the level of gross income of the land for farm use. The average value of prunes per acre in the valley during the past 10 years has been $468 In the Cupertino area of the county, the average property tax on an acre of prunes amounted to $380. In the Gilroy area of the county, not yet reached by suburbia, the average property tax on an acre of prunes was only $28 50 [4]

Statewide, farm property taxes have increased from $7.1 million dollars in 1949 to $175 5 million in 1962, an increase of 147 percent. During this same period of time, net farm income before taxes declined slightly from $543 million in 1949 to $532 million in 1962.[5]

PROBLEMS IN ASSESSMENT

Accurate assessment of land in transition zones is one of the most difficult problems facing the assessor. Sales of comparable property may be misleading indicators of market value.

According to C. Curtis Harris, agricultural economist at the University of California at Davis:

> "No two parcels of land are alike; even the differences in location distinguish the product, for location is part of the product. There are not many buyers and sellers, and the bargaining of only two participants can set the price. The frequency of sales is low, with many of the buyers and sellers being once-in-a-lifetime participants with lack of knowledge. Under these conditions, extreme prices are not ruled out. Prices can be based on unrealistic expectations of future income and other events There is no averaging or consensus of expectations as in the stock market.
>
> "The land market conditions cause prices to vary widely from sale to sale without any recognizable pattern, making explanations of the variations difficult This is especially true in the rural-urban fringe, as it is borne out in our study of land prices in Sacramento County. In the fringe, the unpredictable effects of the market conditions is compounded by the uncertainty of the rate and direction of urban growth." [6]

[4] Statement by Henry J. Voss, President of the Santa Clara County Farm Bureau, to the Assembly Committees on Agriculture and Revenue and Taxation, San Jose, July 2, 1964

[5] U S Department of Agriculture, *Farm Income, 1949–62, State Estimates*, August 1963

[6] Statement of C Curtis Harris to the Assembly Committees on Revenue and Taxation and Agriculture, Fresno, January 30, 1964

The assumption that the farmer is free to sell his property for urban uses may be erroneous. Where overbuilding and a hasty transfer of land has taken place, the farmer adjacent to such overdeveloped property is not free to sell at any point in time.

Another problem facing the assessor in his attempt to correctly value property in the fringe area is the rate of absorption of rural property in the area. It is almost impossible to determine the exact year the land will be converted. As Professor Harris observed:

> "The year of conversion is a crucial element in determining value Two parcels of land being used for the same agricultural purpose and both having the same expected urban use would have different values if one parcel is expected to convert 5 years from now and the other in 10 years Because of uncertainty, individuals who make estimates of the year of conversion for a particular parcel of land come up with many different answers Thus, we observe a wide variation in prices and appraised values in the rural-urban fringe."

Yet the assessor has the responsibility of finding the value of this property and assessing it in the same proportion to value as all other properties. If he overassesses a farm, he may be driving a farmer out of business, yet if he underassesses this property, he is guilty of violating the law and he is permitting some landowners to pay relatively low taxes on land that can and may shortly be sold for a substantial capital gain.

LOSS OF AGRICULTURAL LANDS

As a result of the expansion of urban areas and the high property taxes on farms in the urban-rural fringes, much of California's best agricultural lands are being lost forever. Dr. J. Herbert Snyder, agricultural economist at the University of California at Davis, described the changing patterns of California's agricultural resources in a recent paper.

> "The total physical land resource of California approximates 100,000,000 acres, but not all of this is used or usable for agriculture. As of 1959, approximately 36,800,000 acres was reported as being 'in farms' but of this only 12,966,000 acres was reported as 'cropland' and 7,396,000 acres was reported as being 'irrigated ' The last two figures are most important to us in our consideration of pressures on land used for agricultural production. They are of importance because of the locational aspects of this land. The land that is highly productive for agricultural purposes tends to be found in the valleys and on the broad alluvial fans that form at the margins of the point where the mountains meet the valleys This is alluvial soil, washed into place by nature over periods of geologic time that place the time orientation of civilized man in the last few seconds of a 24-hour geologic clock. For this reason, we cannot expect nature to replace land resources at a rate bearing any operational relation to the rate at which man seems capable of utilizing this natural resource.
>
> "The Soil Conservation Service has surveyed the total physical land resource of California, and on the basis of land use capability

classification, estimated that some 17,561,000 acres of land may be placed in the first four quality categories of land with the remainder being, largely, land that is not suitable for intensive agricultural production And even of this total, well over half cannot be used without resort to some level of conservation management practices that will permit stabilized long-run use for intensive crop production.

"Please note, however, that I have not said we have 17½ million acres of land available for intensive agricultural use, prior to 1942 nearly 2 million acres of this land had been removed from agriculture. Since 1942, the average rate of withdrawal of land suitable for agricultural use from agriculture has averaged well over 60,000 acres per year and in recent years has been approaching 150,000 acres per year. Projected estimates of withdrawals to the year 1975 indicate, conservatively, that approximately one-fourth of our land suitable for agricultural use will be converted to nonagricultural use And the situation for the so-called 'prime' agricultural land is even more striking · several years ago, for example, I estimated that the City of Los Angeles had 'occupied' approximately 90 percent of the best agricultural land in Los Angeles County "[7]

According to University of California Dean of Agriculture, Daniel J. Aldrich, Jr , only two million acres of California's agricultural lands are class I soils and only five million additional acres are rated as class II soils. These seven million acres produce the greater part of California's three-billion-dollar farm income It is also this seven million acres that is in the most danger from the builders of tract homes, factories, and supermarkets This is because many of California's cities were located in the center of rich farm lands to serve the needs of the surrounding farmers. As these cities have expanded and nonagricultural activities become an important part of a region's economy, the rich farm land has disappeared.[8] Land that is good for growing crops is also good for growing houses. It has the short-run advantage of being cheap and easy to develop.

Santa Clara County is a good example of what has happened in parts of California and what can happen in the future in other areas.

In the past 10 years, approximately 100,000 acres have been withdrawn from agricultural use in Santa Clara County. The value of agricultural production in the county has dropped from over $100 million in 1955 to $72 million in 1962 At present rates of absorption, approximately 30,000 additional acres will be converted to urban uses by 1970[9]

In the long run, the urbanization of prime agricultural lands will be a problem of very serious proportions Assuming the state's population continues to double every 20 years and that cropland continues to be suburbanized at the rate of 200 acres per 1,000 population, Rodney J.

[7] J Herbert Snyder, "The City as Seen From the Farm," paper presented at a conference at Davis on March 13 1963

[8] As reported in Harold Gilliam, "The Vanishing Gold of California," San Francisco *Chronicle* August 9 1964

[9] From the statement of Karl Belser, Planning Director of Santa Clara County, to Assembly Committees on Revenue and Taxation and Agriculture, San Jose, July 2, 1964.

Arkley, University of California Soil Scientist, predicts all of this state's cropland will be lost before the year 2020.[10]

ECONOMIC IMPACT

The continued loss of prime agricultural land represents a net loss of millions of dollars of farm income each year. Considering California's efforts to attract industries to the state, it is ironic that an existing economic asset is being systematically destroyed. Although California's farm income has been increasing in recent years, the increase has been small compared with the increase in population and personal income. Agriculture now generates over three billion in new money which is pumped into the economic bloodstream of the state. This industry also supports a number of related industries representing an income of $8 4 billion.[11]

California's 7,500,000 acres of irrigated cropland produce 42 percent of the nation's fruits and nuts and 43 percent of the nation's vegetables. It should also be pointed out that most of California's crops are not in surplus production. In fact, a number of specialty crops grown in California have markets throughout the world.

TABLE I

Selected Specialty Crops Grown in California

Crop	*Percent of U.S.*	*Rank among California crops by dollar value*	*Value 1960 (in $1,000)*
Almonds	100 0	20	$14,129
Artichokes	100 0	51	--
Avocados	94 7	36	7,360
Dates	98 5	56	2,701
Figs	99 1	46	5,106
Garlic	100 0	52	3,534
Grapes	89 9	3	131,761
Honeydew melons	83.7	43	5,297
Lemons	93 8	19	28,899
Nectarines	99 8	49	4,464
Olives	99 8	31	10,500
Persian melons	100 0	60	1,012
Plums	92 4	30	12,240
Prunes	93 6	10	53,515
Walnuts	97.1	13	37,100

SOURCE: "Some Facts About California Agriculture," University of California Agricultural Extension Service, July 1961.

If the destruction of agricultural land continues, some of these specialty crops may be removed permanently from the American diet as they cannot be grown in the same quantity and quality anywhere else in the world. On the other hand, one might argue that the consumer should be willing to pay a high enough price for these specialty crops so that no subsidy is necessary through reduced assessment. Of particular concern is California's wine industry which brings many dollars into the state and produces fine wines that rank with the best produced anywhere in the world. Grapes from which certain special wines are made can be grown only with very special soil and climatic conditions. When these vineyards are plowed up for tract homes, not only will the

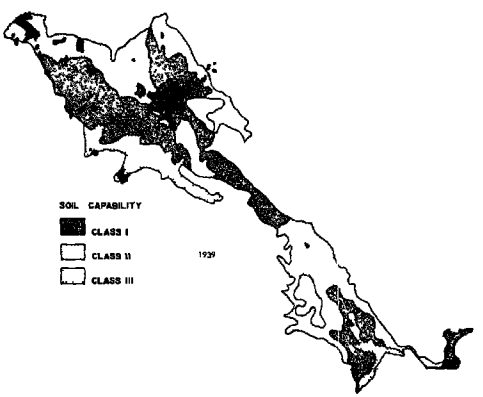
[10] Reported in Harold Gilliam, *op cit*
[11] *Ibid*

California economy suffer, but there will be a permanent loss of several varieties of fine California wines

Another result of the destruction of prime farmland will be, in the long run, the increase in cost of food to the consumer Farming on poorer quality soils is more expensive As food is imported from other areas, costs to the consumer will increase and the quality and variety of foods to which many Californians have become accustomed may not be as readily available.

URBAN SPRAWL

Urban sprawl, the leapfrogging of urban growth in the transitional zone around urban centers, is related to and aggravated by the assessment of agricultural lands to reflect potential urban uses Because of the nature of the farming business, high assessments and taxes will force some farm operators out much faster than others Those who remain find that, as their neighbors are forced to sell for urban developments, their assessments and taxes climb even higher The result, a classic example of urban sprawl California's Santa Clara County is a prime example of this phenomenon The maps below illustrate how prime farmland has been covered by haphazard urban developments



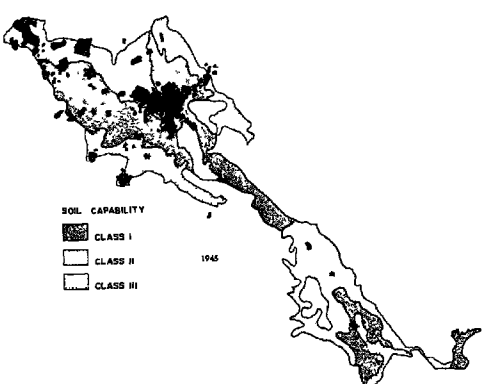
A GARDEN OF EDEN

For many years, the Santa Clara Valley has been one of the unique places on the face of the earth because of its mild climate, long growing season, rich deep alluvial soil, water, and nearby markets All these worked together to create a combination of circumstances almost ideal for intensive irrigated production of pears, apricots, prunes, cherries, strawberries, vegetables, and other specialty crops Over a century ago towns began to take shape on the valley floor. These communities became important agricultural service areas serving the farms around them For almost a hundred years, ending with World War II, this essential balance remained stable and dependable In some respects the growth of these towns was extensive, but city-farm relationships remained in proper balance and no serious maladjustments took place During this 100-year period, crop yields became steadily larger, and finally most of the best class I and II soils on the valley floor were farmed intensively

Urban sprawl is expensive to all concerned—to the taxpayers of the area due to the increased costs of providing general services to the pockets of urban development, to the homeowner in the new urban development who will face special assessments to bring special services such as sewers into the area, and to the farmer due to the restrictions which must be placed on his operations in semiurban areas

The costs of urban sprawl to the community are succinctly stated in a brochure published by the Santa Clara County Planning Department entitled "Land Use Issues in Santa Clara County."

> "The physical results of sprawl can be seen by even a cursory examination of the land use map. In some fringe areas, farm lands predominate but residential subdivisions may be scattered at random within the rural setting. In other areas, residences predominate, with bypassed farm lands apparently struggling for existence in their midst. The impression derived from this view of the map is that of a jumble of uncoordinated parts which may take years to jell into comprehensive, stable and efficient units
>
> "Aside from this chaotic appearance, sprawl has its costs—some apparent—others hidden. Some can be measured in monetary terms, others are social and can be calculated only in terms of inconveniences and lack of amenities. Listed here are just a few of the costs which sprawl exacts from county residents every day.



ENTER THE APPLE OF DISCORD

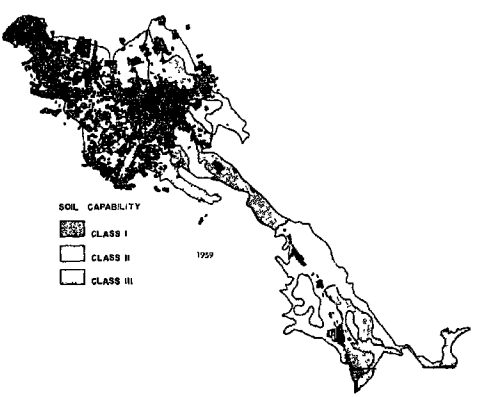
The urban centers grew slowly and conservatively During the first 75 years of this 100-year period the towns remained small, largely because the horse and buggy was the fastest means of transport available, and travel over long distances from home to work would have taken too much time However, the advent of the automobile as a popular means of mass transportation in the 1920's made it possible for urban areas to extend their tentacles out onto the rich fertile land. Nevertheless, even as late as 1945, the cities and towns in Santa Clara County were still well concentrated within reasonable size limits.

—There are the costs of money, time, and aggravation caused by long distance commuting between bedroom communities and places of work. If past development trends persist, these trips will become longer. Are these costs of significance to the commuter?

—There are the financial costs of providing a widespread highway network to accommodate these commuters. A more close knit urban pattern might allow other means of transportation to be fostered.

—There are the costs of extending utilities far beyond the existing urban areas through agricultural lands How long will it be before the extensions are used fully by the areas they pass through? If the growth of these intervening areas slackens, how will the debts be paid?

—There are the costs of duplicated facilities and services resulting from interjurisdictional competition. There are even situations where the separate sewer lines of two jurisdictions parallel each other in the same roadbed. How much does this add to the community's utility bill?



UNDESIRABLE RESULTS

Since the war the growing pains associated with urban sprawl have become one of the major problems of the county "Go West, Young Man" has truly become a reality In 1949 there were approximately 280,000 people residing in Santa Clara County In a single decade the population increased to about 600,000, or 32,000 people a year In the same 10-year period cropland decreased from 247,000 to 187,000 acres, or a total of 60,000 acres. In fact, since World War II more agricultural land has been withdrawn for urban use in the valley than in all the previous time of development.

—There are the immeasurable social costs resulting from incomplete communities. It is assumed by both the cities and the home owners involved that once a new neighborhood is started, it will be completed within a reasonable period. Presumably each neighborhood would have a full complement of urban facilities and services at that time. What happens if development is arrested before such neighborhoods have matured? What kind of urban living can be achieved by the residents of half-completed neighborhoods?

—Associated with the previous point, there are costs to local government from trying to disperse its limited financial resources among many competing semicompleted neighborhoods If so many new neighborhoods are started that the demand for housing is dissipated, the prospect of each neighborhood receiving all the necessary public facilities is diminished.

—There are costs resulting from poor interim locations of certain facilities serving a dispersed population. The spreading and scattering of new developments dictates that some facilities must serve unusually large areas. When an area finally becomes fully urbanized, will these facilities be in their proper locations to adequately serve the area for the years to come?

—There are the costs to the older areas of our communities which already are fully developed but may need maintenance or additional facilities to conserve their utility and amenity, and to prevent blight and expansive redevelopment. How can these needs be accommodated if funds are diverted to aiding many newer areas?" [12]

Aside from tax increases, sprawl is costly to the farmer in a number of other ways. As the urban density of the transitional area increases, the farmer will find that normal farm practices—such as spraying with pesticides—will have to be abandoned in favor of more costly methods of cultivation. The farmer will also see costs increase as a result of population density problems such as vandalism, dog attacks, theft, transportation of equipment, etc.

Urban sprawl also involves the loss of an open-space resource. As William H. Whyte observed:

"It takes remarkably little blight to color a whole area; let the reader travel along a stretch of road he is fond of, and he will notice how a small portion of open land has given amenity to the area But it takes only a few badly designed developments or billboards or hotdog stands to ruin it, and though only a little bit of the land is used, the place will look filled up.

"Sprawl is bad aesthetics; it is bad economics. Five acres are being made to do the work of one, and do it very poorly. This is bad for the farmers, it is bad for communities, it is bad for industry, it is bad for utilities, it is bad for the railroads, it is bad for the recreation groups, it is bad even for the developers." [13]

[12] Santa Clara County Planning Department, *Land Use Issues in Santa Clara County*, December 1963, p 6

[13] William H Whyte, Jr, "Urban Sprawl," *The Exploding Metropolis*, Doubleday & Co, Garden City, N Y, 1958, pp. 116–117.

The problem of urban sprawl as it relates to open space resources and urban planning has been extensively studied and much has been written on the subject Time nor space do not permit an extensive review of all this material in this report.[14]

Frederick Stocker also cites a corollary problem stemming directly from the high assessments and taxes which force a farmer to sell his land before it is ready for urban development.

> "Many years may elapse between the time when land becomes too valuable and too heavily taxed for the farmer to hold, and the time when, in the hands of an investor, it reaches its optimum for development I refer to the so-called ripening process, about which we know relatively little except that it exists.
>
> "Of course, it is not inevitable that farming cease during this period. While awaiting the opportune moment for development, the owner may lease the land to a farmer, perhaps even the former owner, and perhaps at a rent that will cover the taxes But such an arrangement is not always feasible To the nonfarm investor whose eye is on the big prize, the modest rental income may not warrant the bother of seeking a tenant In a semiurban environment, farm operators willing and able to enlarge their operations by renting more land are not always easy to find The insecurity of tenure on land held for future development also may scare away potential tenants
>
> "The more common result is that land is left idle, once it comes into the hands of an owner who regards it as a source of capital gain instead of farm income Farm buildings abandoned to deteriorate become an eyesore; fields, abandoned and eroding, produce mud and silt for streams, brush to blight the landscape, and weeds to plague all hayfever suffers.
>
> "Sometimes, instead of idle land, ad valorem taxation fosters premature development of land in uses that are inconsistent with the optimum development of the entire area. Where this occurs, both the individual property owner and the community at large suffer. A farmer who finds his land assessed at a value commensurate with its worth as building lots may be impelled to subdivide a portion of his property and try to sell a few lots. His hope, perhaps, is to receive enough to pay his taxes, make ends meet, and enable him to hold on a little longer. Often he succeeds only in running the value of his property for later development, and leaves the community a legacy of scattered homes and strings of developed properties along roads." [15]

[14] Karl H Baruth, *The Northern California Metropolis* (Palo Alto, California), distributed by the National Press, 1960, 24 pp maps, California, Department of Natural Resources, Land Use and Metropolitan Sprawl, by DeWitt Nelson, address to Western Resources Conference, Colorado State University, Fort Collins, Colorado, August 7–11, 1961, 23 p , California, Legislature Senate, Senate Resolution No 35 April 1963, 6 pp (In *Senate Journal* April 5, 1963, 1st Ex Sess, pp 241–246) California Tomorrow, *California Going, Going* our states struggle to remain beautiful and productive by Samuel E Wood and Alfred E Heller (Sacramento), 1962 63 pp , California Tomorrow *The Phantom Cities of California* by Samuel E Wood and Alfred E Heller (Sacramento), 1963, 66 pp , Humphrey Carver, *Cities in the Suburbs* University of Toronto, 1962, 150 pp , F Stuart Chapin, Jr., "Taking Stock of Techniques for Shaping Urban Growth Based on Address," *American Institute of Planners, Journal* 29 76–87 May 1963 Winston W Crouch "Challenges of Urbanism in California" *BGR Observer*, June 1962 pp 1–4, Burton Danziger, "Control of Urban Sprawl or Securing Open Space Regulation by Condemnation or by Ordinance?" *California Law Review*, 50: 483–499, August 1962.

[15] Frederick Stocker, *op. cit.*, p. 467.

However, the preferential assessment of agricultural land without other controlling provisions would do little to solve the problem of urban sprawl. This would make it easier for land owners to maintain agricultural operations in a transitional area. Those who wished to sell could still do so and the result would be the same haphazard development as before—except that the sprawl may stretch farther out from the urban core because land owners in the near transitional areas could maintain this operation for a longer period of time as their taxes would continue to be predicated on the rural use of the land.

If preferential assessment is limited to prime agricultural lands and is accomplished by an agreement by all landowners in the area to keep this land in agricultural use for a period of time, sprawl may be better controlled and rich agricultural lands better preserved Changes in assessment practices alone will not solve problems created by urban sprawl.

EQUITY

In discussions of the problems stemming from the assessment of agricultural land in the urban-rural fringe area, the question of equity is important. Equity implies fairness; fairness to the farmer and fairness to the other taxpayers.

It first must be recognized that the farmer has done nothing to create this problem—it is thrust on him from the outside. It hardly seems fair under these conditions to increase the taxes on his land to the point that he must sell if he wishes to continue to farm and if it is the public interest for him to do so. Further, if he is forced to move, it involves not only moving a business, but moving a home—disrupting social ties which may have developed over generations.

From the standpoint of equity, the taxation of agricultural land as a potential site for tract homes cannot be justified under the benefits received principle of taxation. The property tax is an imperfect tax based on the value of the property held, notwithstanding income of the owner or the benefits received from public services. It is, in a sense, a tax on the ownership of wealth.

As a tax on a limited resource, land, the property tax has general social value as a brake on land price inflation. Without a tax on land, it is quite likely that less property would be available for sale in the market place—reducing supply. The demand for land would increase under these conditions as land would be a more desirable investment. The reduction of supply and the increase in demand would result in serious inflation in the price of land.

However, the wealth represented by prime agricultural land is unique. Preferential assessment of this wealth can be justified if some public purpose is served by such a course of action, such as the preservation of this land in agricultural use for a period of time. However, if no public purpose is served, preferential assessment of one type of wealth *vis-à-vis* another would be inequitable.

On the question of fairness, Stocker further observes:

> "From the viewpoint of tax equity, preferential tax assessment contains one glaring weakness. It confers a unilateral benefit on the owner of agricultural property, while requiring nothing of him.

"In return for this favored tax treatment, he makes no pledge as to the continued agricultural use of his land. He gives his neighbors no guarantee that the open spaces they think they are preserving will actually be preserved any longer than it is in his own interest to do so. He is not even under any compulsion, if he does develop his land or sell it for development, to see that the development pattern conforms to any overall community plan. What is more, he is free, when he finally does sell his farmland to a developer, to pocket his entire gain (subject only to the capital gains tax). In short, he owes the community nothing.

"To me, it seems only equitable to require a quid pro quo. In exchange for preferential assessment, the owner of farmland ought to be required to repay the community the abated taxes, perhaps with interest, at the time he sells his land Such an arrangement would resemble the tax-deferral proposal considered by the 1961 Legislatures of Nevada and Hawaii and put on the ballot . . . by the California Legislature in 1962 In addition, I believe the interest of the community at large requires as a condition for preferential assessment or tax deferral that the owner accept some limitations on the future use of his land Preferred-tax treatment could be limited to land earmarked or zoned exclusively for agricultural use, as was specified under the 1957 California law. More thorough going would be a requirement that the owner divest himself of his development rights, placing them in trust for public use. In this case, the market value of the property rights he retains would approximate the agricultural value of the land and could be taxed accordingly." [16]

THE VIEW OF THE TAX ADMINISTRATORS

In general terms, tax administrators oppose further deterioration of the ad valorem property tax base. They also oppose granting a tax privilege to one group of taxpayers at the expense of all other taxpayers.

Richard Nevins, member of the State Board of Equalization, has stated that preferential agricultural assessment:

"would create a privileged class of taxpayers. Their land would be taxed differently from other residents of the same area whose land is not in agricultural production Of course there would be no decrease in the general taxes, for we still must send our children to school and provide the civilized protection that our cities and counties need This means that the same taxes would have to be paid, but the privileged taxpayer would be shifting his tax burden onto the shoulders of others. While it would decrease taxes for a few landholders, it would increase taxes for other property owners . . . for home owners, industrial land owners and other farmers." [17]

[16] Frederick D Stocker, "How Should We Tax Farmland in the Rural-Urban Fringe?" *1961 Proceedings of the National Tax Association*, Harrisburg, Pennsylvania, p 469

[17] Statement of Hon Richard Nevins to the Junior Chamber of Commerce, Long Beach, August 11, 1962.

Preferential assessment of agricultural lands, with a recapture provision of some sort, carries the implication that assessors will have to keep two sets of books. Tax officials see such a program as an administrative nightmare. Additional costs to keep such books, including additional appraisal and clerical help, would not return any additional revenues to local government.

Another fear of tax administrators is that special treatment for agricultural lands in urban fringe areas will invite a horde of owners of other classes of property to claim they deserve special property tax treatment too. The homeowner in a commercial area or the private airport owner in an area ringed with factories may feel that he is entitled to a preferential assessment of his land on the basis of actual use. Timber owners have similar problems. Perhaps most disturbing to tax administrators in the attack which preferential assessment represents on the basic valuation policy which has been established over the years. Value of property will depend on what use it represents. When there is a conflict in usages and the likelihood of a change in use, the value of the property will reflect the higher potential use.

However, the highest use economically for all property is not necessarily the best use of this property for society as a whole. In discussing this point, Stocker says:

> "I think it is necessary, however, to question whether the most profitable use of land is likely to be the most desirable from the viewpoint of society at large. In an earlier day it was perhaps possible to believe, with Adam Smith, that each owner, by seeking the most profitable use of his land, would automatically benefit his neighbors Today, such a belief is patently naive Public support for land use plans and the very existence of such controls as zoning offer proof that in this day and age society will no longer permit the property owner to use his land most profitably unless such use is consistent with the overall welfare of the community So we must avoid the easy assumption that the most profitable use of land is the most desirable, and that the ad valorem tax or any other measure that encourages the most profitable use of economic resources is automatically good." [18]

THE ROAD AHEAD

A variety of proposals have been put forth as possible solutions to the problems stemming from assessments and taxation reflecting potential urban usage of agricultural lands in the urban-rural fringe area Some suggestions, such as subsidies to farmers, types of zoning plans, or government acquisition of the development rights in or title to the land, do not involve direct changes in structure of the property tax. Other suggestions, which generally involve some form of preferential assessment, imply a major change in existing tax policy

Santa Clara County Planning Director Karl Belser has suggested that the state "begin to acquire the fee title or an easement on the development rights and begin the creation of a permanent agricultural land reserve." Belser further commented: [19]

[18] Frederick Stocker, *op cit*, p 466
[19] Statement of Karl Belser to Assembly Committees on Revenue and Taxation and Agriculture, San Jose, July 2, 1964.

"Now these are strong and, to some, fighting words, but they are not unlike those heard on various other conservation fronts. We have all advocated the conservation principles as epitomized in national forests, national parks, and other national efforts along these lines—yet the one indispensable resource, our finest land for growing agricultural products, seems to have no defenders and, consequently, is falling prey to the exploiters. Even the farmer is not really concerned with land protection, except insofar as it enhances the economic viability of his operation, which is completely understandable when considered in the context of the value system under which our economic system operates.

"But just as we do not allow the lumberman to make policy on proper use of the national forest, or the cattle and sheep ranchers to make policy on the proper use of government range and watershed land, so we cannot look to the farmer to save the good land for all the people Individual operations having relatively short-term significance have to be disciplined so as to produce long-range continuing benefits to all."

In other states, various solutions to this problem have been devised. The general approach taken has been through some form of preferential assessment.

In New Jersey, following a State Supreme Court decision that a statutory preferential assessment was invalid, voters approved a constitutional amendment in 1963 requiring the assessment of land actively devoted to agriculture or horticulture at its agricultural or horticultural value alone. Under this plan, when the land is taken out of such use, taxes which would have been paid in the two preceding years in the absence of an agricultural assessment requirement must be paid.[20]

Maryland's problems have been similar to those in New Jersey. In 1956 the State Legislature enacted a measure requiring the assessment of agricultural lands on the basis of use. This was overturned by the Maryland Court of Appeals in 1960. As a result, a constitutional amendment, giving the Legislature the power to provide for the assessment of agricultural land solely on the basis of use, was passed by the voters, and a new preferential assessment was subsequently passed by the Legislature. According to Stocker, the definition of agricultural use and the measurement of agricultural value are the problem areas which have caused the most trouble. In 1963, Maryland created a special legislative committee to reexamine the preferential assessment problem.

Since 1959, Florida has required by statute that land which is zoned and used for agricultural purposes shall be assessed on the basis of such use This law was recently sustained by the State Supreme Court.[21] The Florida law defines agricultural purposes as "bona fide farming, pasture or grove operations" and excludes shed nurseries. In addition only land which was in agricultural use prior to the effective date of the law is eligible for protection.[22]

[20] Frederick D Stocker, "Taxing Farmland in the Urban Fringe," *Tax Policy*, December 1963, p 3

[21] *Tyson v Lanier*, June 5, 1963, reported in Stocker, *op cit*, p 3.

[22] William H Geyer and Peter Hanover, *Preserving Agricultural Land in Areas of Urban Growth: A Look at the Record*, California Legislature Assembly, mimeo, May 20, 1964, p. 4.

A preferential assessment law was passed by the Connecticut Legislature in June 1963. Under the terms of this measure, assessors are permitted to value land classified as farmland, forest land or open space land "on its current use without regard to neighborhood land use of a more intensive nature."[23]

Three of California's neighboring states—Nevada, Oregon and Hawaii—have also adopted special methods for the assessment and taxation of agricultural lands Nevada's preferential assessment law, passed in 1961, and recently declared unconstitutional was similar to those in other states, except that it had an additional provision requiring the payment of five years' back taxes (computed on the basis of the difference between the preferential assessment and an assessment under normal assessment practices) when the property was sold or changed use[24]

Oregon has adopted a two-phased plan for the special assessment of agricultural lands In 1963, the Oregon Legislature amended an earlier preferential assessment statute to provide for:

1 Automatic preferential assessment of farms at agricultural use in designated farm use zones, and

2 Special assessment of farms outside of such zones, on the application of the owner, with the provision that when the property fails to qualify, the owner will pay taxes representing the difference between the preferential assessment and the assessment that would have otherwise been made for the five years preceding.

Land in farm use zones, which are designated by the proper planning authorities, can only be used for farms, schools, churches, golf courses, parks and necessary public utilities, and no other purpose. In the first year of operation of the law, only two Oregon counties—Washington and Polk—established farm use zones. All told, approximately $2,400,000 of assessed value was removed from the tax rolls[25]

Hawaii has adopted a statewide zoning law which provides that all lands in the state be classified into four groupings—urban, rural, agricultural, and conservation; Hawaii's four counties have supplementary zoning power in the first three categories, but uses in conservation areas are under state control. Assessments within the zones are based on the value for the zoned use only.

Still another approach to the problem of urban expansion, the acquisition by the government of conservation easements, is advocated by many. In an article by William H. Whyte (see: Whyte, William H., *Securing Open Space for Urban America: Conservation Easements*, Washington, D.C., 1959: Urban Land Institute), it is suggested that the agricultural zoning and tax laws now in effect in California and other states are both inadequate and unfair. They are inadequate because there is no way of insuring the continuation of the agricultural

[23] Stocker, *op. cit.*, p. 3.
[24] Geyer and Hanoever, *op. cit.*, p. 8.
[25] Speech by Harry J Loggan, Director, Valuation Division, Oregon State Tax Commission, on "Administration of Oregon's Greenbelt Law" to 1964 Conference of Western States Tax Administrators Association, San Francisco, September 10, 1964.

use of the land, any farmer being free to take his property out of the agricultural zone with a minimum of difficulty. Furthermore, the zoning does not insure low valuations of the farming land Many tax experts feel that measures such as preferential assessment do not meet the existing problem head on and are only of a temporary value Such laws are felt by Whyte to be unfair from two standpoints· Since the securing of open spaces is a benefit to the public, then the powers of eminent domain, rather than the zoning powers, should be exercised, and the farmers should be compensated for the potential loss in market value of their land This would be accomplished by having the government purchase the development rights to a piece of the farmer's property The present law is also unfair to the public, since it allows the farmer to have lower taxes while he continues to farm, and yet permits him to reap the benefits of urban expansion by selling his property at subdivision prices after he has taken it out of the agricultural zone.

California, among a few other states, presently has legislation enabling the state to acquire rights in land for the purposes expounded by Whyte. Section 6950 of the *Government Code* reads as follows:

> "It is the intent of the Legislature in enacting this chapter to provide a means whereby any county or city may acquire by purchase, gift, grant, bequest, devise, lease or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment."

It is important to note that these easements must be secured by negotiation, and no provisions have been made for the use of the power of eminent domain. Without eminent domain, the acquiring of scenic easements uniformly over a broad area is very difficult [26] The approach taken by California in attempting to deal with the urban-rural fringe problem has been through a combination of zoning and assessments based on such zoning. To date, California has relied on a combination of exclusive agricultural zoning and special assessments based on such zoning in dealing with urban-rural fringe area assessment problems. Section 402.5 of the Revenue and Taxation Code, enacted in 1957, provides that:

> "In assessing property which is zoned and used exclusively for agricultural, airport or recreational purposes, and as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future, the assessor shall consider no factors other than those relative to such use."

This statute has not been as effective in dealing with the urban-rural fringe problems as the proponents had originally hoped [27] The major weakness is that under this statute there is no assurance that lands

[26] Donald A. Cotton, "Open Space, Its Value and Conservation in the Urban Environment," *Southern California Law Review*, 37 304–331

[27] See comments of William Staiger, representing the Agricultural Council of California, to the Assembly Committees on Agriculture and Revenue and Taxation, Fresno, January 30, 1964.

will be held in agricultural use for any given period of time. Land can be rezoned at the whim of the local board of supervisors, or land can be annexed to cities, thus breaking up the agricultural zone The Attorney General and Legislative Counsel have both ruled that the statute is only a restatement of existing law [28] Such being the case, the assessor must assess the land on the basis of value as the Constitution requires; and if he feels the zoning may not be permanent and the value of the property still reflects potential urban use, he must assess it at this value. Adoption of exclusive agricultural zones has not been widespread, in fact, only 20 to 25 counties have adopted them, and few ordinances contain any restraints on rezoning.[29]

In addition, there is no definition of the type, size or location of lands which can be included in an agricultural zone. Spotty agricultural zoning and agricultural zoning on land admittedly purchased for future subdivision development, as occurred in Sacramento County in 1964,[30] further discredits Section 402.5 as an effective tool for use in preserving prime agricultural land.

To remedy the weaknesses of Section 402.5, a constitutional amendment was placed before the voters at the 1962 general election. This proposed amendment, Proposition 4 on the ballot, provided on a local-option basis that, upon application of the property owner, land used exclusively for agricultural purposes for the two preceding years must be assessed on the basis of agricultural use. If the land changes use or upon application for a regular nonagricultural use assessment, the owner was to be responsible for back taxes and interest equal to the difference between the agricultural assessment and standard assessment for the preceding seven years.

Although the measure carried 37 counties, it was defeated by vote of 2,147,761 yes to 2,384,064 no. Critics of the measure directed their fire at several points:

—The measure did not insure that prime agricultural land would in fact remain in agricultural use for any given period of time.

—The lack of definition of "agricultural purposes" made the measure vague and possibly extended its scope to canneries, grain warehouses and other similar types of agricultural activity.

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[28] See 30 Ops. Cal Atty Gen 246 (1957). Calif. Legislative Counsel Opinion No. 956, dated September 11, 1963

[29] Statement of Don Collin, research director, California Farm Bureau Federation, to 1964 conference of State Association of County Assessors, Sacramento, September 28, 1964.

[30] A 5,260-acre ranch south of Sacramento was purchased for $750 an acre ($4,000,000) in 1961 with the express purpose of developing it for urban uses On February 26, 1964, this property was zoned for exclusive agricultural use by the county board of supervisors over the objections of the county planning commission County Assessor Richard Blechschmidt appraised it at $475 per acre in 1964 based upon the owners' admitted plan to develop the site in seven to eight years The owner successfully argued before the county board of equalization (board of supervisors) that the long-term exclusive agricultural zoning, and other factors precluding its immediate use, warranted lower values A motion to uphold the assessor died for lack of a second, and the appraisal was subsequently reduced to $350 per acre This appraisal is lower than that of surrounding farms held and used exclusively for agricultural purposes Only four of the five supervisors were present, and two of these were lame ducks (See Sacramento *Bee*, July 29, 1964, for further details)

—All farms in a county—those on marginal land, in areas of high urban density, and those operated as a hobby and not for profit—would be eligible for reduced taxes.

—Orderly urban expansion would be aggravated by allowing all agricultural property to be assessed at its use.

—Allowing county options breaks a precedent of having uniform property tax administration in the state and would disrupt school aid formulas and tax jurisdictions crossing county lines.

—Because of the preferential treatment and the ability to sell for urban development at any point in time, agricultural land would become a better area for speculation and the price of good farm land would increase.

—The amendment would lead to pressures to assess all lands on the basis of use rather than on the basis of value.

In view of the rejection of Proposition 4 in 1962, the experiences in other states and the continuing problems in the urban-rural fringe area, it would appear that a solution to the problem is to be found by the use of some form of preferential assessment—conditioned on the continued use of agricultural land for agricultural purposes. In order to meet the objections raised to the passage of Proposition 4, a critical element of any plan is the guarantee that land will remain in agricultural use.

Speaking before the Assembly Committees on Revenue and Taxation and Agriculture on this point, Henry J. Voss, president of the Santa Clara County Farm Bureau, stated:

> "If the problem that faces us is to make it possible for an individual farmer to stay in agriculture as long as he chooses by giving him some tax relief today, only to allow this same prime land to be lost forever a few years later when he chooses not to remain in agriculture, I must say that I am opposed to this solution.
>
> "On the other hand, if a method of compensation combined with zoning can insure that this land will not be lost from its productive capacity, and that the general public realizes and favors this set aside in the public interest, we may yet be able to preserve the 'green gold' of California's vast agricultural industry which enables us to have the highest standard of living of any people at any time and in any place."[31]

The fiscal impact of preferential assessment on local governmental units may amount to upwards of $40 million revenue loss, according to estimates furnished the Assembly Revenue and Taxation Committee by county assessors. The committee asked the assessors for their best judgments as to the loss in assessed value if legislation such as Proposition 4 on the 1962 general election ballot were to pass. The county by county response is as follows:

[31] Statement of Henry J. Voss to the Assembly Committees on Agriculture and Revenue and Taxation, San Jose, July 2, 1964

TABLE II

Estimate of Assessed Value Loss if Proposition 4 Had Passed

Alameda	Unknown	Orange *	$177,100,000
Alpine	Unknown	Placer	625,000
Amador	-------	Plumas	None
Butte	None	Riverside	23,500,000
Calaveras	None	Sacramento	7,000,000
Colusa	None	San Benito	500,000
Contra Costa	$5,000,000	San Bernardino	-------
Del Norte	Unknown	San Diego	None
El Dorado	4,000,000	San Francisco	None
Fresno	8,000,000	San Joaquin	135,690
Glenn	None	San Luis Obispo	20,000,000
Humboldt	None	San Mateo	4–6,000,000
Imperial	-------	Santa Barbara	8,000,000
Inyo	-------	Santa Clara	Unknown
Kern	None	Santa Cruz	Unknown
Kings	Unknown	Shasta	2,500,000
Lake	None	Sierra	-------
Lassen	None	Siskiyou	250,000
Los Angeles *	185,000,000	Solano	None
Madera	2,320,000	Sonoma	2,000,000
Marin	4,374,036	Stanislaus	20,000,000
Mariposa	Small	Sutter	None
Mendocino	50,000	Tehama	None
Merced	15,000,000	Trinity	30,000
Modoc	None	Tulare	2,675,000
Mono	None	Tuolumne	3,000,000
Monterey	1,000,000	Ventura	None
Napa	100,000	Yolo	500,000
Nevada	Unknown	Yuba	250,000

ESTIMATED GRAND TOTAL $498,710,026

(Including faulty estimates from Los Angeles and Orange Counties)

* This estimate appears to be high According to the U S Bureau of the Census, acreage and farms represents 1 5% of Los Angeles County's $11,283,000,000 locally assessed roll and 6 2% of Orange County's $1,740,000,000 locally assessed roll Thus the total farm assessed value in Los Angeles County would be only $169,000,000 and in Orange County would be only $105,000,000. The loss of assessed valuation in these two counties if Proposition 4 had passed would be substantially less than the assessed value figures shown above

SOURCE Computed from information supplied to the Assembly Committee on Revenue and Taxation by the county assessors of California

Considering the faulty figures supplied by Los Angeles and Orange Counties and that the total property tax revenue from farms in this state amounts to less than $170 million (see section on property tax incidence), the assessors' estimates appear to be on the high side. It should also be kept in mind that Proposition 4 was all encompassing in its scope, and the revenue loss as a result of a more restricted preferential assessment proposal would be substantially less.

In setting up a preferential assessment system, some determination would have to be made as to which property would be eligible to participate What is an agricultural use? What types of lands should be preserved for agricultural use? What should be the minimum size farm eligible for such tax abatement? One of the weaknesses of Proposition 4 was its lack of a definition for "agricultural use." These problems, however, are technical rather than fundamental, and can be resolved.

Provisions must also be made for the orderly expansion of urban centers. To tie up all land presently in agricultural use around an urban center may, in the long run, have a deleterious effect on the

economic growth of California. It should be noted that even a limited program or plan which reduces the amount of land for sale in the market place will have the temporary effect of increasing the price of land unless steps are taken to increase the amount of nonagricultural land for sale. A special assessment on unimproved lands in cities or metropolitan areas is one approach which could be considered to restore the balance.

Property eligible for preferential assessment should be determined by local governmental bodies—such as the county planning commission and county boards of supervisors—and the state. A new zoning classification—perhaps designated as a preserve—could be established. Farms in these preserves would then be eligible for a preferential assessment. In considering the establishment of these zones, present urban density and soil capability should be used to determine eligibility. Such a program should be limited to bona fide agricultural soils, based on soil classification maps developed by accepted sources, and closely adjacent land needs to logically complete a unified preserve area By limiting the preferential assessment to farms in the preserves, orderly urban expansion can take place in the areas not included in the preserves Land not in the above categories used in the production of such specialty items as wine grapes might also be included

In return for a preferential assessment, the owner of agricultural land must give some assurance to the public that the land will be kept in an agricultural use A contractual arrangement between the farmer and the county and state may be the best solution Under the terms of the contract, the landowner would agree to keep the land in agricultural use for a certain number of years, 10 for example, in return for a preferential assessment. The owners could be required to renew the contract every year, in effect, always being a party to a contract having 10 years to run. Farmers who did not wish to participate in the program would not enter into the contract, and their lands would continue to be assessed at a value representing highest and best use

In short, a plan for the preferential assessment of agricultural lands might include provisions:

1. To limit the applicability to bona fide farms in certain agriculture preserves designated by county and state officials under recognized guidelines.

2. To require a "quid pro quo" from the landowner in the form of a contract, renewable each year, to keep the land in agricultural use for a period of x years.

If it becomes apparent, under these conditions, that the state is still losing too much valuable agricultural land, the state could then step in and acquire development rights to the land.

Under these conditions, a "preferential assessment" plan will avoid the weakness inherent in Proposition 4 and the integrity of the property tax can be maintained.

It should be noted in conclusion that these ends might also be accomplished outside the tax structure In lieu of a preferential assessment, the farmer could continue to pay his property taxes based on current

assessment practices, and through a contractual arrangement designed to meet the above criteria, be reimbursed by the state for the difference in taxes actually paid and taxes that would have been paid under preferential assessment. This approach is being thoroughly explored by the Assembly Committee on Agriculture.

D. Taxation of Airports

Privately owned airports in California are subject to the same ad valorem taxes as other property. With the increase in population, cities have expanded outward from their central core into the open spaces which formerly surrounded airports. This urban expansion has put great pressure on airport owners due to increased assessments on this land With "highest and best use" assessments reflecting the surrounding homesites, the operator finds he cannot earn enough from his airport facility to meet the new tax levies. Airports, by federal safety regulations, must maintain certain free areas alongside and beyond their paved runways, and as part of their operation they must have gasoline storage and shop areas protected from nearby buildings For these reasons large expanses of land are necessary for the safe, efficient, and continued use of airports If residential assessments are placed on hangar and runway land, the airport cannot remain in business Several solutions for this problem have been suggested, including a varia-

TABLE III

Known Assessed Value of Airport Property: 1963

Alameda	None	Orange	$45,940
Alpine	Unknown	Placer	700,000
Amador	------	Plumas	None
Butte	None	Riverside (est.)	25,000
Calaveras	None	Sacramento	100,000
Colusa	$14,530	San Benito	56,080
Contra Costa	6,120	San Bernardino	304,240
Del Norte	Unknown	San Diego	None
El Dorado	None	San Francisco	None
Fresno (est.)	4,000	San Joaquin	None
Glenn	None	San Luis Obispo	None
Humboldt	None	San Mateo	3,500,000
Imperial	Not available	Santa Barbara	None
Inyo	------	Santa Clara	None
Kern	44,930	Santa Cruz	31,300
Kings	50,000	Shasta	36,385
Lake	None	Sierra	------
Lassen	None	Siskiyou	None
Los Angeles	3,016,530	Solano	26,470
Madera	31,530	Sonoma	200,000
Marin	None	Stanislaus	11,010
Mariposa	None	Sutter	None
Mendocino	15,280	Tehama	None
Merced	8,000	Trinity	None
Modoc	None	Tulare	66,500
Mono	None	Tuolumne	None
Monterey	None	Ventura	None
Napa	None	Yolo	None
Nevada	12,630	Yuba	116,775
KNOWN GRAND TOTAL			$8,423,850

SOURCE: Information supplied to Assembly Committee on Revenue and Taxation by county assessors of California.

tion of the proposal for agricultural land assessment.[32] If private airports are to remain in existence, some new formula for assessing their property must be found.

If all existing airports were to be completely exempted from the property tax, the county assessors have estimated that approximately $8.5 million in assessed value would be removed from the tax rolls.

E. Land Value Taxation

Some property tax reformers advocate a fundamental change in the concept of the property tax by imposing the tax on land value only. This untaxing of personal property and improvements is referred to by some supporters as the "incentive taxation plan." They claim that this proposal would attract industry and trade, encourage home ownership, check the speculation in land and tax the profit out of slums.

Early active champions of land value taxation were Henry George and the "single taxers." They argued that a single tax on land value, in addition to checking the holding of unimproved land for speculative purposes, would provide enough revenue for all government services. The debate on this proposal or related ones such as the "incentive tax plan" has occupied Californians for many years. The "single tax" was put to a vote of the people of California four times in the period 1916 through 1922. Each time it was defeated overwhelmingly.[33] In 1938, the measure reappeared on the ballot along with the "ham and eggs" proposal. At this election the single tax was rejected by the voters by the lopsided margin of 17 percent for, 83 percent against.

There have been very few major experiments with land value taxation in the United States. The City of Pittsburgh, Pennsylvania, in 1913 adopted a graded tax plan providing for a changeover of property taxes from improvements to land values over a 12-year period. In Pittsburgh, land is now taxed at twice the rate of improvements. In commenting on the Pittsburgh experiment, the research director of the Urban Land Institute said:

> "In the City of Pittsburgh, wherein heavier land taxation has been in effect for nearly three decades, there is little evidence to suggest that slums have been discouraged by this tax; however, the capitalization effect, and the fact that the tax is only partially shifted toward land, make the proof of any contention difficult, if not inconclusive.[34]"

Land value taxation is common in other countries, particularly Australia and New Zealand. In Australia, almost two-thirds of the municipalities, representing 92 percent of the municipal area of the commonwealth, are making use of site taxation.[35] In other emerging countries of the world, land value taxation is often used as a device to break up large landholdings.

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[32] See Section III above.

[33] Votes on the single tax measure—
1916 yes 209,142, no 574,712
1918 yes 118,088, no 360,334.
1920 yes 196,649 no 543,503
1922 yes 124,401, no 515,590.

[34] Jerome P. Picard, *Changing Urban Land Uses as Affected by Taxation*, 1962, Urban Land Institute, Washington, D.C., 1962, p. 31

[35] Mabel Walker, "Land Use and Local Finance," *Tax Policy*, July–September 1962, p. 21.

In 1961, Assemblyman Vernon Kilpatrick introduced a constitutional amendment which provided for a shift of the property tax to land values on a county and city option basis This measure, ACA 43, was referred for interim study. As a part of ensuing study, Griffenhagen-Kroeger, Inc. was commissioned by the Committee on Revenue and Taxation to analyze the effect of the proposal on various kinds of property. Fresno County was selected as a representative area where the effects of the proposal could be studied.

The Griffenhagen-Kroeger study concluded that a land value tax would shift the property tax from homeowners and most businesses to farms.

TABLE IV

Tax Shift Caused by Tax on Land Only: Fresno County

Class	*Number by sample*	*Total tax increased*	*Total tax decreased*
Private residence	161	9 9%	89 5%
Multiple residential	9	4 4	55 6
Commercial	42	31 0	69 0
Industrial	19	5 3	94 7
Farms with trees/vines	54	92 6	7 4
Farm without trees/vines	58	75.9	24 1
Miscellaneous			
Secured	36	72 7	27 8
Unsecured	18	0 0	100 0

SOURCE Griffenhagen-Kroeger, *The Effects of Tax Exemption for Improvements and/or Personality*, November 1962, p 43

The findings of the Griffenhagen-Kroeger study do not consider the further changes in the incidence of the property tax which would accompany a shift to land value only. If, as is widely assumed, the tax on improvements on business and commercial property can be shifted in whole or in part, while the tax on land cannot be shifted but is capitalized, the net result would be an even greater tax impact on business and industry than the above figures indicate.

It should be pointed out that the property taxes on private residences are not reduced to any significant extent for most parcels in the sample. For the average homeowner in the sample, the plan would represent a 10.9 percent tax decrease. However, as illustrated in Table V, homeowners paying more than $450 in property taxes would get a 12.6 percent reduction under the plan, while those paying less than $100 in property tax would only get a 7 7 percent reduction.

TABLE V

Effect of Land Value Tax on Residential Property in Fresno County

Class of property	*Number in sample*	*Present average property tax*	*Ave. tax of property tax shifted to land value*	*Reduction in tax liability*	*Percent decrease in tax*
All residential property	161	$257 66	$229.48	$28 18	10 9
Residential property: less than $100 tax payment	20	64 81	59 77	5.04	7.7
Residential property: more than $450 tax payment	15	830 20	725 38	105 82	12 6

SOURCE Computed from statistical data in Griffenhagen-Kroeger, *The Effects of Tax Exemption for Improvements and/or Personality*, November 1962, pp. 54–59.

In conclusion Griffenhagen-Kroeger recommended:

> "We conclude that ACA 43 is worthy of further serious consideration by the California Legislature. It has the virtue of providing local option in the choice of property tax base and thus affords an opportunity to test in practice theories that have long been debated in the abstract. There is evidence in this report that through proper local application, the measure could bring greater tax equity and stimulate economic activity, while continuing to provide a full measure of support to necessary local governmental services.
>
> "The measure would be objectionable if it could not assure continued support of local government without imposing a confiscatory rate of taxation on the remaining tax base. We find no basis for such objection.
>
> "We do find, however, a number of practical problems to be solved through a more careful statement of the provisions of ACA 43." [36]

At the 1963 General Session of the Legislature, a similar constitutional amendment, ACA 20, was introduced and again was referred for interim study The Assembly Committee on Revenue and Taxation met in San Diego on June 26, 1964, to hear testimony on the proposal In addition, the committee staff reviewed previously published material on the subject.

The arguments for a land-only tax are·

1. Land is a fixed commodity, and the only way to prevent land price inflation is to tax land more heavily than improvements
2. Such a tax will make it less profitable to speculate in land
3. Individuals would be encouraged to improve their property without tax penalty, thereby stimulating economic activity.
4 The community is responsible for a portion of the increase in land value and is entitled to recapture this portion for public purposes.
5. A land value tax would reduce the property tax burden on most residential properties and many commercial and industrial properties

The arguments against a land-only tax are·

1 The highest and best use of land economically, on which this plan is predicated, is not necessarily the best use of land in the interests of society as a whole
2. The plan seeks to solve, through taxation, problems which are a result of a complex interaction of a number of social, economic, and psychological forces.
3. The plan would make it difficult to maintain privately held "open spaces" in urban areas.
4 The development and improvement of land requires the investment of capital and labor. Without the prospect of rising land values such investments may not be made.

[36] Griffenhagen-Kroeger, *The Effects of Tax Exemption for Improvements and/or Personality*, November 1962, p 12

5. Serious assessment problems would result from such a plan It is difficult to separate the value of the land from the value of the improvement In such cases, it would be much harder to maintain assessment uniformity among all classes of property

6. The plan doesn't necessarily restrain speculation in land The greatest boom in land values ever to occur in western Canada took place during 1909–1913 when land value taxation in the area was at its peak [37]

7. It is unfair and inequitable as persons who have purchased land in good faith would suffer an indefensible loss.

8 This proposal will increase the tax burden on most farm properties It will also give expensive residential property much greater tax relief in proportion to more modestly priced residential property

9. Although commercial and industrial properties appear to benefit from the plan, if the tax on land cannot be shifted as the tax on improvements, the tax burden of these types of property might actually increase.

Hawaii will begin next year a new system of taxation which embodies the concept of land-only taxation According to State Tax Director E J. Burns, the new law embraces features of both the conventional method of property taxation used throughout the United States and the "site value" system of taxation of Australia and New Zealand In 1965, only 90 percent of the net taxable building values can be taxed This percentage will be lowered by units of 10 percentage points until a minimum of 40 percent is reached As a result of the mechanics of the new law, separate land tax and building tax rates will be set for four classes of property—residential, hotel-apartment-resort, commercial, and industrial Under this method of taxation, a portion of the property tax will be shifted from improvements to land

It should be noted that in Hawaii agricultural lands are assessed and taxed under separate greenbelt zoning provisions and are not affected by this new law

Evaluating the advantages and drawbacks to the plan, Tax Director Burns observed that:

> "Speculation in land and prices will be reduced Unused, underdeveloped and improperly used land will be forced into highest and best use The building construction industry will be stimulated. These results will occur but to a degree that is not now measurable.
>
> "Most serious of disadvantages are the inequity of burdening taxpayers unequally; disregard in certain instances of sound tax principles; i e, 'ability to pay' and 'benefits received', encouraging overimprovement of land; the lack of understanding by most taxpayers of a complex formula; and last but not least—the apparent necessity and high cost of changing from a mass appraisal system to individual property appraisals to provide equitable treatment of taxpayers under the differential tax rate application of the law.[38]

[37] Mabel Walker, op cit., p 22
[38] Speech by E J Burns to Western States' Association of Tax Administrators September 10, 1964, San Francisco

PART V

PROBLEMS IN THE APPLICATION OF THE PROPERTY TAX TO CALIFORNIA PRIVATE FOREST LAND AND STANDING TIMBER

by

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INTRODUCTION

A rapidly increasing population and increased demand for services rendered by all levels of government, including county government, require increased revenue streams. Between the fiscal years 1949–50 and 1961–62, total costs of counties, cities, schools and special districts increased approximately 228 percent at an annual average of 17.5 percent Receipts, slightly larger than payments in the fiscal year 1949–50, rose by approximately 223 percent, at an annual average of 17 2 percent, during the same period Bonded indebtedness of all counties rose by 383 percent, at an annual average of 29.5 percent.[1]

The major local source of revenue is the property tax. Total county-assessed valuation rose approximately 145 percent, while county-assessed land valuation (land including standing timber), rose by 209 percent for the same period.[2]

In several counties the assessed valuation of forest land and timber accounts for more than 25 percent of the total locally assessed secured tax roll, with a high of approximately 40 percent for one county These percentages exclude wood conversion plants of all types whose existenee depends upon an economic supply of the basic raw material—wood. Thus, in a number of counties, the timber industry will be the major source of revenue required to meet the increased demand for county government services

The purpose of this study is to investigate the application of the existing property tax structure to forest land and timber.

This study is by no means complete More information than could be gathered in three months is necessary for a complete report. The information on which this study is based was gathered in only six of the major timbered counties of the state The problems enumerated and discussed below, however, are applicable to all timbered counties and do affect the whole of California's timber and wood-based industries.

I am grateful for the assistance and support of Mr W. L Brown, Assessor of Mendocino County and Chairman of the Timber Standards Advisory Committee; Mr A W. Sauer, Senior Timber and Range Land Appraiser of the State Board of Equalization, and Mr. John Callaghan, Secretary-Manager of the California Forest Protective Association.

Without the candid information, much of it confidential, and the insights provided by the many county assessors and timber appraisers this report would have little basis in fact Aware of the magnitude of the problem facing them with respect to the assessment of forest land and timber and aware of the fact that this inquiry may lead to future demands on their time and resources, they have freely given of their already scarce time, even on weekends. I am greatly indebted to them

PROBLEMS IN THE ASSESSMENT OF FOREST LAND AND STANDING TIMBER

Section 12 of Article XI of the Constitution of the State of California states that "All property subject to taxation shall be assessed for taxation at its full cash value." Every county assessor is charged

[1] Economic Development Agency of the State of California, *California Statistical Abstract* (Sacramento, 1963), p 202
[2] *Ibid*, p 196

with annually assessing all the taxable property in his county, except for those properties assessed by the state.[3] The full *present* cash value of forest land and standing timber depends, among other things, upon the following factors:

(1) Total acreage, its quality, topography
(2) Expected future revenues received from either the use or the sale of forest land
(3) Present or future alternative uses for forest land
(4) Total timber volume
(5) Timber specie
(6) Timber quality and accessibility
(7) Price, present and future, of stumpage (standing timber)
(8) Time period over which or at which income from the sale of timber is realized
(9) Safe rate of return at which future incomes are discounted
(10) Percentage allowance for taxes
(11) The safety factor

THE PRESENT VALUATION OF LAND

The total acreage of forest land owned by each owner is relatively easily ascertainable since a legal description of land must be filed with the county assessor each lien date. What, however, is the value of an acre of forest land?

In the absence of known present or future alternative uses of forest land, indicated by someone's willingness to pay a specific price per acre, the value of forest land is derived from the value of the timber crop it is capable of growing. Forest land is highly differentiated by the species of timber it can support, by topography and by distance from the market for timber. Few counties have adequate site maps, describing in detail the quality of forest land.

Because most or all of the information required to determine present forest land value is lacking, 19 of California's timbered counties assign a flat assessed value to every acre of forest land. In the six counties studied, the predominate range of assessed valuation per acre was from $3 to $6. Only four counties vary the assessed valuation on the basis of quality, topography and location, but without taking into consideration future income streams from the sale of timber on the land or from the sale of the land itself. The determination of present value of forest acreage thus appears to be based more on convention than on economic determinants.

Increasingly, forest land is being acquired for commercial purposes, residential subdivisions and individual homesites. The total acreage involved is as yet very small, and the assessment presents little or no problem since it is based on the recorded sales prices The problem arises in appraising adjoining forest land. In cases where there is evidence that adjoining forest land may have a higher and better use than the present one, growing timber, the assessed valuation of such land will change in accordance with the assessor's judgment regarding the land's alternative value.

[3] *Revenue Laws of California* (Annotated), 1963, Sect 405

THE ASSESSMENT OF TIMBER

Basic to the determination of the present value of timber owned by an operator is a timber inventory Timber inventories, cruises, are conducted either by firms of professional cruisers or by timber owners But because the techniques of taking timber inventories may vary from firm to firm and from owner to owner, it is desirable, for uniformity's sake, that only one firm cruise the whole county or that all cruises are conducted in like manner. It would, of course, be highly desirable that all timber property throughout the state be inventoried on the basis of a statewide standard.

It is also very important that timber cruises not be outdated. At present, only seven counties are using countywide cruises. Two of these cruises are over 40 years old; only three have been conducted within the last 10 years. Thirteen counties base their timber assessment on cruise information supplied by the timber owners. And in many instances, no information as to the date when the cruise was last conducted is available. In the opinion of several assessors and timber appraisers, the owner-provided information in many instances grossly underestimates the actual taxable timber volume.

One reason for the lack of recent county cruises is the relatively high cost A professional cruise may cost 50 cents or more an acre and may involve a total expenditure of up to $500,000. Even sample cruises are costly, and boards of supervisors appear very reluctant to appropriate the necessary funds. If recent cruise information were available, it would have to be analyzed for assessment purposes, which would require experienced timber appraisers; yet several major timbered counties lack timber appraisers!

On the basis of whatever inventory information the assessor has, he must determine annually the full present market value of that inventory Since he lacks information of prices received by the owners, information which should ideally be broken down by species, age, quality and proximity to markets of the timber when cut, the assessor or the appraiser presently uses some average stumpage price per species as a first approximation to the actual unit value. Sixteen of the timbered counties use a countywide average stumpage price for each species. The countywide average stumpage prices are simple averages for timber sold off federal as well as off privately owned land. Only three counties differentiate between stumpage values by physical condition and accessibility. No attempt is made to construct a weighted average.

Once a present stumpage price for each species has been established, the present value of a stand of timber must be determined If a stand of timber is cut during the assessment period, the determination of its full present market value is simple· volume harvested $\times$ stumpage price Should harvesting take place over a period of time, or at some time in the future, the determination of the *present* value becomes more difficult

First, future income streams are determined by multiplying *expected future* timber harvests by *present* stumpage price. The longer the time period over which, or the more distant the time at which, the income

is earned, the less precise is the estimate of the future income stream because of fluctuations in stumpage prices and possible loss of timber due to fire, wind and other hazards.

TABLE I

Stumpage Prices for Timber Sold in the United States

(Dollars per thousand board feet)

Year	*Douglas fir*	*Sugar pine*	*Ponderosa pine*
1950	$16 40	$25 00	$18 30
1951	25 40	40 40	33 60
1952	27 80	36 40	27 40
1953	20 20	30 20	25 00
1954	18 20	31 20	27 20
1955	28 90	30 00	26 10
1956	37 70	34 90	27 20
1957	26 20	30 00	24 20
1958	21 80	23 50	19 10
1959	36 80	26 70	20 60
1960	32 00	29 00	19 10
1961	27 60	18 40	12 10
1962 *	26 60	21 20	17 80

* Average for the first two quarters only

SOURCE Forest Service and the Agricultural Stabilization and Conservation Service, *The Demand and Price Situation for Forest Products* (U S Department of Agriculture, 1962), p 36

The present value of a future income stream is determined by discounting the total future income for the time period over which it is received. If the procedure outlined in the *Assessors' Handbook* [4] is followed, the total discount factor depends upon the "safe" rate of interest, an allowance for taxes and a "safety factor " While the allowance for taxes used by the counties is identical, 1.5 percent, the "safe" rate of interest chosen may vary from 3 to 4 5 percent. What rationale underlies the choosing of one "safe" rate of interest versus another is not clear. It appears to be a matter of convention Clear is, however, that the greater the "safe" rate of interest chosen to discount any given future income stream, the smaller will be the present value of that stream.

Assume identical stands of timber, in two different counties, each yielding an annual gross receipt from the sale of timber of $100,000 for a period of 10 years, or a total of $1 million. Assume further that the "safe" rate of interest plus allowance for taxes, the latter identical for both counties, used for discounting the future streams are 4 5 percent in county A, 5 5 percent in county B. The respective present values for equal future income streams then are. county A—$791,300, county B—$753,800 Assuming further, equal appraised-to-assessed value ratios of four to one, and equal tax rates of 7 percent of assessed valuation, the respective present tax liabilities are county A—$13,847 75, county B—$13,191 50, a difference of $656 25 Compounding only the first year's difference for a period of 10 years, the lifetime of the total income stream, at 5 percent per annum increases the additional tax liability borne by the owner in county A to approximately $1,069 Obviously, all additional future tax payments arising out of the difference in assessed valuation must be compounded and summed

[4] The California State Board of Equalization, *The Appraisal of Timber Property* (Sacramento, 1961).

in order to arrive at the total increased tax liability borne by the owner in county A.

The total discount factor also depends upon the "safety factor" chosen by the assessor. The timber industry is thought to be subject to extraordinary risk due to fire, wind and insects. Recognizing this fact, the *Assessors' Handbook* recommends a number of safety factors, to be used in determining the actual discount factor, which range from .65 to .75 and can presumably be further varied in either direction. In using one safety factor over another, the assessor is in fact determining the risk to which a particular stand of timber is, may be, or has historically been subject. It is doubtful that these safety factors do indeed reflect with any precision the actual risk involved. It appears that safety factors are more often than not an heirloom inherited from a predecessor and adopted without specific rationale.

The larger the numerical coefficient of the safety factor, "safe" rate of interest and tax allowance being equal, the greater the present value of a future income stream. To return to the above example. Assume that the assessor of county A assigns a safety factor of .75 to the risk to which our hypothetical operator is subject; the same factor applied in county B is .65. Then, the present value of two identical income streams, one discounted at 4.5 percent and the other at 5.5 percent, are: county A—$593,500, county B—$490,000. Using the same assumptions as above, the respective present tax liabilities are: county A—$10,386.25, county B—$8,575.00, a difference of $1,811.25. The increased tax liability of the owner in county A in the first year alone, if compounded at 5 percent over a 10-year period, now amounts to $2,950.34. The above examples, while hypothetical, do reflect the real world of assessment of forest land and timber in California today.

While, even if the valuation procedure outlined in the *Assessors' Handbook* is followed, present values and tax liabilities for identical future income streams may vary greatly from one county to another, the differences may further be aggravated by the use of other valuation approaches. Five counties use an approach other than those suggested in the handbook; eight counties assess the timber volumes without any reference to an appraisal.

Another major factor determining the present value of a stand of timber is the period of time over which or at which it produces revenue. Obviously, the longer the time period over which a given income is received, the smaller the present value of the total income. In determining economic life for a given parcel of land, the assessor divides the presumed total volume of merchantable timber by the reported annual cut. Changing market conditions, however, may either increase or diminish the rate of cutting, thereby increasing or decreasing the present value of a future income stream. Unless the assessor annually reappraises the timber volume, the assumed present value is inconsistent with the "true" present value of the future income stream.

The effective tax liabilities borne by similar stands of timber located in two different counties, or in different taxing districts within a county, are further dependent upon the ratio of appraised to assessed valuation and the respective tax rates.

The present application of the property tax system to forest land and timber gives rise to gross inequities In many cases, information about the quality of the land, timber volume, specie, quality of timber, accessibility, and other factors determining present value of both forest land and timber is lacking Techniques of estimating present values of future income streams, including the use of different "safe" rates of interest and safety factors, may lead to vastly different valuations of like property and therefore to different tax burdens

THE PROBLEM OF SECTION 12¾

Section 12¾ of Article XIII of the Constitution of the State of California provides in part that

> . . . all immature forest trees which have been planted on lands not previously bearing merchantable timber, or planted or of natural growth, upon lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such . forest trees to taxation; provided, that forest trees or timber shall be considered mature for the purpose of this act at such time, after 40 years from the time of planting or removal of the original timber as above provided, as a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization and the county assessor of the county in which the timber is located, shall by a majority thereof so determine.

WHAT IS MERCHANTABLE TIMBER?

When Section 12¾ was amended in 1926, the major timber product was dimensional lumber Since then, and in particular since the end of World War II, the rapid technological change has brought about an increase in the number of products made out of wood and has greatly improved harvesting techniques While it may have been uneconomic to harvest a relatively young tree 20 or 30 years ago, today a similar tree may be profitably converted into such products as particle board or woodpulp and subsequently paper products.

The pulp and paper industry is primarily market-oriented. Between 1950 and 1962, California's population rose by about 60 percent [5] A recent study estimated California's civilian population in 1980 to be at 24 4 million, an increase over 1962 of approximately 43 percent [6]

Paper and paper products are also assumed to be relatively income-elastic Personal income in California rose by slightly more than 150 percent between 1950 and 1962,[7] compared to an increase of only approximately 93 percent for the United States as a whole during the same period.[8] While in 1962 California's population amounted to about 9 2 percent of total U S. population, and California's personal income amounted to 11 2 percent of U S. personal income, California's produc-

[5] *California Statistical Abstract op cit*, p 44
[6] Stanford Research Institute, *The California Economy 1947–1980* (Menlo Park, California, 1960), p 41
[7] *California Statistical Abstract*, op cit, p 164.
[8] U. S Department of Commerce, Bureau of Census, *Statistical Abstract of the United States 1963* (Washington, D C, 1963), p 322

tion of paper and paperboard amounted to about 3 9 percent of total U S production. It can be safely assumed, therefore, that the future will bring an increase in the number of plants producing woodpulp, paper and paperboard, evidenced by the recent construction of three new pulp mills, and that the demand for the basic raw material, wood, is going to increase.

According to an industry spokesman, the relatively young particle board and the woodpulp industries are at present mainly relying on the residue of lumber, plywood and veneer mills for the major proportion of their raw materials [9] An increase in the number of pulpmills, however, may lead to the logging of smaller diameter young growth for the particle board and pulpmills, thus making smaller diameter young growth timber merchantable.

A recent opinion of the Attorney General of the State of California stated that ". . . Section 12¾ grants to the Timber Maturity Board discretion in the determination of when timber is to be considered mature for taxation purposes " [10] While Timber Maturity Board hearings for the purpose of declaring previously exempt timber mature, hence taxable, can be initiated by either the assessor or the owner of the timber, all such hearings held to date were initiated by the assessor Ultimately then, it depends upon the assessor's definition of maturity (merchantability) of timber to determine what stands of timber shall be assessed.

At present, the respective assessors' definitions of mature timber differ greatly. In one county mature timber is defined as that 100 years old or older. Other counties move to have timber declared mature and taxable when a stand reaches 40 years or 16 inches or more dbh (diameter at breast height). From 1955 to 1963, Timber Maturity Board hearings were held in only six counties Eighteen out of 24 hearings were held in two counties, and one county accounted for 78 5 percent of the total timbered acreage the timber on which was returned to the tax rolls The wide latitude given to Timber Maturity Boards by the Attorney General's opinion in defining maturity (taxability) of timber results in considerable volumes of timber being taxed in one county while timber of like quality is exempt in other counties. Because of lack of adequate cruise information for all counties, it is impossible to determine the magnitude of the resulting inequity.

EXEMPTION OF RESIDUAL OLD GROWTH

The same opinion of the Attorney General stated that

> . . it was the intent of the 1926 amendment to Section 12¾ that, once 70 percent of the merchantable timber has been removed from an area, the remaining timber stand is to be exempt regardless of whether some of the individual trees (stems) are merchantable.[11]

The legislative history of Senate Bill No 401, introduced by Senator A. B. Johnson in 1923, a bill which passed both houses of the Legislature but was pocket-vetoed by the Governor, and of the subsequent

[9] Statement by John Callaghan, Secretary-Manager, The California Forest Protective Association
[10] Office of the Attorney General of the State of California, OPINION 61/104 (1962), p. 8
[11] *Ibid.*, p 16.

Senate Constitutional Amendment No 10, amending Section 12¾, makes it appear that the exemption granted to the residual 30 percent or less of old growth was intended to enhance reforestation.

The question of the necessary reseeding period for any given area, and for different species of timber, cannot be answered by an economist. The fact remains that reseeding will not take 40 years. Thus, at present, substantial volumes of tax exempt residual old growth timber are being cut throughout the state. Because of the tax exemption granted by Section 12¾, timber owners do not file reports of the annual cut of exempt old growth with the assessor. According to one assessor, however, the total annual cut of one timber operator in his county exceeded the total volume of taxable timber owned by him, presumably due to the exemption granted to residual old growth timber by Section 12¾ The approximate magnitude of the problem can be seen in the following table.

TABLE 11

Total Assessed Volume, Exempt Old Growth Residual Timber, and Ratio of Land Bearing Assessed Timber to Total Private Commercial Forest Land

	Total assessed timber volume (mill. board ft.)	*Exempt old growth (mill board ft.)*	*Exempt old growth/ total assessed volume (percent)*	*Land bearing assessed timber/total private commercial forest land (percent)*
County I	7,878	8,212	104 2	20.3
County II	13,000	3,200[a]	13 9	35 5
County III	3,453	675	19 5	47 2
County IV	2,329[b]	452[b]	17 9	n a [c]
County V	3,500[c]	6,000[d]	171 4[e]	n a [c]

[a] Assessor's very conservative estimate
[b] Volume for 74 percent of total private commercial forest land only.
[c] Virgin timber over 20 inches dbh (diameter at breast height).
[d] Timber over 12 inches dbh
[e] Ratio of timber over 12 inches dbh to virgin timber over 20 inches dbh
[f] Not available

SOURCE Information provided by county assessors
Source for Total Private Commercial Forest Land California Forest and Range Experiment Station, *Forest Statistics for California* (Berkeley, California, 1954), Forest Survey Release No 25.

Even the most conservative estimate for County II shows that the tax exempt residual old growth accounts for 13 9 percent of the total assessed volume. In that county, according to the assessor, the annual cut of residual old growth timber is "very significant."

Harvesting residual old growth long after the optimum reseeding period may in addition run counter to the purpose of exempting that old growth, namely, reforestation, because in the process of harvesting the old growth, the existing young growth may be either damaged or destroyed.

PERPETUAL EXEMPTION

The third question relates to whether Section 12¾ provides for only one exemption for any particular piece of land or whether successive crops of immature timber are entitled to the exemption. In our opinion, Section 12¾ provides for successive exemptions.[12]

[12] *Ibid*, pp 17–18.

Given this interpretation, it is entirely possible that some timber will, in the future, be entirely exempt from property taxation Assume an immature timber stand which is exempt for 40 years. In the 41st year, it is entirely cut. If the stand were to be assessed and taxed in that one year, assuming an appraised-to-assessed ratio of four to one and a tax rate of 7 percent of assessed valuation, the effective property tax rate for timber would amount to 1 75 percent of gross revenue. Under the present interpretation of Section 12¾, any young-growth timber which is regenerated on that same parcel of land will again be exempt for a period of 40 years, and the process can repeat itself ad infinitum.

Assuming an increased demand for young growth timber due to an increased demand for forest products mentioned above, and as California continues to move in the direction of a second-growth timber economy, future property tax revenues from timber may drop drastically.

ALTERNATIVES TO THE PROPERTY TAX

The general problems of the application of the property tax to timber have been discussed elsewhere at length [13] According to a recent estimate, the property tax is still applied to about 90 percent of the total private commercial timber stands in the United States.[14] While other growing crops are exempt from property taxation, timber, a crop which may need from 40 to 80 years to mature, pays an annual property tax which, compounded, does appreciably reduce the net income derived from the sale of the crop. This may lead to excessive cutting in the existing stands, i.e., run counter to desirable sustained yield forestry (annual cut = annual growth), and may discourage future investment in timber.

In order to encourage sustained yield forest management, several states have provided exemption for growing stands of timber According to Williams,[15] the exemption provided by California law is the most far reaching of all. One way of exempting growing timber from the property tax is the application of the yield tax, either mandatory or optional, presently used by about 17 states

The yield tax is a gross income tax, payable at the time income from the sale of timber is realized, and levied in lieu of an annual payment of property taxes [16]

[13] See for instance
F. R Fairchield, et al, "Report of the Committee on Forest Taxation," *Proceedings, National Tax Association*, 1922
F. R Fairchield, et al, *Forest Taxation in the United States*, U. S Department of Agriculture, Miscellaneous Publication No 218 (Washington, D C., 1935)
R. C Hall, "Appraisal of Special Forest Tax Legislation in Practice," *Proceedings, National Tax Association*, 1941
L M. James, "Property and Yield Taxes on Forests," Department of Forestry (Michigan State University, 1958), mimeographed
L S Murphy, "The General Property Tax and Forest Property," *Journal of Forestry*, Sept 1925, 23.
S B Stewart, "Can We Make the Property Tax a More Effective Fiscal Instrument?", *Proceedings, National Tax Association*, 1958.
R. W Trestrail, "An Analysis of Alternative Methods of Forest Taxation Their Effects on Real Forest Investment and Social Value Yields Not Subject to Culture by the Owner," University of Washington, 1961, unpublished Ph D dissertation.
J. A Zivnuska, "The Tax Burden on Forest Plantations," Berkeley, California, 1960, mimeographed
[14] E. T Williams, "Trends in Forest Taxation," *National Tax Journal*, June, 1951, p 116
[15] *Ibid*., p 122
[16] R. W Marquis, *Forest Yield Taxes*, U S Department of Agriculture, Circular No 899 (Washington, D C, 1952)

As any other tax, the yield tax has certain advantages and disadvantages. It is easy to administer. Timber owners, aware of the yield tax rate, can calculate future tax burdens with reasonable certainty. If the yield tax is optional, i e , a timber owner has the choice of being taxed either under the property tax or the yield tax, it will limit the effective rate of the property tax. Since a yield tax rate applies equally to incomes from the sale of timber by all timber owners, the yield tax eliminates inequities which arise under the property tax because of different appraisal techniques and different tax rates levied by the respective taxing districts within which the timber is located. Forest land devoted entirely to the growing of a timber crop may be assessed equally and at low valuations, thus eliminating imperfect judgment of the quality of the forest land on the part of the assessor, and reducing the tax burden borne by the crop over the growth period.

The major disadvantage of the yield tax is the uneven flow of revenue it provides Since revenue depends upon the volume and the frequency of timber sales, revenues needed for the provision of local services may not be forthcoming in any one particular year. This may result in the increase of assessed valuation of other property or an increase in the property tax rates

Because of the lack of information on the total value of the annual cut of exempt old growth timber, it is impossible to estimate the gain in revenue, if a yield tax were levied on it, offsetting losses incurred because of the discontinuance of the property tax

Since tax structures and actual tax burdens are major considerations in determining the investment in the timber industry, it is of interest to take a look at Oregon and Washington, states which compete with California for such investment.

Oregon In 1929 Oregon enacted a mandatory yield tax which has been administered on an optional basis.[17] Under the present terms of this law, land which has been classified as "reforestation land" bearing immature or nonmerchantable timber is entirely exempt from property taxation. In lieu of the annual property tax, an annual fee of 5 cents per acre is imposed upon land located west of the Cascade Mountains, 2½ cents per acre on land located east of the Cascade Mountains.[18] A 12 5 percent yield tax is imposed upon the value of timber harvested. Prior to harvesting an owner must secure a permit from the State Tax Commission The unit value of the crop is determined by the State Tax Commission on the basis of prevailing market prices for timber of the species and quality harvested All forest fees and yield taxes are paid to the county tax collector and are disbursed as property tax revenue.

In 1961 Oregon enacted three different tax laws, applicable to forest lands and timber, the most important of which is a mandatory differential assessment law [19] The law applies to all forest land and timber situated west of the Cascade Mountains, the bulk of Oregon's prime commercial forest land, except to such land classified as "reforestration land" under the 1929 optional yield tax law.

[17] CCH 97-001-002.
[18] E T Williams, *State Forest Tax Law Digest*, 1956, and Mimeographed Supplements, Division of Forest Economics Research, U S Department of Agriculture (Washington, D C , 1957), pp 65-67
[19] *Laws of the State of Oregon*, Ch 659, 1961.

Land continues to be assessed at its highest and best use value, which presumably is that derived from growing timber [20] All timber of less than 12 inches dbh (diameter at breast height) and not in excess of 90 years old is assessed at immediate harvest value, that value at which the timber could be sold voluntarily in the open market Any timber over 90 years of age is assessed at 30 percent of its immediate harvest value, except in cases where less than one-thirtieth of the total old growth has been harvested in the preceding year, in which case the present true cash value for assessment purposes is 25 percent of immediate harvest value. Since 1963, an additional property tax has been levied on all old and young growth harvested in the preceding year In the case of old growth, the additional property tax amounts to the differential between the actual tax paid on a 30 percent valuation of immediate harvest value and the total tax due had the timber been assessed at 70 percent of harvest value. The additional tax imposed upon young growth harvested is based upon 100 percent of harvest value, clearly a penalty tax designed to discourage the cutting of young growth.

The second tax passed in 1961 is an optional timber tax for small owners in western Oregon [21] An owner of no more than 1,000 acres of forest land west of the Cascade Mountains, not classified under the 1929 optional yield tax law may, for tax purposes, have his land classified under this particular act, if the average age of timber does not exceed 60 years and the land is actually devoted to timber production.

Land is differentiated by quality and assessed on appraised values ranging from $80 per acre for site I land to $5 per acre for site V land. The timber itself is entirely exempt from separate ad valorem taxation. The appraisal of taxable forest land and timber is undertaken by the State Tax Commission, which in each case determines the immediate harvest value of the timber, as well as the full cash value of the land.

The third law applies to forest land and timber east of the Cascade Mountains [22] The land continues to be assessed and taxed under the general property laws. Timber, however, is entirely exempt from property taxation. At the time of harvest, a 5 percent yield tax is imposed on "the immediate harvest value of the timber." The Oregon State Tax Commission determines the value by species and by general growing area, taking into account the size and quality of the timber, distance from conversion plant, cost of removal, etc Timber owners must file quarterly returns with the State Tax Commission indicating the amount harvested during the preceding three months. Taxes, derived by determining the harvest value and applying the 5 percent yield tax rate, are payable quarterly to the State Tax Commission, which in turn credits the eastern Oregon counties with the tax receipts on the basis of the ratio of the county's total appraised timber valuation to the total timber valuation for eastern Oregon. A reserve fund is administered by the State Tax Commission, which each quarter is credited

[20] The present technique of valuing forest land has been subject to considerable criticism See for instance I A Zivnuska, "The Valuation of Forest Land in Western Oregon for Property Tax Purposes," Berkeley, California, 1963, mimeographed
[21] *Laws of the State of Oregon*, Ch. 714, 1961
[22] *Ibid*, Ch. 627.

with any monies not disbursed to the counties. Only 80 percent of the yield tax revenues is distributed. Should the revenues received during the fiscal year 1963–64 and during later years amount to less than the revenues received in the 1962–63 fiscal year, the reserve fund will be utilized to make up the deficiency. In order not to diminish the total appraised value of taxing districts, eastern Oregon timber is kept on the local tax rolls.

Washington. The State of Washington has an optional yield tax which was enacted in 1931.[23] Under its provision land which bears nonmerchantable young growth or immature timber left after the mature timber has been harvested may be classified as "reforestration land" by the State Forest Board. Reforestration land is taxed on a fixed assessment of $1 per acre for land west of the Cascades and $0.50 per acre for land east of the Cascade Mountains. The timber itself is subject to the yield tax imposed upon the full cash value of timber when harvested. The yield tax rate is 1 percent per year for each year after classification as reforestration land, not to exceed a 12.5 percent maximum tax rate. The tax bill is computed on the basis of the annual cut reported by the owner to the State Forest Board and the county assessor and the stumpage prices determined by the State Forest Board Prior to cutting, the owner must obtain a permit from the State Forest Board and must, in addition, post a surety bond to cover the approximate amount of yield taxes payable. The taxes are paid directly into the county treasury.

EVALUATION OF OREGON AND WASHINGTON ALTERNATIVES VS. CALIFORNIA TAX

Additional research is required to make a comparison of the tax liabilities borne by similar stands of timber in Washington, Oregon, and California. It is clear that the tax liability of Washington forest land, assuming identical tax rates, is less than that of California forest land. On the other hand, the tax burden on timber may be considerably greater in Washington than it is in California. If timber, previously exempt under Section 12¾, is cut during the first year after it has been returned to the tax rolls, the effective tax rate as a percent of gross revenue amounts to 1.75 percent, assuming an appraised-to-assessed valuation of four to one and a tax rate of 7 percent of assessed value. Under similar circumstances the effective tax rate of gross revenue in Washington would amount to 12.5 percent.

The major advantages of Oregon's and Washington's tax laws are their relative simplicity, their general applicability to all owners of forest land and timber, the fact that such risks as fire, wind and insects need not be borne by the owner; and a certainty about future tax liabilities. Most importantly, the application of a yield tax to incomes received from the sale of timber would reduce or eliminate the glaring inequities which result from the application of the property tax on a county-to-county basis It would certainly reduce an apparent "competitive undervaluation" practiced by some California timber counties.

[23] Williams, *State Forest Tax Law Digest*, pp. 68-70.

SUMMARY

Throughout this paper the term "inequity" has been used recurrently, because the present application of California's property tax to private forest land and standing timber places greatly differing tax liabilities on similar properties in different counties or in different taxing districts within a county.

The annual determination of full present value of property, required by the Constitution of the State of California is an extraordinarily difficult task even if the assessors were in possession of relevant economic information. Many assessors lack even the basic information, a reliable inventory of the property to be assessed

The present value of timber property depends upon future incomes derived from such property. The value of future income streams is a function of the volume of timber harvested, the time period over which it is harvested and the price at which it can be sold. Yet the volume of future harvests, the harvest period (for operations other than sustained yield) and unit prices of timber are not predictable with any degree of certainty. Thus, determination of *present* value based upon *future* income streams is subject to the vagaries of the market place which cannot be anticipated Even if a future income stream has been "determined" (agreed upon), it must be discounted in order to derive the present value thereof The magnitude of the discount factor which determines the present value and present tax liability, following the procedure outlined in the Assessors' Handbook (4), is a conglomerate of a "safe" rate of return, an allowance for taxes, and a "safety factor." The "safe" rate of return and the "safety factor" used in deriving the discount factor vary considerably from county to county, resulting in different present values and tax liabilities borne by like timber properties.

The California Constitution provides for certain tax exemptions for nonmerchantable young-growth timber and merchantable old-growth timber left on cutover land for purposes of reforestation The Constitution further grants to the county timber maturity boards the authority to determine what constitutes "mature timber."

Because of rapid technological changes, the definition of mature timber, upon which the constitutional provision rests, does not hold today. There appear to be as many definitions of mature timber as there are timbered counties The result is exemption from the property tax for a given stand of timber in one county, assessment and taxation of a like stand in another county. Furthermore, tax exempt merchantable old-growth timber is being harvested in significant volume in several counties.

Because a major proportion of the property tax base of some counties consists of forest land and timber, and because significant percentages of total employment in some counties are generated in the timber- and wood-using industries, some counties appear to "competitively undervalue" timber properties in order to "not drive the industry out."

As an alternative to the property tax, the yield tax, levied on gross income from the sale of timber, has the distinct advantage of letting the market place determine value. Since the yield tax rate applies to all sellers of timber in like manner, the yield tax eliminates the inequities arising from differential assessments and tax rates which typify the present application of the property tax to California's timber.

The major disadvantage of the timber yield tax is that tax revenues are dependent upon harvest and sale of timber, which may fluctuate from year to year. This will affect the ability of county governments to provide necessary services, or will require increased assessed valuation of other property or increased tax rates.

PART VI

TAXATION OF HOUSE TRAILERS

RAYMOND R SULLIVAN

The property tax is not applied to house trailers, mobilehomes, or motor vehicles Instead a license fee is charged as an *in-lieu* tax; that is, a state fee in lieu of the local property tax State licensing of motor vehicles has the obvious advantage of uniformity in license plates rather than 58 different county plates and it also assures central record keeping for ease in identifying stolen, damaged, or abandoned automobiles. The ease with which motor vehicles could be registered in the lowest tax rate counties would create inequities for most owners, dealers, and fleet operators. The same problem prevails in the location and assessment of mobilehomes, so they are included within the *Revenue and Taxation Code* sections on taxation of motor vehicles.[1] In addition to the in-lieu tax of 2 percent, there is a basic registration fee of $8 which is added to the fee and collected as one bill

The code contains a depreciation schedule which must be used to determine value of the vehicle.[2] The single depreciation schedule in the code applies to motor vehicles—those propelled by their own power—and mobilehomes which must be towed to their sites It covers nine years of declining rates; values for years after the ninth are equal to the value for the ninth year. The license fee for trailers has the advantage of easy collectibility and little escape but it seems a strange method of taxation for a vehicle which cannot move under its own power and often can be moved only by a special vehicle and then with a travel and route permit because of the extreme size The in-lieu tax is computed against the California delivered price (by price classes) in the year the vehicle is first offered for sale in this state For the first year the tax is based on 85 percent of the figure which represents the class of the vehicle as determined by the department. Subsequent rates are 70 percent for the second year, 55 percent for the third, 40 percent, 30 percent, 25 percent, 15 percent, 10 percent, through the eighth year and 5 percent for the ninth and succeeding years.

Chairman Petris asked the Department of Motor Vehicles to prepare a separate depreciation schedule for mobilehomes which would more closely represent their actual value He suggested that the *Mobilehome Market Report* (trailer blue book) be used as a guide in determining value for tax purposes and received the following reply:

> "We have given considerable study to your request and find that a review of the *Mobilehome Market Report* indicates that the information therein is much too sketchy to support any type of depreciation schedule except for possibly a very few standard makes that have been in constant production for at least nine years.[3]

[1] *Revenue and Taxation Code*, Section 10701 ff.
[2] *Revenue and Taxation Code*, Section 10753 2c
[3] Letter to Hon Nicholas C Petris from Mr. Tom Bright, Director of the Department of Motor Vehicles August 19, 1964

House trailers and mobilehomes are now offered for sale with wall-to-wall carpeting, electric ranges, refrigerators, and complete furnishings including pictures on the walls. All this equipment is legally part of the motor vehicle at sale as accessories and becomes part of the depreciable purchase price, not subject to any personal property tax as is household furniture.

Since the present depreciation schedule for motor vehicles does not appear to reflect actual current values when applied to trailers and the blue book information is too sketchy to be the basis for a new schedule, some other system must be proposed The most promising suggestion has been to eliminate the *in-lieu* tax on the house trailer and mobilehome vehicle while retaining some small basic registration fee for a license plate. This would insure compliance and locate all the trailers by county. The county assessor would then be authorized to assess the coach as he assesses all other taxable property in the county. The assessor would recognize the depreciation of the coach, and he would assess the property accordingly, but the assessment for tax purposes would more closely reflect actual value than the present fixed and rapidly declining depreciation schedule found in the Revenue and Taxation Code.

The two tables which follow indicate the number of house trailers registered in this state and the revenue derived from their taxation The average in-lieu tax on house trailers is slightly more than $16 and the average 1965 in-lieu tax on new trailers purchased in 1964 will amount to about $53 38 It is interesting to compare these figures with the property tax on a new, furnished home purchased in 1964

TABLE I

House Trailers: Registrations Through September 11, 1964

Year first sold	*Total*	*Year first sold*	*Total*
1929 and prior	2	1952	11,129
1930–1938	1,272	1953	13,255
1939	423	1954	12,548
1940	510	1955	17,312
1941	994	1956	18,550
1942	1,022	1957	20,611
1943	484	1958	21,039
1944	846	1959	26,004
1945	1,640	1960	21,859
1946	4,860	1961	19,869
1947	7,010	1962	22,628
1948	7,059	1963	27,492
1949	4,634	1964	22,305
1950	6,172		
1951	7,484	Total	299,613

TABLE II

Tax Revenues From House Trailers

Year first sold	*Total items*	*Total 1965 VLF fee*
1957 and prior	137,817	$815,391
1958	21,039	131,888
1959	26,004	271,183
1960	21,859	410,947
1961	19,869	475,175
1962	22,628	751,455
1963	27,492	1,252 232
1964	22,305	1,100,745
Total	299,613	$4,799,016

PART VII

THE CALIFORNIA BANK TAX

by

MRS. YVETTE E. GURLEY

A. Introduction

This study of the bank tax in California follows a long line of predecessors. The most recent study was the Hulse Committee report in 1951.[1] At that time the State of California was being sued by the banks over the legality of the part of the franchise tax which was *in lieu* of property taxes The suit was decided in California's favor, but the tax is still being protested by the banks. Therefore, it is appropriate, in connection with the full and complete study of the state tax structure which the Assembly assigned to the Committee on Revenue and Taxation, to review once again the problems of bank taxation in California.

At the present time, all business corporations, including banks, in California have to pay a 5.5 percent income tax. However, corporations other than banks pay personal property taxes to local governments; state and local governments are prohibited from taxing such property of national banks, and so state banks are not taxed on personal property either. Instead, California imposes a supplementary tax on bank income at a rate equal to the ratio of nonfinancial corporations' personal property taxes to their net income, but this rate cannot exceed 4 percent.

This additional tax, in one word, is the bank tax problem. From what has just been said, it is clear that the discussion of bank taxes cannot be limited to these taxes alone The fact is that they are integrally bound up with matters related to corporation income taxes and personal property taxes. One is therefore forced to widen the scope of the study to include these other taxes, and to consider such questions as whether banks bear larger tax burdens than other corporations or savings and loan associations.

This study attempts to deal with these issues in a systematic way. It first looks at the legal methods open to the states of taxing national banks It then turns to the methods that have actually been used by California, and the current situation is outlined Next, the study evaluates the various objections to the present method of taxing banks in California, raising the question whether California banks are discriminated against in any significant way. Finally, it takes up alternatives to the present method of bank taxation, and makes recommendations at the end.

B. Legal Methods of Taxing National Banks

The taxation of banks by the states is restricted by the existence of our dual banking system. Banks may be chartered by the states; and it turns out that every state has a system of state-chartered and state-supervised banks. Banks may also be chartered by the federal govern-

[1] *Report of the Senate Interim Committee on State and Local Taxation*, Part 3 (Sacramento, 1951), p. 203-224

ment; and throughout the country we have a system of national banks supervised by the Comptroller of the Currency Since national banks are creatures of the federal government, they may be taxed by the states only in a manner established by Congress [2] The states have a natural reluctance to tax their state banking systems at rates higher than those applied to national banks, so the law which effectively governs the state taxation of all banks is federal law

Over the years, Congress has established four methods of taxing national banks. Only one method of taxation may be used by any state, except that a state may, under certain conditions, impose a tax measured by net income of the banks and also tax individuals on the dividends received from those banks, as explained below

1. TAXATION OF BANK SHARES

The first statute by which Congress permitted the states to tax national banks was Section 41 of the National Banking Act, approved June 3, 1864. It permitted the taxation of the shares of stock in the hands of the stockholders In less than four years the system was changed By act approved February 10, 1868 the statute was altered—in the now-famous Section 5219—to permit the taxation of the shares of the bank as a block, the assessment being on the bank, with the bank paying the tax for its shareholders and having the right to secure reimbursement from the shareholders The tax could not be at a rate higher than that on "other moneyed capital" in the hands of individual citizens of the state coming into competition with the business of national banks Section 5219 also provided that real estate owned by the bank might be taxed like other real estate.

As in the case of general property taxation, taxes on bank shares may be based on actual value, fair market value, true value, etc Each state sets up its own guides for determining the value of the stock The rate on bank shares is the same as or lower than that on other forms of intangible personal property owing to the provision noted above.

Most states use this method of taxing banks It was the only method available from 1864 to 1923 and it has remained in force up to the present time in 27 states However, this taxing method is not without complications The tax rate cannot be higher than that on "other moneyed capital," but the meaning of this term has been repeatedly questioned. And there have been allied questions which we will presently turn to It has been said that "the problem of discrimination under the share tax method has proven by far the most complex problem in bank taxation." [3]

2. TAXATION OF BANK DIVIDENDS

The states may include dividends derived from bank shares in the taxable income of the dividend recipients The tax cannot be at a rate greater than that assessed upon the net income from other moneyed capital. If a state has an individual income tax, it may include the dividends of national banks (if other dividends are also included) in such income, but it cannot use this method along with the share tax

[2] *McCulloch v Maryland*, 4 Wheat, 316 (1819).
[3] *Commerce Clearing House*, 1963, p. 1814.

method However, it may use this method along with either the third or fourth methods, which are described below, if both corporate income and dividends are generally taxed

The dividend tax was approved by Congress in 1923 along with the tax on banks' net income The states were given the privilege of taxing dividends in addition to bank income to induce them to switch from the share tax method. The reason for this inducement was that a 1921 Supreme Court decision [4] in effect defined "other moneyed capital" to include a large portion of all intangible assets, and many states were taxing bank shares at rates higher than those on some intangibles.

3. TAXATION OF BANK NET INCOME

The states may impose a tax on the net income of national banks if the rate does not exceed that on other specified classes of corporations (mercantile, manufacturing, and business)

This tax did not prove to be popular. The revenue from the tax would have been too small, particularly since the tax on the net income would have excluded tax-exempt interest on government bonds from the income base Banks hold large amounts of these securities owing to the high federal income tax on bank net income.

This tax has been applied in several states, but at the present time it is confined to Wisconsin and South Carolina

4. THE FRANCHISE OR EXCISE TAX

In 1926 Congress added a fourth method of taxing national banks, an excise tax upon the franchise of a bank, the value of the franchise measured by net income [5] In this case, net income comprises income "received from all sources," including the interest on government bonds, otherwise tax exempt. The rate of "excise tax" cannot "be higher than the highest of rates assessed by the taxing state upon mercantile, manufacturing and business corporations doing business within its limits." Since 1926, 18 states have switched from the share tax method to the franchise tax method The two new states, Alaska and Hawaii, have adopted the franchise tax

National banks cannot be taxed on their personal property, but ordinary corporations are so taxed by states and local governments Consequently, even if the net income tax were the same on both national banks and corporations, the former would be subject to lower overall taxes Some states therefore add several percentage points to the net income tax rate on banks, the additional points based on the personal property taxes paid by other corporations as a percentage of their net income Thus, Massachusetts and California each provide for a rate to be fixed by the taxing official, which is intended to equalize the tax burden upon banks and other corporations Other states, which levy additional percentage points, but not so scientifically, are Colorado, Minnesota, Missouri, and South Dakota

[4] *Merchants National Bank* v *City of Richmond*, 256 U S 635 (1921)
[5] Hence this tax may be termed excise, franchise, or income In this study it is referred to as a franchise tax

C. *Bank Taxation in California*

1. TAX METHOD, 1911–1928

California adopted Constitutional Amendment No. 1 in 1910 to enable it to tax national banks under the authority granted by the federal government in 1864 and 1868.[6]

The Legislature provided for the following method of taxing banks. (1) taxation by local governments of the real property of banks as other real property was locally taxed; and (2) taxation by the state of the shares of stock. The shares were to be assessed at their "book value" plus the pro rata of the accumulated surplus and profit with a deduction for the assessed value of the bank real estate.

This method of taxation remained in force from 1911 to 1928. The experience with the share tax was satisfactory both from the point of view of the state and of the banks. The yield of the tax was substantial, the tax method used was apparently straightforward, and there was no complaint of discrimination among banks.[7]

California got into difficulty with this tax through a series of actions which came into conflict with the provision that the tax rate on national bank shares could be no higher than that on "other moneyed capital." This term was for a long time interpreted to mean state bank shares. However, in 1921, the Supreme Court decision referred to above widened the definition of "other moneyed capital" to include individual investments in bonds, notes, and other evidences of indebtedness that came into competition with national banks in the loan market. This, in effect, included a wide range of intangible assets. In 1910, prior to this Supreme Court decision, California exempted mortgages from taxation by constitutional amendment. And in 1925, authorized by constitutional amendment in 1924, the Legislature enacted the Solvent Credits Act which gave preferential treatment to many intangibles, not including bank shares. Next, the California Supreme Court in 1928 declared the classification of intangibles invalid, and the situation reverted to the status of 1917, namely, the assessment of all property, intangibles included, at full cash value.

Meanwhile, in response to the 1921 U.S. Supreme Court decision and to the resulting protests from the states, Congress (in 1923) amended Section 5219 by providing for two new methods of taxing national banks. And in 1926 still another method was added, the franchise (excise) tax.

Consequently, by the late 1920's, it was clear that California's share tax on banks was higher than rates imposed on many other intangibles which had been defined as "other moneyed capital"; and this fact confronted the federal government's provision of alternative methods for taxing national banks. In California, it was felt that an emergency existed because "recent litigation and court decisions have thrown the tax administration of the state into confusion and have placed in jeopardy an amount of state revenue estimated to be in excess of $22,000,000."[8]

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[6] November 1910 Art. XIII, Sec. 14, of the Constitution relates to taxation of banks by California.

[7] *Special Report of the California Tax Commission* (Sacramento, 1928), p. 15.

[8] 1928 Special Report, *op. cit.*, p. 7.

2. BANK TAXATION, 1929–1933

The California commission set up to study the problem recommended abandonment of the share tax method, mainly because California wanted to reestablish lower tax rates on specified intangibles. Of the alternatives described in Chapter B, the fourth—the franchise tax—was selected. The second alternative, the dividend tax, would have required the enactment of a personal income tax. The third method, an income tax, was discarded in favor of the fourth because the latter had the added advantage of allowing the inclusion of what would otherwise be tax-exempt interest in the tax base. The exclusion of federal bond interest would have reduced the tax base of banks by one-fourth and the exclusion of all interest exempt from the federal income tax would have reduced that base by more than one-half.[9]

Therefore, the commission recommended, the Legislature voted, and the people approved the 13th Amendment to the California Constitution The Legislature then enacted into law the Bank and Corporation Franchise Tax Act of 1929.[10] A levy of 4 percent according to or measured by income was imposed upon both banks and corporations. "Provision was made, as a temporary expedient for an offset for real estate taxes as well as for personal property taxes paid to localities Personal property taxes and 10 percent of real property taxes paid locally could be used as an offset with the proviso that the total offset could in no instance exceed more than 75 percent of the franchise tax." [11]

Owing to the decline in bank income in the depression and to the low tax rate imposed by the new tax, revenue from the banks fell drastically The taxes paid by banks in 1929, 1930, and 1931 averaged only one-sixth of the taxes paid in 1926, 1927, 1928, the last years of the share tax.[12]

Concern with the low yield of the new tax led to reexaminations of the problem by various groups. The 1931 joint legislative committee pointed out the unique advantage enjoyed by the banks: "Where they are taxed only upon their real property and by an excise tax, while all other corporations are taxed either directly or by a commutated tax upon their real property, their intangible assets (franchise) or by an excise measure." [13]

3. BANK TAXATION, 1933 TO PRESENT

The Tax Research Bureau Report of 1933 concluded that the total tax burden on corporations was heavier than that on banks: " . . it is clear that banks are now paying a smaller percentage of their net income than are other corporations in total taxes." [14]

The remedy offered by the Tax Research Bureau had two facets First, the report recommended elimination of the offset provision for equity reasons. Second, it recommended a new tax rate on banks and

[9] 1928 Special Report, *op cit*, p 40.
[10] *Statutes of 1929*, Ch 13
[11] California Senate, *Report of the Senate Interim Committee on State and Local Taxation*, Part 3 (Sacramento, 1951), p 206
[12] *Report of the California Tax Research Bureau* (Sacramento, 1933), p 75
[13] *Assembly Daily Journal*, Jan 23, 1931, p 31.
[14] Tax Research Bureau, *op cit*, p 79

corporations "If the offset should be abolished, a rate of 1 89 percent applied to the net income of corporations would have produced the same revenue. However, this rate would have produced much less revenue from banks To equalize the total tax burden, state and local, of corporations and banks, it will be necessary to ascertain the average percentage of net income paid by corporations in the form of personal property taxes Addition of this percentage to 1 89 percent would produce a corresponding burden in terms of net income on banks." [15]

The bureau recommended setting the bank tax rate partly in terms of the percentage of net income of general corporations consumed by personal property taxes [16] Legislation in 1933 made this recommendation effective

The provision for setting part of the bank tax rate according to the ratio of personal property taxes paid by corporations to their net income has been a source of controversy and litigation from that day to this A formula rate on banks was provided which was equal to the income tax rate paid by general corporations plus the percentage of the personal property taxes to the net income of those general corporations, with provision for a maximum rate The basic income tax rate on general corporations and banks was initially set at 2 percent, with the maximum tax *in lieu* of property tax upon banks at 4 percent Subsequently, the basic rate was raised to 4 percent and then to 5½ percent, where it now stands. The *in-lieu* (or 2nd installment) rate has remained at a maximum of 4 percent Thus, the total tax rate on banks may be as high as 9½ percent

The corporation tax rates and other provisions, as they prevailed from 1929 to 1959, are shown on Table 1

The Executive Officer of the Franchise Tax Board is charged with the responsibility of determining, by the 31st of December each year, the formula rate for the supplementary tax on banks The rate is set after a public hearing for examination of the data on which the rate is based

This formula method of determining the supplementary tax rate has consistently been criticized by the California banks as unconstitutional and as being improperly applied by the Executive Officer. The allegation of unconstitutionality was disposed of by the U S Supreme Court decision of October 9, 1961,[17] which denied review of the appeal of California banks from an adverse decision of the Supreme Court of California [18]

The allegation that the tax was improperly applied by the Franchise Tax Commission was considered by the 1945 Legislature, which provided for the deletion of the personal property of public utilities and of their income as factors in determining the formula rate applicable to banks

[15] *Ibid*, p 81
[16] *Ibid*, p 79-82
[17] 76 ed 2nd 16
[18] *Security First National Bank et al* v. *Franchise Tax Board*, 55c 2nd 407 (February 23, 1961).

TABLE I

Corporation Tax Rates

Item	Income year						
	1929-32	1933-34[1]	1935-36[2]	1937-42	1943-49	1950-58	1959 ff
1 General corporations							
a Tax rate	4%	2%	4%	4%	3 4%[3]	4%	5½%
b Minimum tax	$25	$25	$25	$25[5]	$25[5]	$25	$100[6]
c Franchise tax offset	*	--	--	--	--	--	--
2 Banks							
a Tax rate[4]							
(1) 1st installment	4%	2%	4%	4%	3 4%[3]	4%	5½%
(2) 2nd installment[5]	--	Max of 4%	Max of 4%	Max of 4%	Max of 4%	Max of 4%	Max of 4%
b Franchise tax offset	†	--	--	--	--	--	--
3 Other financial corporations							
a Tax rate							
(1) 1st installment	4%	2%	4%	4%	3 4%[3]	4%	5½%
(2) 2nd installment[5]	--	Max of 4%	Max of 4%	Max of 4%	Max of 4%	Max of 4%	Max of 4%
b Minimum tax	$25	$25	$25	$25	$25[5]	$25	$100[6]
c Franchise tax offset	*	‡	‡	‡	‡	‡	‡
4. Corporations not subject to bank and corporation franchise tax							
a Tax rate[4]	--	--	--	4%	3 4%[3]	4%	5½%

* 100 percent of personal property and 10 percent of real property taxes up to 75 percent of franchise tax

† 10 percent of real property taxes up to 75 percent of franchise tax.

‡ All personal property taxes, 1933 through 1936, all taxes and license fees except real property and franchise taxes, 1937 through 1938, personal property taxes, motor vehicle "in lieu" tax, and personal property brokers' license fees, 1939 through 1946, all of foregoing plus license fees for privilege of loaning money, 1947 through 1950, all of foregoing plus use tax paid by savings and loan associations, 1957 to date

[1] The bank and corporation franchise tax was extended to Massachusetts and business trusts, which heretofore had been exempt from taxation (Stats 1933, p 708). Six years later, these firms were removed from the scope of the bank and corporation franchise tax and subjected to the corporation income tax (Stats 1939, p 2902)

[2] The bank and corporation franchise tax was extended to public utilities which heretofore had been taxed on gross receipts (Stats 1935, p 960)

[3] Temporary provisions enacted during World War II reduced the franchise tax rate by 15 percent This temporary reduction, which commenced with December 31, 1943 income-year returns, was renewed in 1945, 1947, and 1948, but was allowed to lapse in 1949 with income years ending on or before November 30, 1949 (Stats 1943, p 1679; Stats. 1945, p 1290, Stats 1947, p 1866, Stats 1948, p 15) The temporary reduction in the minimum tax from $25 to $21 25 was withdrawn for returns for income years ending on or after July 31, 1947 (Stats 1947, p 2852).

[4] There is no minimum tax imposed on banks or on corporations subject to the corporation income tax

[5] The second installment rate is the lower of two figures· a maximum rate and a figure which approximates the ratio of the aggregate personal property taxes of income-earning nonfinancial (and 1944 to date, nonutility) corporations to their aggregate net income

[6] The minimum tax imposed on credit unions was reduced from $100 to $25 provided their gross income is $20,000 or less This reduction was effective with income years ended on or after April 1, 1960 (Stats 1960, Ch 1). The minimum tax imposed on gold mining companies which have been inactive since 1950 was reduced from $100 to $25 effective with income years beginning after December 31, 1960 (Stats 1961, p 1413)

SOURCE Franchise Tax Board. *Annual Report, Calendar Year 1963*

The 1963 amendments to the Bank and Corporation Franchise Tax Act provided for paying tax liabilities at an earlier date than heretofore. First, the privilege of paying the tax in installments was eliminated; second, the payment of taxes was accelerated by providing for the payment of a portion of an estimated tax each year on the basis of the estimated income for that year.[10]

[10] Senate Bill No. 5, Chapter 2.

At the present time, all California business corporations, financial and nonfinancial, pay a franchise tax at the basic rate of 5 5 percent of their net income. Nonfinancial corporations pay *ad volorem* taxes on their personal property at the local rates Commercial banks, which are exempt from these local personal property taxes, pay a tax *in lieu* of property tax to the state on their net income, the rate of which is fixed annually as previously described, up to a maximum rate of 4 percent.[20]

D. Revenue from Bank Tax: California and Other States

Before considering the objections to the present method of taxing banks and the alternatives to this method, we shall look at the annual tax revenues collected from California banks from 1950 to 1960; and then compare these revenues with those collected by other states.

1. REVENUE FROM BANK TAX IN CALIFORNIA

Table 2 records the net profits of banks and the federal and state and local taxes paid by these banks during the years 1950–60. It may be seen that net profits rose markedly during the period along with tax revenue to federal, state, and local governments. However, there was very little overall increase in the proportion of net income absorbed by taxes. This proportion, for the federal government, did rise during 1952 and 1953, when an excess profits tax was imposed on corporations, but it fell back again and ended the decade about where it began The average percentage of income paid by California banks to the federal government from 1950 to 1960 was 40 6 percent.

The state tax rate on bank net income was increased from 4 percent in 1950–58 to 5½ percent in 1959, the level which prevails today. This increase is reflected in total state and local taxes for 1959 and 1960. From 1950 to 1960 California banks paid an average of 11.7 percent of net income in total state and local taxes. It is interesting to note that the California Tax Commission found that the banks paid 11.6 percent of their net income in bank share taxes to the state in 1927.[21] Thus, since the 1927 figure does not include local property taxes, which

[20] The bank tax rate, r_b, is the sum of two tax rates the basic corporation income tax rate, r_y, and an *in lieu* tax rate, r_l. The latter is equal to

$$(1)\ r_l = \frac{T_p - r_y T_p}{Y + T_p},$$

where T_p is the personal property taxes paid by nonfinancial corporations, and Y is the net income of these corporations If corporations were not subject to personal property taxes, their net income would be increased to this extent (T_p) and consequently they would pay more income taxes ($= r_y T_p$) Hence, personal property taxes increase corporations' total taxes, not by T_p, but by $T_p - r_y T_p$, which is the numerator in equation (1) r_l is subject to a ceiling of 4 percent Also for purposes of this tax, nonfinancial corporations exclude some corporations, such as public utilities.

Thus, the overall bank tax rate, r_b, is

$$(2)\ r_b = r_y + r_l = r_y + \frac{T_p - r_y T_p}{Y + T_p},$$

and this is equivalent to

$$(2a)\ r_b = \frac{T_p + r_y Y}{Y + T_p},$$

or to the sum of corporations taxes on personal property and net income divided by their net income (including personal property taxes)

If we write $r_p P = T_p$, where r_p is the average property tax rate and P is assessed value of property, then

$$(3)\ r_b = \frac{r_p P + r_y Y}{Y + r_p P} = \frac{r_p p/y + r_y}{1 + r_p p/y}$$

Therefore, the bank tax depends on four factors (A) the average property tax on corporations, (B) the basic corporation income tax, (C) the assessed value of personal property of corporations, and (D) the net income of corporations

[21] 1928 Report, *op cit.*, p 34

are included in the data in Table 2, the banks still are not paying as much in taxes to the state as they did when they were taxed on bank shares

TABLE II

Taxes on California Banks: 1950–1960

Year	Net profits of banks before taxes (in millions)	Federal taxes on net income		Total state and local taxes	
		Amount (in millions)	As percent of net income	Amount (in millions)	As percent of net income
1950	$155 6	$58 3	37 4%	$19 3	12 4%
1951	158 9	58 6	36 9	17 5	11 0
1952	178 0	75 0	42 1	16 2	9.1
1953	204 6	94 9	46 4	18 2	8 9
1954	249 0	104 3	41 9	26 7	10 7
1955	217 8	89 7	41 2	26 8	12 2
1956	248 5	102 4	41 2	27 6	11 1
1957	244 0	101 1	41 5	30 5	12 5
1958	305 3	125 2	41 0	37 9	12 4
1959	272 3	101 6	37 3	38 0	14 0
1960	348 7	137 1	39 3	51 1	14.6

SOURCE Federal Deposit Insurance Corporation, *Annual Reports.*

2. STATE AND LOCAL BANK TAXES IN CALIFORNIA AND OTHER STATES

California banks do not pay an unusually large percentage of their net income in taxes to the state and local governments. Table 3 shows that 16 states collect more taxes from banks (relative to their income)

TABLE III

Percent of Net Income Paid in State and Local Taxes

(1) State	(2) Percent	(3) Principal method	(1) State	(2) Percent	(3) Principal method
1 Rhode Island	22 0	Income	26 New Hampshire	9 4	Share
2 Montana	21 4	Share	27 New York	9 3	Income
3 Louisiana	18 7	Share	28 Pennsylvania	9 2	Share
4 Ohio	18 5	Share	29 Arkansas	8 5	Share
5 Texas	16 3	Share	30 Colorado	8 4	Income
6 Mississippi	16 1	Share	31 Kansas	8 2	Share
7 Indiana	16 0	Share	32 North Carolina	8 0	Income
8 New Jersey	15 5	Share	33 Illinois	7 9	Share
9 Massachusetts	15 3	Income	34 Missouri	7 8	Income
10 Georgia	15 0	Share	35 Wyoming	7 8	Share
11 Oregon	13 8	Income	36 Nebraska	7 7	Share
12 Connecticut	13 7	Income	37 Alabama	7 6	Income
13 Tennessee	13 0	Share	38 Wisconsin	7 1	Income
14 Maine	12 7	Share	39 Florida	6 9	Share
15 New Mexico	12 4	Share	40 Iowa	6 8	Share
16 Maryland	12 1	Share	41 West Virginia	6 8	Share
17 California	11 7	Income	42 South Dakota	6 8	Income
18 Michigan	11 4	Share	43 North Dakota	6 4	Income
19 Kentucky	11 1	Share	44 Washington	6 2	*
20 Idaho	10 3	Income	45 South Carolina	6 2	Income
21 Vermont	10 2	Income	46 Oklahoma	5 9	Income
22 Minnesota	10 1	Income	47 Utah	5 6	Income
23 Nevada	10 0	Share	48 Delaware	4 3	Share
24 Virginia	9 7	Share	49 Alaska	No data	Income
25 Arizona	9 4	Income	50 Hawaii	No data	Income

* No special tax on banks

(2) Percent of net income paid in state and local taxes
Average 1956–1960 FDIC, *Annual Reports*
Based on Appendix Table 5

than does California The table ranks all states according to this criterion, and it records the percentage of income paid in taxes to each state and the principal taxing method used

It is interesting to note that, of the 16 states which collect more taxes from banks than California, 12 use the share tax as their principal taxing device. The remaining four use the franchise tax If the top 24 states are examined, it is found that twice as many states (16) use the share tax as use the franchise tax (8). In the bottom half, more use the franchise tax (12) than the share tax (11). (Washington uses neither.) It is clear that the share tax can be and has been used by the states to collect relatively large amounts of revenue.

Since 1960, two states, Kansas (effective January 1, 1964) and North Carolina have switched from the share tax to the franchise tax Also, the new states, Alaska and Hawaii, adopted the franchise tax with rates of 2 percent and 10 percent respectively.

Among the states already using the franchise tax in 1950, the main trend has been an attempt to get more revenue by raising the rates. Table 4 shows the states which increased their rates during the 1950's and the rate increases

TABLE IV

Increases in Income Tax Rates During the 1950's

State	*(1) From*	*(2) To*
California	8 0%	9 5%
Connecticut	3 0	5 0
Minnesota	8 4	10 0
Rhode Island	4 0	6 0
South Dakota	3 0	4 5
Utah	3 0	4 0
Vermont	4 0	5 0

SOURCE (1) *Report of the Senate Interim Committee on State and Local Taxation*, Part 3, (Sacramento, 1951), p 213 (2) Commerce Clearing House, Inc, *State Tax Guide*, 1963

3. RELATION OF PERSONAL PROPERTY TAX RATE TO REVENUE FROM BANK TAX

The revenue from the bank tax is made up of two parts The first payment is 5 5 percent of bank net income from all sources This payment is not diretely affected by any change in the personal property tax rate. The second payment is based on the rate which is set by the Franchise Tax Commissioner each year As described in Chapter C, this rate is based on the (adjusted) amount of personal property taxes paid by corporations and by the net income of corporations (including personal property taxes paid).

Table 5 presents the computations of the second-payment rate during the period 1950 to 1962. The ceiling rate was 4 percent throughout the period, and in the last six years of the period the ceiling was effective.

The adjusted personal property tax is found by taking the personal property tax paid by corporations (T_p) and subtracting from it $r_y \cdot T_p$, where r_y is the basic corporation income tax rate of 5 5 percent This subtraction is made because, if property taxes were not imposed, corporations' income taxes would be increased by $r_y \cdot T_p$.

TABLE V

Determination of the Bank Tax Rate

Year	*Adjusted personal property tax paid by corporations (in millions)*	*Corporate net income plus personal property tax rate*	*Ratio (in percent)*
1950	$56 9	$1990 4	2 859
1951	66 4	2326 0	2 853
1952	73 7	1993 6	3 745
1953	87 9	2155 2	4 076
1954	93 6	2252 6	4 154
1955	102 1	2760 1	3 698
1956	114 9	2944 9	3 903
1957	147 5	2997 0	4 922
1958	156 7	2770 0	5 657
1959	140 7	3230 3	4 356
1960	140 1	3123 0	4 775
1961	169 8	3305 4	5 136
1962	180 0	3583 5	5 024

SOURCE Franchise Tax Board, *Report Preliminary to Determination of Bank Tax Rates* various years, mimeo

Hence, the second-payment rate r_t is equal to·

$$(1)\ r_t = \frac{T_p - r_p T_p}{Y + T_p}, \text{ where } Y \text{ is the net income of corporations}$$

Since T_p is equal to the average tax rate on personal property r_p times the assessed value of personal property (P), we can write·

$$(2)\ r_t = \frac{r_p \cdot P - r_y \quad r_p \quad P}{Y + r_p P} = \frac{r_p(1 - r_y)}{r_p + Y/P} \leq 4\%$$

Therefore, the second-payment rate depends on four factors

1. The basic corporate income tax rate;
2. The average tax rate on personal property;
3. The net income of corporations; and
4. The assessed value of personal property of corporations

An increase in the personal property tax rate, other factors unchanged, would increase the amount of personal property taxes paid by corporations The ratio of their property taxes to their income would rise—and this ratio would rise more to the extent that Y/P was low (i e, that corporations held a large amount of personal property relative to their net income). To this extent, the tax rate on banks would be higher [22] However, during the last six years (1957 to 1962), the ratio as computed each year has been higher than the 4 percent maximum rate allowed by law. Thus, any increases in personal property tax rates in this period would not have increased the tax revenue from banks.

For analogous reasons, a decrease in the personal property tax rate would tend to decrease bank tax revenue

[22] Using equation 2 above, we have $\frac{\partial r_t}{\partial r_p} = \frac{(1 - r_y)Y/P}{(Y/P + r_p)^2} > 0$

E. Objections to Present Method of Taxing Banks: An Evaluation

Although the U S. Supreme Court decision which denied review of the appeal of California banks from an adverse decision of the Supreme Court of California presumably settled the issue of bank taxation as far as the State of California is concerned, it apparently did not placate the banks. The California Bankers Association has continued its protests against the *in-lieu* part of the bank tax

The three main issues revolve around: (1) bank dissatisfaction with the administrative procedure in setting the *in-lieu* rate; (2) the validity of using the personal property of other corporations as the basis for setting the bank rate; and (3) the allegation that property taxes can be shifted more easily than income taxes, with a resulting discrimination against banks as compared to either nonfinancial corporations or savings and loan associations We will discuss each of these in turn

1. ADMINISTRATIVE PROCEDURES

The appeal of the California banks to the U S Supreme Court raised three issues, two of which were directly based on the alleged objectionable administrative practices in setting the *in-lieu* rate The claim was that the California banks were being deprived of their property without due process of law under the 14th Amendment (1) The banks said they were denied "the right to a full and fair hearing and judicial review of the tax commissioner's factual determinations" which had the effect of permitting the commissioner to determine the "component factors of the tax rate and the resulting tax liability on the basis of secret and unidentifiable evidence without such hearing or review "[23] (2) The banks protested that the assessing authorities in California systematically misclassify real property as personal property, with the result that "the commissioner in relying upon such determinations erroneously computed the rate and the resulting tax liability upon the basis of an overstated personal property tax component."[24]

All of these criticisms along with the replies of the Franchise Tax Board are covered extensively in the most recent study of the bank tax[25] That report contents itself with asking the question: "Does the board comply with the requirements and intent of the law in its procedures in administering the act?" The answer given in the report is: "Certain of these questions apparently must be resolved by judicial determination . . ."[26] As has already been stated, the case was decided for the state.

If personal property of corporations is to be the basis of bank *in-lieu* taxation, then equity demands—not only for banks but for the corporations themselves—that such property be correctly identified The reader is referred to Section 4, and Section 5, Part 1 where the general problem of the administration of the personal property tax is discussed.

[23] *Report to the Management Committee on the California Bank Tax Case,* American Bankers Association, June 27, 1961, p 1
[24] *Ibid*, pp. 1–2.
[25] *Report of the Senate Interim Committee on State and Local Taxation, op cit.,* pp 218–21.
[26] *Ibid*, p. 221.

2. PERSONAL PROPERTY OF NONFINANCIAL CORPORATIONS AND BANK TAXATION

Should the personal property of nonfinancial corporations—even if correctly identified—be used as the basis for bank taxes? The banks claim that it should not be, and to support their position they go back to the conditions and discussion surrounding the original imposition of the *in-lieu* tax.

It will be recalled from Chapter C that the tax in force from 1929 to 1932 was a 4-percent franchise tax on all corporations, with a limited offset for personal property taxes paid However, while banks did not pay the latter taxes, many corporations paid more than they were allowed to offset. Hence, banks were taxed at 4 percent while many corporations were taxed in excess of 4 percent The tax was therefore inequitable as between banks and corporations.

> Analysis of the franchise tax returns reveals that many corporations pay personal property taxes which are in excess of allowable offsets. To that extent these corporations have paid franchise and personal property taxes amounting to more than 4 percent of their net income It is obvious that no bank has paid comparable taxes which are as great.[27]

Furthermore, the above makes it clear that some corporations paid more taxes to the state relative to income than other corporations did, even though all were taxed at 4 percent of income. Hence, it was felt that the tax was inequitable between some corporations and others

> It will be noted that less than 12 percent of the corporations taxable under the act benefit from the offset provisions and that these corporations pay less than one-third of the total tax.
>
> The law has established net income as the measure for taxation of corporate franchises, and assessed value as the proper measure of local tax liability. Consequently, there appears to be no valid reason for taxing certain corporations at smaller percentages of their net income than are applicable to other companies, merely because of differences in property holdings Therefore, the offset cannot be said to result in equitable treatment as between corporations themselves.[28]

Largely for these reasons, the offset provisions were repealed and the present *in-lieu* tax imposed.

The California banks now claim that the present method of taxing banks results in discrimination against banks, in much the same way that the previous taxing method discriminated against corporations. All banks, it is claimed, are required to pay 9 5 percent of net income in taxes but business corporations which have no or small amounts of personal property pay less than this to the state—as little as 5 5 percent of net income Therefore, it is argued, since the previous taxing method was repealed on grounds that it was inequitable, the present method should also be repealed for the same reason.

> In repealing the offset provisions in 1933 the Legislature acted upon the recommendation of the Tax Research Bureau that the

[27] *Summary Report of the California Tax Research Bureau*, op cit, p 79
[28] *Ibid*, p 81.

> offset provisions permitted discrimination between business corporations because it [sic] in effect permitted a different rate of franchise tax based upon the amount of personal property owned by the individual corporate taxpayer. The same principle should apply to the franchise tax on banks . . . It cannot be said that there is no discrimination against banks when all banks are required to pay a franchise tax of 9 5 percent of income whereas any business corporation which does not own tangible personal property pays total taxes of only 5½ percent.[29]

The principal issues involved here can best be sorted out if we look at the problem by means of an example. Assume that two taxes—a personal property tax and an income tax—are imposed on both banks and nonfinancial corporations. Assume that both groups have the same net income, but that banks have less personal property than other corporations.[30] Then banks would pay less total taxes than other corporations—and rightly so if both personal property and income are considered to be equitable bases for taxation

To illustrate with numbers, suppose that a 5-percent tax on personal property and a 10-percent tax on net income are imposed on banks and other corporations; that each group has $50 of net income; and that banks own $100 of personal property and other corporations twice that amount. We then get the following results:

	Banks		*Other corporations*	
	Amount of	*Tax on*	*Amount of*	*Tax on*
Personal property	$100	$5	$200	$10
Net income	50	5	50	5
Total taxes		$10		$15
Total taxes as percent of income		20%		30%
Total taxes as percent of personal property		10%		7½%

Banks and other corporations are each taxed fairly, but because other corporations have more personal property they pay more in total taxes. It is true that corporations' total taxes are a larger percentage of their net income than are the banks' taxes, but banks pay more taxes relative to their personal property than do other corporations. And both results are simply reflections of two taxes imposed equitably upon two bases, income and property

It would clearly be inequitable to ask that banks pay the same total taxes as other corporations—$15 in the above example—even though both groups would then be paying taxes equal to the same percentage of their *net income*. Equity between two groups does not demand that each pay total taxes equal to the same percentage of income, if another tax base, *personal property*, is also employed by the taxing authorities. For the same reason, it would not be equitable to ask both groups to pay the same taxes as a percentage of their personal property.

[29] Hugo A. Steinmeyer, *Evolution of Bank Tax Legislation in California*, Oct. 31, 1963, pp. 51, 53

[30] Whether this is in fact true will be discussed below However, if banks hold more personal property than other corporations, they should pay more taxes than other corporations

If equal total taxes, in the above numerical example, are nevertheless required, then the property tax *rate* on banks would have to be raised from 5 percent to 10 percent, while that on other corporations remained at 5 percent.[31] This would obviously discriminate against the banks. The results are shown below:

	Banks		*Other Corporations*	
	Amount of	*Tax on*	*Amount of*	*Tax on*
Personal property	$100	$10	$200	$10
Net income	50	5	50	5
Total taxes		$15		$15
Total taxes as percent of income		30%		30%
Total taxes as percent of personal property:		15%		7½%

Now, if personal property taxes cannot legally be imposed on banks, the above inequitable result can be obtained in another way. This is to impose a supplementary income tax rate on banks, which is equal to the property taxes paid by other corporations ($10) as a percentage of their net income ($50)—or a rate of 20 percent.[32] Thus banks would pay the basic income tax rate of 10 percent plus an additional 20 percent, or 30 percent in all. This would yield $15 in total taxes, equal to the tax payments of other corporations.

The supplementary bank tax of 20 percent in this case is based on the personal property taxes of other corporations relative to their income. This method is equivalent to taxing banks directly on their personal property, but at a rate twice as high as that imposed on other corporations, "twice as high" because personal property of other corporations is twice that of banks, in our example.

Both of these taxes—the higher personal property rate and the supplementary income rate—discriminate against banks.[33] If banks cannot be taxed directly on their personal property, an equitable alternative is to impose a supplementary income tax rate on them equal to their personal property taxes as a ratio to their net income; or, in the above example, at a rate equal to 10 percent. Thus, banks would pay the basic income tax rate of 10 percent plus a supplementary rate of 10 percent, or $10 in all.

The conclusion to which this discussion leads is that, if personal property taxes cannot be imposed on banks directly, a supplementary tax on their income should be based on *their* personal property holdings and not on those of other corporations. To the extent that other corporations hold larger amounts of personal property than do banks, banks are discriminated against by a supplementary rate based on corporations' personal property. This is modified to the extent that a ceiling limits the *in-lieu* rate or to the extent that those corporations with especially large holdings of personal property are excluded in

[31] This assumes the income tax rate is given. Alternatively, the banks' income tax could be raised to 20 percent.

[32] This supplementary rate is equal to $r_p(P_o/Y_o)$, where r_p is the personal property tax rate, P_o is the assessed value of personal property of other corporations and Y_o is their net income.

[33] If banks held more personal property than other corporations, the attempt to equalize total taxes would still result in an inequitable tax—only, instead of discriminating against banks, it would discriminate against other corporations.

computing the supplementary rate, i e, public utilities[34] Of course, if all corporations with higher or lower holdings of personal property (relative to their incomes) than those of banks were excluded, the supplementary bank rate would simply be based in effect on banks' personal property. And this is how it should be Hence, this principle dictates that not only should public utilities be excluded because they hold unusually large amounts of personal property, but other corporations which hold unusually large or *small* amounts of personal property should be excluded as well.

In conclusion, the present method of computing the *in-lieu* tax rate on banks cannot be defended from an equity standpoint, because it is based on other corporations' personal property and not on that of banks.

3. TAX SHIFTING ARGUMENTS

Even if the *in-lieu* rate imposed on banks' net income were set fairly, in accordance with the previous discussion, it is claimed that banks would still be discriminated against owing to the extent to which various taxes can be shifted.

In particular, it is argued that the personal property taxes imposed on business corporations can be shifted more easily than income taxes imposed on both banks and other corporations On income taxes, Jacoby and Weston have written:

> A tax measured by business net income or profits does not ordinarily possess a high degree of shiftability, because it does not directly affect the short-run variable costs of businesses Therefore, in the short run, the incidence or burden of such a tax remains substantially upon the taxed firms under ordinary conditions This may now be regarded as the orthodox and essentially correct analysis of the incidence of a tax on corporate net income in the short run.[35]

On the other hand, personal property taxes on goods in the process of manufacture and sale would appear to be more readily shiftable if the taxes are on all competitors

Consequently, according to this argument, the *in-lieu* tax on banks is inequitable because it cannot be shifted, whereas the personal property tax on corporations can be shifted.

The same argument can be applied to the banks vis-à-vis the savings and loan associations. These associations pay a franchise tax of 9 5 percent measured by their net income; they are also taxed locally on their personal property However, they are allowed to offset the personal property tax against the franchise tax owed The purpose of the offset is to put them in a position of equality with banks and with

[34] It will be recalled that the 1945 Legislature provided for the elimination of the personal property of public utilities and of their income in determining the formula rate applicable to banks The banks had argued that "It is only by including the taxes paid by public utilities upon the vast amounts of personal property owned by them and striking an average that it can be said that the additional rate imposed upon banks bears the same ratio to their net income as the amount of personal property taxes paid by all other corporations bears to the net income of all other corporations" Calif Bankers Assn., *Reply to Report on Calif Bank Tax*, Mar 1945 pp 5-6

[35] N H Jacoby and J F Weston, "Economic Problems of *In Lieu* Taxation of Banks," *National Tax Journal*, Mar 1963, p. 4.

nonfinancial corporations. The result is that savings and loan associations pay a franchise tax equal to 9 5 percent of their income, the same as banks. However, here again equality is not achieved, according to the argument of Jacoby and Weston, because that part of the tax which is on personal property is more readily shifted than the part based on income.

However, Jacoby and Weston carry this argument much further than either theory or empirical work would support The fact is that there are good theoretical reasons for believing that some significant portion of income taxes are shifted in the short run. Thus, Musgrave, in the standard work in the field, sums up the present theoretical position in this way:

> The traditional rule that a profits tax cannot give rise to short-run adjustments in price remains a good point of departure, but hardly more. Without falling back upon the "practical" argument that businessmen do not act this way, we find a variety of situations where the tax may lead to adjustments in price and output. These include the return to working capital, monopoly pricing under restraint, oligopoly pricing, and situations of collective bargaining where the firm's ability to pay is taken into consideration. Possibilities such as these throw considerable doubt on the conventional position that price policy remains unaffected in the short run.[36]

Aside from theoretical arguments, the two most recent empirical studies in the area of shifting of the corporation income tax came to diametrically opposite conclusions Krzyzaniak and Musgrave found that the corporation income tax was shifted by more than 100 percent in the short run.[37] The other study—that of Challis Hall—found that profits taxes were not significantly shifted in the short run [38]

Furthermore, the extent to which almost any tax is shifted is an open question. There have been no definite answers. Thus, Jacoby and Weston go much too far in their assertion of agreement on such questions. This being so, their argument based on such agreement is invalid.

4. SUMMARY

In summary, if personal property is used as a basis for taxation, bank taxation is inequitable to the extent that banks are taxed, not on their own personal property, but on others' holdings of such property; and to the extent that the administration of such taxation is deficient There is no definitive evidence to support the assertion that banks are discriminated against because of tax-shifting differentials.

F. Alternatives to Present Method of Taxing Banks

As we have seen, if other corporations hold more personal property than banks, the present *in-lieu* tax discriminates against the banks. Perhaps there is no superior alternative, within the present legal frame-

[36] Richard A Musgrave, *The Theory of Public Finance*, New York, 1959, p 286
[37] Marian Krzyzaniak and Richard A Musgrave, *The Shifting of the Corporation Income Tax* (Johns Hopkins Press, 1963)
[38] Challis A. Hall, Jr., Direct Shifting of the Corporation Income Tax in Manufacturing," *Papers and Proceedings of the American Economic Association*," May, 1964, pp. 258-87

work, to the current method of bank taxation. But several proposals have been made, and it is necessary to examine them.

We will first consider a proposal to set the *in-lieu* rate at approximately 1 percent. We then turn to two general proposals, to tax banks like nonfinancial corporations, and to tax nonfinancial corporations like banks. We conclude this section with some recommendations.

1. SET *IN-LIEU* RATE AT 1 PERCENT

The California Bankers Association favors bank taxation that would impose the basic income tax rate (5.5 percent) on banks plus an additional percentage to allow for personal property taxes not paid by banks This additional percentage has been stated to be in the neighborhood of 1 percent.

Recently, Jacoby and Weston attempted to measure the personal property taxes that would have been paid by California banks if they had been taxed in the same manner as nonfinancial corporations during the periods 1932–49 and 1950–59.[39] Their main findings are as follows:

> The major categories of personal property held by banks are furniture and fixtures and coin and currency. Other items of personal property are. automobiles, bullion, gold dust, inventories of stationery and supplies, and repossessed property arising from consumer loans. For all forms of personal property other than money, the calculation procedure could readily be performed: the total amounts of personal property were summed and an average property tax rate was applied.
>
> The determination of the appropriate taxes on money held by California banks involves some complexities Since it is well known that only a small fraction of the money held by the public and subject to assessment is actually assessed, it would be obviously unfair to assume that 100 percent of bank-held money would be assessed. It is reasonable to assume that money held in banks would be assessed to the same extent that money outside banks is actually assessed. Accordingly, estimates of money assessment ratios were developed The percent of currency and coin subject to personal property taxes which was actually assessed averaged 1 34 percent for the 1930's, .75 percent for the 1940's, and 3 04 percent for the 1950's. The money assessment percentages were multiplied by the values of the coin and currency held by California banks on assessment dates to obtain the amounts of personal property taxes which would have to be paid on money.
>
> The total personal property taxes which would have been paid by California banks during the years 1932–1949 averaged about 5 percent of their annual net income; for 1950–1959 they averaged about 1 percent. The actual *in-lieu* tax rate was between 2 and 4 percent for most of the earlier years, and averaged almost 4 percent for the period 1950–1959 The cumulated excess of the *in-lieu* tax over the personal property taxes which would have been paid by California banks for the years 1932–1949 was some $20 million; for 1950–1959 it was $68 million.[40]

[39] Jacoby and Weston, *op. cit.*, pp 7–8
[40] *Ibid.*, pp. 7–8

The above calculation of the amount of taxes that banks would have paid on their personal property relies on a very low assessment of coin and currency. Jacoby and Weston used a figure representing the percentage of coin and currency that was actually assessed to other holders (3 04 percent for the 1950's). However, the law states that coin and currency are to be "taxed in proportion to value" If the assessor adhered to the law, and there is no reason to suppose that he would not, he would be obliged to assess any coin and currency that he knew of at the regular rate.

The Jacoby-Weston argument implies that any taxpayer has the right to declare only part of his tax base for tax purposes if he knows or suspects that others are doing this Thus, presumably wage earners, under the personal income tax, would be justified in declaring only a part of their wages if they felt that other taxpayers were being taxed on only part of their receipts.

If coin and currency are subject to personal property taxes, as they are, but if some taxpayers are not being taxed on their full holdings, the solution is not to extend the results of poor assessment procedures to areas where good assessment is possible Rather, the proper solution is to improve assessment methods where they most need improvement; or, if this is too costly, to eliminate the tax altogether.

Thus, alternative calculations should be made, assuming that bank-held coin and currency would be "taxed in proportion to value" in accordance with the law These calculations are recorded in Appendix Tables 3 and 4 In these tables, the Jacoby-Weston data are used, but it is assumed that bank-held coin and currency are assessed at 50 percent of value, as is other tangible personal property in, for example, Los Angeles County [41]

Instead of total personal property taxes of about 1 percent of net income (75 average for 1950–1959 as computed by Jacoby and Weston), these taxes average 3 17 percent of net income for 1950–1959 The average *in-lieu* rate for the same period was 3 71 percent Instead of a "cumulated excess of the *in-lieu* tax over the personal property taxes which would have been paid by California banks" for the years 1950–59 of $68 million [42] the use of the new assumption results in a maximum of $14 million.[43]

It appears, therefore, that, if coin and currency had been assessed and taxed properly, banks would have paid about one-half percentage point less—not three percentage points less—if the *in-lieu* rate had been based on their personal property rather than on that of nonfinancial corporations. This result depends entirely on how coin and currency of banks are taxed The bankers of course realize this better than anyone else For example, the attempt to amend Section 5219 (H R 3175, 82nd Congress), which was promulgated by the American Bankers Association and the National Tax Association, contained, among other provisions, an authorization to tax national banks on their personal property. However, it was carefully stipulated that·

[41] Los Angeles County has recently reduced its assessment ratio on tangible personal property to 25 percent
[42] *Ibid*, p 8, and *Appendix Table 1*, Row 7.
[43] *Appendix Table 3*, Row 7.

"For the purposes of this subsection, coin, bullion, and currency shall not be deemed to be tangible personal property." [44]

If coin and currency are taxed as personal property, an administrative problem may arise because of the shipment of coin and currency out of the banks just before the tax assessment date This could be solved by utilizing a call date rather than a fixed assessment date. Banks submit condition reports to supervisory authorities which are based on call dates, to prevent the banks from concealing their true financial condition These condition reports could be used by the states to assess the tax due on coin and currency For example, the figures from the four condition reports submitted each year could be averaged for each bank to give an average amount of coin and currency held on which the tax could then be assessed.

In summary, the proposal to set the *in-lieu* rate at 1 percent is based on the banks' contention that this is the rate they would pay if they could be taxed on their own personal property instead of by a tax based on personal property held by other corporations. It has been shown that, under the present law defining coin and currency as tangible personal property, the rate the banks would have paid averaged more than 3 percent of net income from 1950–1959. If the *in-lieu* rate is to be lowered to reflect the personal property of banks instead of that of other corporations, this rate should be set close to 3 percent, and not the 1 percent advocated by the bankers.

2. TAX BANKS LIKE NONFINANCIAL CORPORATIONS

The 1 percent *in-lieu* tax proposal, just discussed, does not contemplate altering federal law in order to impose personal property taxes on national banks However, an alternative proposal does contemplate such a change this is the proposal to tax the personal property of banks in the same way as corporation personal property is taxed. Since such bank taxation is now prohibited, this would require amendment of federal law—specifically, Section 5219

Jacoby and Weston have recently offered this alternative, the heart of which lies in the preferential treatment of coin and currency.[45] They suggest three possible ways of treating coin and currency. First, coin and currency could be assessed to banks in the same ratio as it is assessed outside banks This method, they admit, would not be easily administered "The practical difficulty here is that the calculation of the money assessment ratios is a highly involved and laborious task." [46] As pointed out in the previous chapter, the imposition of a new tax which relies on the inadequate enforcement of the same tax in other sectors of the community cannot be recommended.

Second, the authors suggest a classified tax system with low rates on intangibles, including coin and currency. This would encourage fuller assessment of money and "make less discriminatory the taxation of the full amount of money held by banks" [47] In this case, all the money held by banks would be assessed and taxed, but at special low rates The State of California has had a classified tax on intangibles

[44] S 2547 (81st Congress)
[45] Jacoby and Weston, *op cit*, p 9.
[46] *Ibid*, p 9
[47] *Ibid*, p 9

for many years—the solvent credits tax. This tax has never been very highly regarded and in fact its elimination has been suggested The Northern California County Supervisors Association has testified favoring elimination of this tax "on grounds of administrative feasibility and productivity, holding that 'income from the taxation of intangibles is not sufficient to cover the cost in time and money that is consumed in the collection of taxes on these intangibles . . .'"[48]

Third, Jacoby and Weston advance the proposal of the National Tax Association and the American Bankers Association This alternative would allow states to tax banks directly on their personal property, excluding money The authors claim that· "Of the alternatives considered, this proposal seems superior on both theoretical and practical grounds It avoids the discrimination of the *in-lieu* system of taxation, with a minimum of change in tax practices."[49]

The above three versions of this general proposal give highly favorable treatment to banks' holdings of coin and currency without advancing any good reasons for such treatment Moreover, the proposal seems impractical in that its success depends on the amendment of Section 5219, and for years this section has withstood wave after wave of assaults It is relevant at this point to review recent efforts to amend the section, if only to gain an appreciation of the strength of the opposition against amendment.

Recent Efforts to Amend Section 5219

The amendment of Section 5219, as finally agreed upon by committees of the American Bankers Association and the National Tax Association after lengthy discussions, was first introduced in the 81st Congress in 1949 as S 2547 and H R. 7896. H R 3175 was introduced in the 82nd Congress in 1951.

The main objective of these bills was to invalidate by congressional act the *in-lieu* tax or so-called built-up rate The bills would not allow states to tax the income of national banks at a rate higher than the highest rate of like character on the income of other corporations The adoption of this amendment would have invalidated California's additional tax, and also the excise taxes levied by other states on banks which exceeded the rate imposed on other business corporations[50]

S 2547 was reported favorably by the Senate Banking and Currency Committee and passed by the Senate that year. Before any action on the bill was taken in the House, opposition developed from a number of the state bankers associations which led to a special meeting of the Administrative Committee of the American Bankers Association in January 1952 At this meeting, 15 state associations expressed opposition to the bill

The opposition to the proposed amendment was led by the Missouri Bankers Association which complained that "the bankers of California do not like their built-up rate and desire to outlaw it by the proposed amendments Their gain in this regard would result in rendering in-

[48] Report of the Senate Interim Committee on State and Local Taxation, Part Two, *The Taxation of Personal Property in California*, (Sacramento, 1955) p 63
[49] Jacoby and Weston, *op cit*, p 9
[50] *The Position of the Missouri Bankers Association in Regard to the Proposed Amendments to Section 5219*, (Columbia Mo, May 1954) pp. 30–31.

valid the present excise tax laws by which national banks are taxed in the States of Missouri, Colorado, Minnesota, North Dakota, South Dakota, Oklahoma, Alabama and Arizona." [51] State and national banks in Missouri pay an excise tax measured by net income of 7 percent, with gross income including what is otherwise tax-exempt income. "This 7-percent rate . . . was deemed . . . to be the equivalent of franchise, income, and tangible personal property taxes paid by other corporations." [52] The Missouri bankers further complained that "In order to conform the tax law of Missouri . . . it would be necessary to change the method of taxing *all other corporations* in order to tax validly national banks in Missouri, or as the only other alternative, it would be necessary to change the 1945 Constitution of Missouri in order that national banks might again be taxed on the share tax basis" [53]

At the conclusion of the meeting of the administrative committee, the following resolution was adopted:

> The Administrative Committee of the A B A. hereby reaffirms the principles long ago expressed and several times repeated, that the banks in the national banking system pay their just and equitable share of state taxes, but, at the same time, should be effectively protected against the imposition by the respective states of taxes upon national banks, which discriminate against such banks as compared with other corporate taxpayers.[54]

A recommendation also was made that the association continue its study with the National Tax Association in an effort to develop a satisfactory amendment and that pending this further study "no action shall be taken to urge consideration of H R. 3175 now pending in the House of Representatives." [55]

Since 1952 there have been no further attempts to amend Section 5219 through the introduction of bills in Congress. However, the issue is by no means a dead one The California Bankers Association has continued its efforts to line up support for an amendment to the section In late 1963 a meeting was held at which Mr Hugo A. Steinmeyer of the California Bankers Association presented the case to the A.B.A. again However, the 5219 committee felt that this section had net benefits and that the A.B.A should not support any set of amendments which would hurt bankers in other states It was also felt that Section 5219 should be left as it now stands unless California bankers can propose a set of amendments that can draw widespread support throughout the country.

W. R Courtney, President of the Missouri Bankers Association, expressed the view that "the bankers of Missouri believe that the problems of California national bankers should be worked out by them at the local level with their own legislature, rather than at the national level in Congress, particularly when solution at the national level is opposed by and materially injures the banks in a number of other states as is the situation." [56]

[51] *Ibid*, p. 22
[52] *Ibid*, p 10.
[53] *Ibid*, p 10.
[54] *Ibid*, p. 24.
[55] *Ibid*, p 24
[56] *Ibid.*, p. 10.

The conclusion which emerges from this résumé of developments is that any amendment of the federal law governing taxation of national banks by the states is unlikely in the foreseeable future

3. TAX NONFINANCIAL CORPORATIONS LIKE BANKS

One solution to the problem of equity between banks and nonfinancial corporations is available without federal legislation. The personal property tax on corporations could be abolished and the regular franchise tax rate on all banks and corporations increased to make up the loss in revenue.

A strong case can be made for the abolition of the personal property tax on corporations. In 1953 a study was undertaken by the California Senate Interim Committee on State and Local Taxation in "response to requests from various business and agricultural groups and associations that the committee inquire into the taxation of personal property in California and develop remedies for the inequities which allegedly characterize the present local ad valorem tax." [57]

The committee found many serious weaknesses in the ad valorem taxation of personal property. Some of these are as follows: [58]

1. The burden of the tax is distributed inequitably because the tax "cannot be applied universally and uniformly to widely varying types of property."
2. The tax does not meet the ability-to-pay principle, which rests on income and not property.
3. The tax does not meet the benefit principle, either, because the benefits of government services are widespread and do not necessarily follow property ownership patterns.
4. The tax cannot achieve equality among persons, because it is on *things*.
5. The tax tends to be regressive in its impact because "of the widespread tendency for properties of lower value to be assessed at a higher ratio to actual value than is the case for properties of higher value . . ."
6. The tax is vague enough to encourage negotiation and personal influence "and create an unhealthy atmosphere of caprice in place of clear-cut official responsibility."
7. "As administered, including fixed lien dates, the personal property tax results in periodic dislocation of transportation and storage facilities, and the impossibility of uniform administration places some firms at a competitive disadvantage."

Inventories are one of the largest components of personal property, and some of the chief criticisms in the committee's report of the personal property tax were directed to their treatment. There are problems arising from the valuation of inventories as of a certain date rather than by an averaging technique There are complaints regarding the "great disparities among tax rates on inventories throughout the state." [59] On this subject of inventories the report concluded: "How-

[57] Taxation of Personal Property in Calif., *op. cit.*, p 5.
[58] *Ibid.*, p 22.
[59] *Ibid.*, p. 58.

ever, even with efficient technical assessment, some inequities, inherent in the nature of inventory taxation will remain Although this is true in some degree of all property taxation, it applies with particular force to the ad valorem taxation of personal property used in business, and is the basis of much of the current agitation for the exemption from taxation . . . of business inventories '' [60]

Witnesses who testified at the hearings on behalf of business generally favored the elimination of the personal property tax, particularly the taxation of business inventories This of course is not necessarily a strike against the tax, but, if it does have serious inherent weaknesses, it could be eliminated without widespread opposition from business Moreover, the elimination of this tax would permit the elimination of the *in-lieu* tax on banks, against which, as we have seen, there have been numerous complaints

Therefore, a happy solution should be the abolition of both taxes. How would the revenue loss be made up? The most likely source is that of net income for which there "is much to be said . . . on grounds of equity, administration, and productivity." [61]

TABLE VI

Rate Necessary to Make Up Revenue Loss if Personal Property Taxes Abolished on Corporations

Year	Corporation net income (in millions)	Bank net income (in millions)	Total net income (in millions)	Corporation franchise tax (in millions)	Corporation personal property tax (in millions)	Bank franchise tax (in millions)	Total (in millions)	Rate necessary to secure the same revenue (percent)	Rate actually paid by banks (percent)	Rate actually paid by corporations (percent)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1950	1990 4	167 1	2157 5	79 3	57 3	11 5	148 1	6 87	6 88	6 86
1951	2326 0	158 8	2484 8	92 1	67 5	10 0	170 5	6 86	6 86	6 86
1952	1993 6	179 7	2173 J	76 6	77 7	13 9	168 2	7 74	7 73	7 74
1953	2155 2	208 6	2363 8	82 5	91 4	16 7	190 6	8 06	7 99	8 07
1954	2252 6	264 3	2516 9	86 2	97 4	21 1	204 7	8 13	7 99	8 15
1955	2760 1	220 4	2980 5	106 2	106 2	17 9	229 4	7 70	7 69	7 70
1956	2944 9	241 4	3186 3	113 0	119 6	19 0	251 6	7 90	7 88	7 90
1957	2997 0	247 6	3244 6	113 7	153 5	19 8	287 0	8 85	8 00	8 92
1958	2770 0	342 8	3113 8	104 3	163 1	27 4	294 8	9 47	7 99	9 65
1959	3210 3	288 4	3498 7	150 9	148 7	25 5	334 1	9 55	9 50	9 55
1960	3123 0	354 3	3477 3	163 1	157 5	33 7	354 3	10 19	9 50	10 27
1961	3305 4	387 8	3693 2	171 9	179 4	36 5	387 8	10 50	9 42	10 63
						Average rate		8 48	8 12	8 53

(1) Corporation net income + corporation personal property taxes paid—Franchise Tax Board, *Report Preliminary to Determination of the Bank Tax Rate*. (2) Bank net income, Franchise Tax Board, *Annual Reports*. (3) Col 1 plus Col 2. (4) Taxes on nonutility corporation net income, *Report Preliminary to Determination of the Bank Tax Rate* (5) Personal property tax paid by (nonutility) corporations, *Report Preliminary to Determination of the Bank Tax Rate*. (6) Taxes on bank net income, Franchise Tax Board, *Annual Reports*. (7) Col 4 plus Col 5 plus Col 6. (8) Col 7 divided by Col 3. (9) Col 6 divided by Col 2. (10) Col. 4 plus Col 5 divided by Col 1.

We have calculated the uniform franchise tax rates that would have elicited the same total revenue (as was actually paid) from corporations and banks during each year of the period 1950–1961. The rates are shown in Table 6 It is readily apparent that the average rate that

[60] *Ibid*., p. 27
[61] *Ibid*., p. 35.

would have been necessary during the years 1950–1956 is very little different from the actual percentage of net income paid by corporations and banks in those years However, from 1957 on, with the exception of 1958, the banks would have paid a somewhat higher rate and corporations a somewhat lower one if the proposal for a single rate applying to both had been in effect This results from the ceiling of 4 percent on the *in-lieu* rate; thus the corporation taxes are free to rise and have done so, while the bank tax has been held down by the ceiling. In 1961, for example, the banks would have paid about 1 percent more of their net income in taxes—the required rate for that year was 10.5 percent and banks actually paid 9 42 percent.

A single tax rate of 8.5 percent on the net income of banks and corporations would have provided about the same revenue as was actually forthcoming had it been in effect from 1950 to 1961. However, the percentage of income paid in taxes rose from 6 86 in 1950 to 10.5 in 1961 so that by the end of the period a rate of 10 5 percent would have raised the same revenue It seems very probable that an 11-percent rate would provide about the same income at the present time. An estimate for one year was made by the Senate committee. It was thought that a "total tax of 11 percent on corporate net incomes would be necessary to provide the present revenue now derived by the state from this source plus an additional $200 million now produced by local ad valorem taxation of personal property."[62]

Abolishing the personal property tax would mean a large revenue loss for the local governments It would be necessary for the state to distribute its increased revenue from the higher franchise tax back to the local governments on some equalization basis.

4. THE OFFSET PROVISION PROPOSAL

If it is considered desirable to retain the personal property tax because of adverse effects on state-local governmental relations arising from its abolition, there is another method of equalizing the taxes of banks and corporations within the framework of existing federal law. The use of this method would require a higher franchise tax rate on the net income of banks and corporations with a deduction allowed for personal property taxes paid.

As was mentioned earlier, this method is currently in use in taxing savings and loan associations in California. They are, like banks, subjected to an additional franchise tax measured by their net income Unlike banks, however, they are taxed on their personal property. But they are permitted to offset (or deduct) their personal property tax payments from their franchise tax liabilities.

This offset of personal property taxes has its origin in the original provisions of the Bank and Corporation Franchise Tax Act, and from 1929 to 1933 it applied to all corporations "The device suggested of permitting an ordinary corporation to offset it's personal property taxes against the new franchise tax was adopted to make it possible for the corporation which was subject to these personal property taxes to have such taxes count as part of its tax burden."[63] This is precisely the reason that we would give today for the use of a property tax offset.

[62] *Ibid.*, p 35.
[63] *Final Report of California Tax Commission, op. cit.*, p 302.

At the time the offset provision was granted it was regarded as "a temporary adjustment, undesirable in itself, which should be eliminated at the earliest possible moment" [64] However, as we noted in Chapter C, this offset was limited in amount and because of that, the tax was inequitable between business corporations The limited offset provision as it applied to corporations was repealed in 1933 when the *in-lieu* tax on banks was put into effect.

A full offset provision, without limits, would be free of such inequitable treatment Both nonfinancial corporations and banks would pay a uniform net income tax. To the extent that corporations also paid personal property taxes, these could be deducted without limit from income taxes otherwise owed to the state. Thus, local governments would receive revenue directly, rather than indirectly through the state, and all corporations including banks would pay total taxes equal to the same percentage of net income.

The only disadvantage of this proposal is the retention of the personal property tax with its array of weaknesses as enumerated above.

G. *Summary and Recommendations*

We have reviewed the possible methods of taxing banks Although four methods are permitted in the law, the effective choices are really only two—the share tax and the franchise tax The share tax was used in California from 1911 to 1928 and was deemed to be satisfactory in its operations Also when we looked at the methods of bank taxation used by the states, we found that the share tax can be and has been used by the states to collect relatively large amounts of revenue. However, its legality vis-à-vis the taxation of "other moneyed capital" has been one of the thorniest problems in bank taxation and for this reason a return to the share tax is not recommended.

The franchise tax has been used by California since 1929. From 1929 to 1932 the state did not get much revenue from it. In 1933 a supplementary or *in-lieu* tax was imposed on bank income at a rate determined by the ratio of personal property taxes to net income of nonfinancial corporations, and revenue from the tax has been satisfactory in recent years. California banks rank 16th in the nation in the ratio of total state and local taxes to net profits.

The banks' complaints concerning the inequity of being taxed on the basis of personal property of other corporations appear to be justified To the extent that other corporations hold larger amounts of personal property than do banks, banks are discriminated against by a supplementary rate based on corporations' personal property This is modified to some extent because those corporations (i e., public utilities) with especially large holdings of personal property are excluded in computing the supplementary rate.

As it turns out, banks probably have not paid a significantly higher rate of tax under the present method than they would have paid if they had been taxed directly on their own personal property, provided that their coin and currency had been treated in the way the law specifies. This has depended, however, in recent years partly on the fact that the 4 percent ceiling on the *in-lieu* tax has been effective, which has reduced bank taxes from what they otherwise would have

[64] *Ibid.*, p. 301.

been. There is, of course, always the possibility that the excess of the computed *in-lieu* tax rate over the 4 percent level will be used as an argument to raise the ceiling. Hence, even if banks are not now paying excessive taxes in substantial amounts, one cannot guarantee that this will continue to be so.

Although it cannot be said that an emergency exists in the way taxes are imposed on banks in California, it would still be desirable to remove the unattractive features of the tax noted above There are two alternatives which can be recommended.

First, abolish the *in-lieu* tax on banks and the personal property tax on corporations. The income tax (franchise) rate on banks and corporations could be raised to make up the lost revenue. The personal property tax has been extensively criticized for its many weaknesses; it is not a good tax either from the ability-to-pay viewpoint or from the benefit criterion; and equitable administration of it presents many problems. If it were abolished, a corporation income tax rate of about 10.5 or 11 percent would be necessary to provide the same revenue. In addition, a system of returning revenue to the local governments would have to be worked out.

The second alternative is to abolish the *in-lieu* tax on banks and allow nonfinancial corporations a full offset for personal property taxes paid to local governments against franchise taxes owed to the state The franchise tax rate could be raised to make up the revenue loss to the state

Even though the courts have upheld the present system of taxing banks in California, there seems to have been very little change in the bank tax situation since April 1951 when the last study of the bank tax was issued. Recommendation number one of that report will serve just as well today as it did when it was made "In the first place, some effort should be made to resolve the difficulties that now exist between the state on the one hand and the banks upon the other in order to create a more satisfactory position for the state with respect to definiteness of revenue and taxpayer acceptance of the law and of administrative procedure under it. The answer is not easily found."[65]

H. Addendum: Leasing Practices of National Banks

During the past 10 years, many industries have found that there are definite advantages in the leasing of production equipment and other personal property rather than the purchase of this property The use of the leasing method frees working capital for other purposes The development of lease-financing companies showed that there was a demand for a form of leasing in which the property is managed by the company leasing it. Prior to March of 1963, it was generally believed that national banks had no authority to engage in personal property leasing. In September 1962, the Advisory Committee on Banking to the Comptroller of the Currency recommended that national banks be permitted to do so under certain circumstances.[66]

[65] *1951 State Senate Report, op cit*, p 223

[66] *National Banks and the Future Report of the Advisory Committee on Banking to the Comptroller of the Currency*, extracts from pages 55 and 58 Personal Property Leases Analysis of the issues The lease has become a popular tool for financing the acquisition of machinery, equipment, fixtures and other personal property by industry and business generally Banks have engaged in such financing, usually on the security (when security is required) of a chattel mortgage and assignment of rentals executed by the lessor Situations frequently arise, however, when it would be to the interest of all concerned that such secured financing be arranged

On March 18, 1963, the Comptroller addressed a letter to the presidents of all national banks, authorizing them to engage in the direct leasing of personal property. The letter expressed the conclusion that:

> The leasing by the bank of personal property acquired upon the specific request of and for the use of its customer, and the incurring of such additional obligations as may be incident to becoming an owner of personal property and the lessor thereof, is a lawful exercise of the powers of a national bank and necessary to the business of banking.

Although banks have proceeded slowly in taking advantage of the authorization by the Comptroller, there have been complaints, from automobile dealers and lease-financing companies in the leasing of automobiles, about this competition from banks. The objection has been made that it is not a proper function of banks to engage in the purchase and lease of merchandise. There has been a further objection that the intrusion of banks into the business of leasing constitutes "unfair" competition for those now engaged in the business.

So on January 31, 1964, Congressman Abraham J. Multer introduced H.R. 9822, which is an effort to counteract the Comptroller's ruling and to restore the status quo prior to March 18, 1963. The bill was referred to the House Committee on Banking and Currency. On February 25 and 26, 1964, hearings were held before the Subcommittee on Bank Supervision and chaired by Congressman Multer.[67]

The hearings disclose that, for various reasons, the enactment of H.R 9822 is not favored by any of the bank supervisory agencies; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Comptroller of the Currency; and the National Association of Supervisors of State Banks. The main reason given for not favoring H.R. 9822 was lack of evidence that it was needed [68]

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by a bank discounting a lease or otherwise acquiring the lessor's interest in the lease and the leased property, without recourse on the lessor. There appears to be some question of the propriety of a national bank providing the latter type of financing since the bank would thereby succeed to the lessor's ownership of, and reversionary interest in, the leased property. The committee feels that this type of financing is a proper and useful method of credit extension for national banks.

The committee further feels that national banks should be permitted to purchase personal property for the purpose of leasing it directly to a lessee. National banks should be permitted to engage in such lease financing in appropriate situations, rather than be compelled to resort to the more cumbersome and less efficient security devices now used. Recommendations: National banks should be permitted to discount leases of personal property, or otherwise acquire a lessor's interest in the lease and the leased property, without recourse to the lessor, and to purchase personal property for the purpose of simultaneous leasing.

[67] Hearings before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency, on H.R. 9548 and H.R. 9822 (Washington, 1964), 154 p.

[68] Statement of Board of Governors, Federal Reserve System: "The Board does not know how the Comptroller's ruling has been interpreted and applied by national banks or the extent to which national banks and state banks engage in purchasing and leasing equipment and other personal property in an unsafe and unsound manner." *Ibid.*, p. 6.

Statement of Joseph W. Barr, Chairman, Federal Deposit Insurance Corporation: "Because of the few insured banks engaged in the practice of personal property leasing and the absence of any known bank supervision problems in this area, I might say that in the narrow sense the corporation would have little interest in the proposed legislation. To our knowledge, few banks are now engaging in direct leasing of personal property. If future experience should disclose unsafe or unsound aspects of personal property leasing by banks, this corporation would support corrective legislation." *Ibid.*, pp. 8–9.

Statement of Hollis W. Burt, executive vice-president, National Association of Supervisors of State Banks: "We do not have any information at this time as to the extent to which state banks are permitted under state law to engage in this practice and, if so, the extent to which they have, in fact, done so." *Ibid.*, p. 13.

The bill is still in committee. Since it has been opposed by all the bank supervisory agencies it is unlikely that there will be any action on it in its present form

It has not been possible to get much information on the extent of leasing. The only statistics available are in the *National Banking Review*, according to which banks "have written only $5 million on a direct lease basis through September 30, 1963." [68]

A survey by the *American Banker* gives the only other clue on the extent of leasing "On November 13, 1963, the *American Banker* published the results of its survey of more than two dozen leading national banks in seven large cities and reported that only a few banks at this time are ready to enter the leasing field because the 'problems are many.'" [70]

It is entirely possible that a large percentage of the direct leasing so far has been in California. The Bank of America was the first bank to engage in direct leasing and has been advertising aggressively to expand its business [71]

At the present time national banks engaging in direct leasing would have a cost advantage because of their exemption from the personal property tax If other leasing firms have to pay personal property taxes on the leased property and banks do not, this would be unfair competition However, it is not clear that banks are exempt from personal property taxes in this case "The Supreme Court has held that a tax whose economic burden in fact falls on the customers of the bank is not unconstitutional as a tax upon a federal instrumentality. Sales taxes, use taxes, and similar levies may be imposed legitimately upon leasing operations of national banks and on all collateral operations, such as applications for permits to collect sales and use taxes." [72]

Recommendation

The direct leasing of capital equipment by banks is a recent development and is very likely to expand. If banks are exempt from personal property taxes on this equipment, it gives them an unfair cost advantage over other leasing firms. There seems to be very little possibility that this power to engage in direct leasing will be taken away from national banks, either by federal legislation, by legal action, or by the Comptroller of the Currency.

It is recommended that the state make a study of the possibility of taxing the banks on the personal property owned by banks on direct lease It may be pointed out here that this problem could also be solved by the adoption of either of the recommended alternative methods of taxing banks and corporations.

[68] Comptroller of the Currency, December 1963
[70] Hearings on H R 9548 and H R 9822, *op cit*, pp 80–81
[71] *Ibid* p 146 Testimony of Robert D Syer, Vice-president, Bank of America.
[72] Alvin Zises, "Equipment Leasing by Banks," *The Bankers Magazine*, January 1964. The tax case cited is *Bedford v. Colorado National Bank*, 91 P. 2d 469 (1939).

ADDENDUM TABLE I

Comparison of Bank In-lieu Tax with Personal Property Tax, 1950–1959
All California Commercial Banks

(Dollar amounts in thousands)

	1950–59 average	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950
1 Net income		$268 408	$242,796	$247,611	$241,380	$220,391	$264,251	$208,559	$179,741	$158,833	$167,180
2 Bank in-lieu tax rate		% 4 00	% 4 00	% 3 934	% 3 598	% 4 00	% 4 00	% 3 745	% 2 853	% 2 889	% 3 55
3 Bank in-lieu tax		$10,736	$13,712	$9,864	$8,926	$6,816	$10,750	$7,811	$5,128	$4,541	$5,935
4 Personal property tax which would have been paid of banks were taxed on the same basis as other taxpayers		$3,363	$2,840	$2,514	$2,018	$1,579	$1,378	$1,186	$1,034	$963	$856
5 Percent of net income equivalent to personal property tax	.749	% 1 25	% 83	% 1 02	% % 84	% 72	% 56	% 57	% 58	% 61	% .51
6. Annual excess of in-lieu tax over personal property tax		$7,373	$10,872	$7,150	$6,908	$7,237	$9,372	$6,625	$4,094	$3,578	$5,079
7. Cumulated excess of in-lieu tax over personal property tax		$68,282	$60,909	$50,037	$42,887	$35,98.	$28,748	$19,376	$12,751	$8,657	$5,079

SOURCE Jacoby and Weston, *op cit* unpublished data

Row 1—California Franchise Tax Board, *Statistics of Income*, 1955, p 79, 1956, p 80, 1957, p 90, 1958, p 86; 1959, p 74, 1960, p A-72
Row 2—*Ibid*, p 55, 1950, 1951, p 55, 1952, p 67, 1953, p 61, 1954, p 65, 1955, p 65, 1956, p 82, 1957, p. 92, 1959, p A-77.
Row 3—Row 2 multiplied by Row 1.
Row 4—Table 2, Row 7 plus Row 9.
Row 5—Row 4 divided by Row 1.
Row 6—Row 3 minus Row 4
Row 7—Row 6 cumulated from 1950.

ADDENDUM TABLE II

Personal Property Tax Which Would Have Been Paid on Money and Furniture and Fixtures if Banks Had Been Taxed on the Same Basis as Other Taxpayers, 1950–1959
All California Commercial Banks

(Dollar amounts in thousands)

	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950
1 Currency and coin held on assessment dates	$187 075	$207,709	$207,418	$215,260	$176,404	$139,717	$139,631	$156,375	$148 913	$119 552
2 Money assessment percent	% 3 53	% 3 35	% 3 21	% 3 21	% 2 98	% 3 16	% 2 58	% 2 83	% 3 01	% 2 51
3 Amount of currency and coin which would have been assessed under personal property taxes	$6,625	$6,958	$6,658	$6,589	$5,151	$4,415	$3,602	$4,425	$4,482	$3,001
4 Assessment valuation ratio applied to money	50	50	50	50	50	50	50	50	50	50
5 Assessed value of currency and coin	$3,312	$3,479	$3,329	$3,294	$2,575	$2,207	$1 801	$2,212	$2,241	$1,500
6 Average taxable property tax rate	% 7 26	% 6 96	% 6 72	% 6 49	% 6 27	% 6 15	% 5 94	% 5 79	% 5 74	% 5 81
7 Personal property tax which would have been paid on money	$240	$242	$224	$214	$161	$136	$107	$128	$129	$87
8 Assessed value of furniture and fixtures	$43,020	$37,324	$34,083	$27,793	$22,923	$20,190	$18,173	$15,843	$14,530	$13,243
9 Personal property tax which would have been paid on furniture and fixtures	$3,123	$2,598	$2,290	$1,804	$1,418	$1,242	$1,079	$906	$831	$769

SOURCE Same as Addendum Table I.

Row 1—Jacoby and Weston
Row 2—Jacoby and Weston
Row 3—Row 1 multiplied by Row 2
Row 4—Telephone discussions, Los Angeles County Assessor's Office.
Row 5—Row 3 multiplied by Row 4
Row 6—Economic Development Agency of the State of California, *California Statistical Abstract*, 1961, p. 164, Table Q-18.
Row 7—Row 5 multiplied by Row 6
Row 8—The market values multiplied by 50, the assessment ratio For the full values, see Federal Deposit Insurance Corp., *Assets, Liabilities, and Capital Accounts, Commercial and Mutual Savings Banks*, No 34, 1950, p 15, No 36, 1951, p 15, No 38, 1952, p 15, No 40, 1953, p 15; No. 42, 1954, p 11; No 44, 1955, p 11, No 46, 1956, p. 11, No 48, 1957, p. 11, No 50, 1958, p 11, No 52, 1959, p 20
Row 9—Row 6 multiplied by Row 8.

ADDENDUM TABLE III

Comparison of Bank In-lieu Tax with Personal Property Tax, 1950–1959
All California Commercial Banks

(Dollar amounts in thousands)

		1950–59 average	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950
1	Net income		$268,408	$242,798	$247,611	$241,389	$220,301	$264,251	$208,559	$179,741	$158,833	$167,189
2	Bank in-lieu tax rate	3 706	% 4 00	% 4 00	% 4 00	% 3 903	% 3 698	% 4 00	% 4 00	% 3 745	% 2 853	% 2 859
3	Bank in-lieu tax		$10,736	$13,712	$9,904	$9,421	$8,750	$10,750	$8,342	$6,731	$4,532	$4,780
4	Personal property tax which would have been paid if banks were taxed on the same basis as other taxpayers		$9,935	$9,826	$9,158	$8,789	$10,083	$5,538	$5,236	$5,163	$5,108	$4,242
5	Percent of net income equivalent to personal property tax	3.173	% 3 70	% 2 87	% 3 70	% 3 64	% 4 58	% 2 10	% 2 51	% 2 87	% 3 22	% 2 54
6	Annual excess of in-lieu tax over personal property tax		$801	$3,886	$746	$632	$+1,933	$5,212	$3,116	$1,568	$+576	$538
7.	Cumulated excess of in-lieu tax over personal property tax		$13,990	$13,189	$9,303	$8,557	$7,925	$9,858	$4,646	$1,530	$−38	$538

SOURCE:

Row 1—Table 1, Row 1.
Row 2—Franchise Tax Board All Jacoby-Weston bank *in lieu* rates in Appendix Table 1 are off one year Thus, the rate shown for 1951 2 859, was actually the 1950 rate, and so on for all the others These errors do not invalidate their result
Row 3—Row 2 multiplied by Row 1
Row 4—Table 2, Row 9 plus Table 4, Row 7.
Row 5—Row 4 divided by Row 1.
Row 6—Row 3 minus Row 4
Row 7—Row 6 cumulated from 1950.

Alternative calculation of Addendum Table I.

ADDENDUM TABLE IV

Personal Property Tax Which Would Have Been Paid on Money and Furniture and Fixtures if Banks Had Been Taxed on the Same Basis as Other Taxpayers, 1950–1959
All California Commercial Banks

(Dollar amounts in thousands)

	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950
1 Currency and coin held on assessment dates	$187,675	$207,709	$207,418	$215,260	$176,404	$139,717	$139,631	$156,375	$148,913	$119,552
2 Money assessment percent	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00	% 100 00
3 Amount of currency and coin which would have been assessed under personal property taxes	$187,675	$207,709	$204,418	$215,260	$176,404	$139,717	$139,631	$156,375	$148,913	$119,552
4 Assessment valuation ratio applied to money	50	50	50	50	50	50	50	50	50	50
5 Assessed value of currency and coin	$93,838	$103,854	$102,209	$107,630	$138,202	$69,858	$69,815	$78,187	$74,457	$59,776
6 Average tangible property tax rate	% 7 26	% 6 96	% 6 72	% 6 49	% 6 27	% 6 15	% 6 94	% 5 79	% 5 74	% 5 81
7 Personal property tax which would have been paid on money	$6,812	$7,228	$6,868	$6,985	$8,655	$4,296	$4,147	$4,527	$4,274	$3,473

SOURCE

Row 1—Table 2, Row 1.
Row 2—Assumed that money would be assessed at full value
Row 3—Row 1 multiplied by Row 2.
Row 4—Table 2, Row 4
Row 5—Row 3 multiplied by Row 4.
Row 6—Table 2, Row 6
Row 7—Row 5 multiplied by Row 6.
Alternate calculation of Addendum Table II

ADDENDUM TABLE V

Total State and Local Taxes as Percent of Bank Net Income

	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	Average 1950–60
Alabama	8 1	8 1	7 1	6 8	6 2	7 3	7 8	8 3	6 5	9 6	7 3	7 6
Arizona	11 6	10 3	9 5	9 4	8 7	8 9	9 9	10 2	9 0	8 7	7 6	9 4
Arkansas	7 4	7 5	7 2	8 2	7 6	8 7	9 7	10 1	8 3	10 5	8 7	8 5
California	12 4	11 0	9 1	8 9	10 7	12 2	11 1	12 5	12 4	14 0	14 6	11 7
Colorado	8 1	7 4	7 9	8 5	7 4	8 3	8 4	11 4	8 9	8 8	9 3	8 4
Connecticut	12 4	13 0	12 4	12 7	11 6	14 6	14 7	13 9	13 1	17 2	14 6	13 7
Delaware	3 5	3 5	4 4	3 7	3 3	4 0	3 7	3 4	4 8	7 2	5 9	4 3
Florida	5 9	6 4	6 2	6 3	5 3	6 6	6 3	7 6	6 4	10 4	8 8	6 9
Georgia	15 2	14 8	12 7	13 1	12 3	16 0	19 1	15 5	12 2	22 0	12 1	15 0
Idaho	10 9	9 8	9 2	8 7	5 6	13 6	12 5	8 7	6 2	19 5	7 6	10 2
Illinois	9 5	9 4	8 9	7 5	6 4	8 0	8 6	8 2	6 0	9 5	6 6	7 9
Indiana	18 7	18 1	16 9	15 7	13 1	17 2	18 5	15 6	12 7	18 3	13 3	16 0
Iowa	5 8	5 6	5 5	6 0	5 6	6 7	7 5	8 4	6 6	9 4	7 9	6 8
Kansas	6 6	7 6	8 0	7 5	7 2	8 5	9 4	9 2	8 6	9 3	7 9	8 2
Kentucky	11 7	13 0	10 9	11 2	11 4	10 7	11 8	10 5	10 0	12 8	8 6	11 1
Louisiana	18 6	18 8	17 1	16 0	16 8	18 0	17 6	19 2	19 6	23 2	21 0	18 7
Maine	12 9	14 3	11 0	10 8	9 6	12 5	13 4	13 0	14 6	14 6	12 7	12 7
Maryland	12 8	12 4	10 8	11 4	9 3	12 3	12 5	11 3	10 8	16 2	12 9	12 1
Massachusetts	15 1	13 8	13 0	15 1	14 4	14 6	14 2	13 6	14 3	14 8	14 2	15 2
Michigan	10 0	10 0	10 5	12 3	8 3	11 2	12 4	11 6	10 5	14 9	13 5	11 4
Minnesota	9 8	9 9	9 2	8 9	8 7	9 4	10 8	10 4	9 9	11 7	12 2	10 1
Mississippi	15 5	15 2	13 4	14 2	15 0	17 2	18 4	19 4	15 5	17 1	13 7	16 1
Missouri	8 5	8 7	7 6	7 3	6 3	8 2	7 8	7 3	7 2	9 3	7 1	7 8
Montana	26 4	20 8	21 6	22 1	19 6	22 3	26 4	21 3	14 3	23 7	17 4	21 4
Nebraska	8 1	9 1	8 4	7 9	7 2	6 3	8 3	7 9	6 9	7 7	7 1	7 7
Nevada	12 4	11 4	9 7	8 0	8 4	8 4	9 9	10 0	10 0	13 7	7 8	10 0
New Hampshire	10 8	9 2	8 9	9 0	7 9	8 6	10 2	10 1	8 4	11 9	7 9	9 4
New Jersey	11 2	15 0	15 1	14 5	12 6	16 2	17 8	18 2	13 9	18 5	15 6	15 5
New Mexico	6 9	11 1	13 8	12 7	13 0	13 5	14 7	12 0	12 8	14 8	12 0	12 4
New York	10 0	10 0	8 9	9 1	8 7	9 5	10 3	8 3	8 2	9 8	8 5	9 3

North Carolina	7 5	7 3	7 5	7 8	7 6	6 6	8 0	8 2	8 4	10 0	8 9	8 0
North Dakota	6 6	5 1	6 8	5 8	5 2	6 7	7 7	6 3	6 3	7 9	6 3	6 4
Ohio	23 6	22 1	10 6	10 4	17 9	20 3	16 3	14 2	15 6	20 6	14 0	18 5
Oklahoma	6 0	6 6	5 8	5 5	5 4	3 5	9 5	8 8	6 9	7 2	6 3	5 9
Oregon	12 8	12 2	12 4	11 9	13 8	12 3	13 0	14 5	13 0	16 7	17 6	13 8
Pennsylvania	8 8	9 4	8 3	7 9	7 4	8 7	9 4	8 4	7 7	13 2	12 2	9 2
Rhode Island	21 2	19 5	22 7	21 9	25 3	23 9	20 6	20 6	19 7	24 9	20 2	22 0
South Carolina	6 1	5 7	5 4	5 7	4 7	6 3	6 3	7 2	6 2	6 6	6 8	6 2
South Dakota	6 7	6 4	6 2	5 8	5 4	6 3	7 3	7 2	7 1	8 7	7 9	6 8
Tennessee	12 6	13 8	13 3	12 6	11 9	13 6	14 5	13 0	11 7	14 9	11 0	13 0
Texas	15 9	15 6	16 4	16 6	14 5	16 6	18 0	16 4	15 3	17 6	16 1	16 3
Utah	5 2	5 8	5 6	5 4	4 9	6 0	5 5	5 6	5 3	7 7	4 3	5 6
Vermont	9 3	9 3	9 0	9 6	8 7	11 0	10 9	12 4	10 3	11 3	10 7	10 2
Virginia	9 4	9 2	8 4	8 8	8 7	10 4	10 6	9 0	9 2	12 4	9 5	9 7
Washington	6 1	6 3	5 2	5 2	4 7	6 0	7 5	6 4	6 0	8 5	6 3	6 2
West Virginia	6 7	6 7	6 7	6 3	5 9	6 4	7 4	7 0	6 3	7 9	7 8	6 8
Wisconsin	5 8	6 5	6 2	6 6	5 9	6 8	8 7	7 2	7 1	9 4	7 5	7 1
Wyoming	8 4	7 5	7 9	8 3	6 6	8 3	8 5	8 4	6 7	7 7	7 6	7 8

SOURCE FDIC, *Annual Reports*

SECTION SIX

PROPERTY TAX BURDENS

I. Economic and Psychological Limits of the Property Tax
by Bruce McKim

II. Tax Rate Limits
by David R. Doerr and Raymond R. Sullivan

PART I

ECONOMIC AND PSYCHOLOGICAL LIMITS OF THE PROPERTY TAX

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A. *Introduction*

Estimates of limits above which total tax collections seriously begin to impair economic efficiency, incentives to work and invest, and to promote either inflation or recession, have little validity. Dollar ceilings for one decade are overwhelmed by the economic growth of the next. One author has observed,

> "No fixed limits to the expansibility of a particular tax exist Consequently, it is not easy to evaluate the contention that as of a given moment the limits are being approached "[1]

Ceilings set as a percent of aggregate income may also be breached with no apparent effect upon the productivity of the economy[2] While it is not possible to set a dollar figure beyond which California property tax collections impair the smooth conduct of the economy of this state, it is possible to isolate some factors from the mass of data available, in order to give a general impression of the changing degree of pressure on economic activity applied over time by the property tax Much of the evidence is necessarily indirect, for again, there is no formula by which to set a ceiling Governor Brown has said, "There are signs of rising protest over our local property taxes "[3] It is the main task

[1] Kenyon E Poole *Public Finance and Economic Welfare*, New York Rinehart & Company, 1956, p 295

[2] Colin Clark, "Public Finance and the Value of Money," *Economic Journal*, December 1945, develops the notion that tax increases become self-defeating beyond 25 percent of the national income It should be noted that in no year since 1942 has the sum of federal, state and local taxes been below 25 percent of the national income In 1961, the sum was 29 6 percent of national income, yet, economic growth has proceeded at a rapid pace since that time

[3] Governor Edmund G Brown, *California Assembly Interim Committee on Revenue and Taxation, California's Tax Structure 1961, A Major Tax Study, Part 1*, January 1964, p 7

of this study to indicate the nature of these signs, and, where possible, to explain the forces underlying the indications given by the data, that the taxable capacity is being approached.

As a point of departure, it is convenient to define "taxable capacity" as the level beyond which further increases in revenue severely interfere with productive effort and the smooth functioning of the economy In the case of property tax revenues in California, this definition can be stated as "the point beyond which further increases in revenue discourage property development, increase rental prices, discourage voter approval of new bond issues to be financed out of property tax revenues, encourage rising numbers of assessed valuation protests, discourage entrance of migrants, encourage exit of population, encourage delinquencies of due taxes, and cause a large turnover in local boards of supervisors at each election " This is, perhaps, an unduly harsh criterion by which to identify the limits of the California property tax Yet, it is useful to examine the various test points, realizing that other factors than the property tax have likely been at work in determining the numbers that emerge.

Property tax levies by substate governments in California have risen substantially in recent years This study is concerned with the relationship of these levies to evidence of both economic and psychological nature which might suggest an increasing taxpayer awareness of and resentment toward present and expected revenue levels While it may be true that taxpayers always resent the paying of taxes, it is reasonable to think that they will not resent the tax bill presented them in sufficient degree to cause them to react in economically wasteful ways unless the temperature of their resentment runs high In a sense, this study is an effort to provide a thermometer by which to gauge present property taxpayer temperature It therefore undertakes to discuss only the part of what temperature exists that is related to property taxes The relationship between property tax levies and the total tax levy for a property owner can be dramatically illustrated by asking whether the degree of resentment for the property tax would be lowered, in the present circumstance, if taxes of all other forms were abruptly stopped or sharply curtailed in amount The answer probably is that it would be greatly lowered. This answer points to the necessity of attempting to separate effects of the property tax from effects of taxes in general

The time period to which the study applies is, for the most part, the span 1946 to the present, for it is during this period that California's most rapid population growth to date took place, and the demand for services by various branches of government within the state rose most sharply It is also the period in which property tax levies have grown most rapidly, for this revenue provided the funds out of which the great majority of county, city, school, and special district operations are financed The period has seen a recovery from the war-induced shortages in both public and private sectors, increased demands for additional services by substate governments, and large construction outlays for the purpose of answering these demands In one sense, this study has the purpose of attempting to balance the demands for additional property-tax-financed services against whatever resentment may be present against the necessity to pay for these The task of measuring such resentment in the context of rising nonproperty state and federal

taxes is a formidable one. Much of the data to be used in order to weigh the contention that property tax levies are at or near their ceiling, must be of circumstantial nature.

Experience has shown that interview surveys of taxpayer attitudes have typically overstated the degree of irritation with taxes for a variety of reasons. The taxpayer, always resentful of the necessity to pay taxes, looks upon an interview as his opportunity to state in the strongest terms his feeling that taxes (at whatever level) are presently confiscatory, and cannot be increased short of open rebellion. Further difficulties involve the taking of an adequate sample, the design of an impartial questionnaire, and the use of highly qualified public opinion interviewers. For these reasons, this study does not involve a direct survey technique, though such an attempt is not beyond the feasible. Rather, the evidence to be developed is of indirect nature. This method of analysis allows the reader of the study the latitude of reviewing the data herein and evaulating the suggested interpretations of the author.

B. *The Bases of Property Tax Resentment*

Table 1 facilitates the comparison of California property tax levies with similar levies for the United States, in per capita form, as a percent of personal income, and as a proportion of state and local levies, for the period 1946–1962. Column 2 indicates that property levies increased 465 percent, while column 3 shows total state and local property levies for the United States rose 280 percent during this period. Thus, this form of taxation has increased nearly twice as fast in California as in the United States since 1946. As a proportion of state and local taxes collected, property levies in California rose 13 percent (column 8); during the same period, state and local property levies for the entire United States *decreased* 19 percent of nationwide total state and local revenues (column 9). Again, the property tax in California has been increasing in importance as a producer of revenue, while the opposite tendency has set in over the United States.

In per capita terms, the California property tax levy increased 215 percent (column 4), while column 5 indicates nationwide per capita state and local property levies increased 190 percent. Notwithstanding an 80-percent increase in California's population within the period, the California per capita property tax today exceeds that of the United States state and local governments

As a proportion of California personal income, property levies increased nearly 80 percent (column 6), while for the United States as a whole the proportion of state and local levies on property to United States personal income rose only about 56 percent (column 7). Once again, the California property tax has made necessary the allocation of a greater proportion of personal income to such payments than has been true for the United States. In addition, the percentage increase of this proportion has been larger in California than in the United States. Deflated by the gross national product implicit price deflators, the California ratio of property levies to personal income shows a 25-percent rise. This figure is included as an approximation of the "real burden" of the tax—the loss in purchasing power to the taxpayer. It also serves as a rough measure of the change in real expenditure power of the county and local governments of California.

TABLE I

Comparative Statistics of Property Tax Levies, 1946–1962

Year or fiscal year	California property levies (in millions)	Total U.S., state and local property levies (in millions)	Per capita California property levies (in millions)	Per capita property levies U.S., state and local governments	California property levies as percent of California personal income (in millions)	U.S., state and local property levies as percent of U.S. personal income	California property levies as percent of California state and local revenues	U.S. property levies as percent of U.S., state and local revenues	Deflated ratio of California property levies to California personal income
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1946	$367 7	$4988	$38 46	$35 13	2 29	2.78	30 7	40 4	3.06
1947	465 8	----	47 47	----	2 80	----	33 0	----	3 37
1948	544 4	6126	54 09	41 61	3 09	2 91	34 8	35 5	3 49
1949	681 0	----	64 23	----	3 72	----	39 2	----	4 22
1950	719 3	7349	67 58	48 26	3 66	3.22	37 0	35 1	4 09
1951	791 4	----	64 62	----	3 48	----	37 0	----	3 62
1952	845 8	8653	72 67	84 89	3 37	3 17	36 9	34 4	3 44
1953	933 3	9375	77 12	58 52	3 50	3 25	37 9	34 3	3 54
1954	1020 0	9967	81 48	61 14	3 72	3 44	38 1	34 4	3 73
1955	1121 9	10735	86 27	64 70	3 71	3 46	36 7	34 5	3 67
1956	1253 2	11749	92 27	69 56	3 77	3 55	37 3	33 9	3 60
1957	1418 2	13097	99 89	76 14	3 98	3 76	38 9	34 2	3 67
1958	1634 4	14047	110 87	80 31	4 39	3 90	40 6	34 1	3 96
1959	1807 9	14983	118 25	84 26	4 41	3 91	38 7	33 1	3 91
1960	1990 5	16405	125 48	90 78	4 61	4 11	39 7	32 5	4 03
1961	2195 6	18002	133 44	97 94	4 80	4 34	40 3	33 3	4 15
1962	2414 7	19058	141 67	102 07	4 91	4 33	40 4	32 7	4 20
Addendum 1946–1962 Change as percent of 1946	556 7	282 1	268 4	190 5	114 4	55 8	31 6	−19 1	37 3

SOURCES Column 2, California State Board of Equalization Columns 3, 7, 8, United States Department of Commerce, Bureau of the Census. Columns 4, 5, 6, United States Department of Commerce, Office of Business Economics Column 10 Implicit price deflators for Gross National Product, (1954 = 100), United States Department of Commerce, Office of Business Economics

It is helpful to note that federal income tax receipts from the United States in total, increased about 180 percent, and corporate income taxes about 80 percent over their level in 1946. These figures may be compared with the previously mentioned 466-percent increase in California property tax levies.

By each measure, California property tax levies have shown increases which have surpassed the increases in tax revenues of other varieties as well as the nationwide average of state and local property taxes. These facts provide some basis for taxpayer antipathy toward further increases in the yield of the tax, and lay the groundwork for further discussion of the bases of taxpayer resentment.

So far, the only concern has been with the taking of revenue It must be noted that a large proportion of the revenue taken is returned to the public sector of the locale in which it has been raised. To the extent that salaries of public servants are dependent upon the revenue raised, and that services and materials are purchased in the state with property tax revenue funds, these expenditures presumably are an offset to taxpayer indignation, among those whose incomes are related to the level of such expenditures In this scheme of things, why is it that the taxpayer becomes dissatisfied when property taxes rise? There are two general reasons (1) There are relatively fewer direct recipients than payers of property tax revenue (2) The taxpayer loses the identity of the money he pays as property taxes, with the return in tangible and intangible form, in which the revenue reappears in the public sector of his locale Further, he does not typically feel a proprietary interest in the goods and services made available in the public sector with the proceeds of his own revenue On balance, therefore, the owner of property, faced with the necessity of meeting payments on a mortgage of the property, uncertain of the nature of the return he gets for the taxes he pays, and uncertain of the direction his future income will take, becomes anxious as he observes over the years, the upward trend of both rates and assessments, shown in Table 1 It is in this setting that the property tax finds itself today In addition, it has been the experience of property owners that as the state's population increases, the dollar value of services demanded by the population tends to expand proportionally.[4] There is present then, a component of anticipation of future revenue increases that worries the California taxpayer. Not only the present level, but the probability of future increases, helps determine the degree of his resistance to property taxes

A further difficulty for the property tax involves its inability to vary in amount with the cycles of taxpayer income, so that in the event of a serious recession, the property owner is likely to experience a constant dollar amount of taxes to be paid out of a dwindling dollar income This is true because of the impossibility of keeping assessments exactly current with the change in market value of property One author concludes,

> "Continued high property tax collections in depressions take purchasing power that would otherwise be spent and also cause

[4] Southern California Research Council, "The Cost of Metropolitan Growth," Pomona, 1954, has estimated the cost of capital construction required to provide such services as streets, water, sewers, and schools to be $17,000 for each new family arriving in a county Noncapital costs must be added to this figure

serious individual sacrifices In inflationary periods the lag in property tax collections creates problems for the local governments and aggravates the inflationary tendencies "[5]

In general then, there are several bases upon which taxpayer resentment may set in The taxpayer resents inequitable treatment He knows that his $17,500 property on which he has a $15,000 mortgage with 15 years to run, is taxed in the same amount as his neighbor's $17,500 property which his neighbor owns free and clear The personal wealth of the mortgaged property owner is considerably less than that of the unmortgaged property owner, yet the tax paid by each is the same. Further, disparities in the types of wealth owned by taxpayers receive inequitable treatment by the property tax Owners of stocks and bonds, for example, pay no tax on these assets, while those who have a home as an asset are taxed

To the extent that the wealth of a person is largely in the form of a home his expenditures for the home are large relative to his income, so that the taxes on his home are regressive relative to his income A 1954 study verifies that property taxes for the United States are regressively distributed.[6] To the inequities already mentioned, must be added those which result from inaccurate assessment, that creep in despite diligent efforts of assessors to prevent them

Another barrier to increasing property taxes is the proposition that the older segment of the population, forced to live within a fixed dollar income, and unable to defend itself against tax increases by raising the prices of its output, cannot continue to experience increases in its tax load. In the context of rising property values of shelter and generally increasing costs of living, this portion of the taxpaying community reaches its ceiling sooner and more definitely than a portion which is able to increase its dollar income proportionally with increases in property taxes In terms of ability to pay property taxes, it is clear that older persons are disadvantaged Further, it is contended, there are indications that the elderly do not require services of various kinds which are financed through the property tax, the services of schools for example So on the benefit and equity principles, it appears that the aged may presently be victims of property tax practices in California A later section will investigate this contention, again, in the light of its basis for taxpayer resentment

The foregoing supports the view that the degree to which each of the considerations mentioned is, or is thought by the taxpayer to be, inequitable, affects his willingness to pay the property tax So far, this study has developed the general background for the contention that property taxes are presently resented It is necessary to develop the evidence that resentment is widespread The most convenient way to do this is to present relevant data for each of the points raised initially in the definition of "taxable capacity." The first of these relates to the discouragement of property development

[5] John F Due, *Government Finance*, Richard D Irwin, Inc., 1963, p 374

[6] R A Musgrave, "The Incidence of the Tax Structure and Its Effects on Consumption," in Joint Committee on the Economic Report, *Federal Tax Policy for Economic Growth and Stability*, Washington, D C U S Government Printing Office, 1955, p 98 shows the regressivity of the property tax in the chart cited

C. The Development of Property

It is useful at the outset, to visualize how a property owner can defend himself against an increase in his property taxes. If his income, the source from which he pays the taxes, can be increased by the amount of the increase in his property taxes, by working harder or in some way increasing his productivity, then he is able to defend his after-tax income against tax increases. If his income is generated substantially from rental receipts, perhaps he can defend his money income level by raising the rents he charges. In this case, the tax increase is translated directly to an increase in rental prices, if the demand for rental occupancy allows this. An inability to raise rents would lead to a third line of defense, involving the sale of the assessed property to a new owner, if one could be found at a satisfactory price If the new owner were unable to raise the rent he could charge, then he would have to be willing to accept a comparatively lower yield on the property than the former owner. An example will clear up the relevant points.

Suppose an untaxed property with $10,000 market value yields net yearly rent of $500, affording an annual return of 5 percent. If a $200 yearly property tax is imposed on the property, causing the annual yield to fall from 5 percent to 3 percent, the owner can attempt to increase his rent $200 and maintain his original 5 percent yield by passing the tax along to the tenant. Or he can sell, attempting to realize the same price as he might have obtained before the tax increase, when he capitalized the property at 5 percent But a prospective buyer of the property, able to realize $300 yearly income from the property, would only be willing to pay $6,000.

This would be the result if the prospective purchaser of the property thought the tax on the property would remain at $200 for the period over which he wished to capitalize the yearly rental income. However, if he thought the property tax likely to rise above the $200 level, he would subtract the capitalized increase from his purchase price

It should be noted that capitalization by property owners occurs only if the property tax cannot be shifted, so that it lowers the rate of return on the property. To the extent that the tax does not impact equally upon all types of property, the market value of taxed property is depressed relative to untaxed property. Owners may be able to escape the capitalization penalty by shifting the tax forward to the tenant so that the proportional rise in rents matches the proportional rise in taxes on the property. If part of a tax increase can be passed along to the renter, the owner is able to avoid part of the capitalization loss. Capitalization provides a basis for property owner resentment toward increased taxes. For if capitalization of the tax can occur, the owner is confronted by an increase in his taxes if he retains ownership, and a decrease in the price the property can command in the market if he decides to sell. Evidence bearing on the likelihood of capitalization of California property taxes and its attendant basis for taxpayer resentment of the tax will be subsequently introduced in the section which discusses the cost of housing.

Offsetting capitalization factors in the determination of the price of property, is the prospective purchaser's estimation of the likely increase in the rental price of the property. This is determined by the

TABLE 11

United States and California Private Residential Housing Starts, Starts per Thousand Population, Net Migration Into the State

Year	California private residential housing starts (000)	United States private residential housing starts (000)	California starts as percent of U S starts	California starts per thousand population	Net migration into california (000)	Yearly changes		
						Private residential housing starts (000)	Starts per thousand population	Net migration into California (000)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1948	148 7	913 5	16 3	14 7	82	----	----	----
1949	130 8	988 8	13 2	12 6	131	−17 9	−2 1	49
1950	195 4	1352 2	14 4	18 3	155	64 6	5 7	24
1951	144 2	1020 1	14 1	12 9	268	−51 2	−5 4	113
1952	166 4	1068 5	15 6	13 2	294	22 2	1 3	16
1953	172 0	1068 3	16 1	14 2	307	5 6	0 0	28
1954	197 4	1201 7	16 4	15 7	289	25 4	1 5	−18
1955	214 4	1309 5	16 4	16 4	273	17 0	0 7	−16
1956	173 1	1093 9	16 3	13 1	364	−36 3	−3 3	91
1957	166 4	993 3	16 8	11 7	388	−11 7	−1 4	24
1958	195 0	1342 8	14 5	13 2	325	28 6	0 5	−63
1959	231 5	1494 6	15 5	15 1	329	36 5	1 9	4
1960	189 8	1230.1	15 4	11 9	368	−41 7	−3 2	39
1961	204 7	1284 8	15 9	12 4	346	14 9	0 5	−22
1962	237 5	1439 1	16 5	13 9	353	32 8	1 5	7
1963	290 9	1561 0	18 6	16 4	368	53 4	2 5	15
Addendum 1948–1963 Change as percent of 1948	95 6	70 9						

SOURCES Housing Starts, U S Department of Labor, Bureau of Labor Statistics, prior to 1959, Department of Commerce thereafter Population, California Department of Finance, Budget Division, Financial and Population Research Section

change in population and the level of income of the area, neither of which is within the ability of the purchaser to estimate precisely for a horizon very distant Yet, there can be little doubt that both the increase in California's population and the increase in family income of residents has, to a large degree, supported the base from which increased property tax yields have become available

If property tax levies, as they approach their ceiling, cause property owners to neglect property improvement as a means of avoiding increases in the assessed valuations, this would pinpoint statistically the impact of property levies on development If improvements decline with historically rising assessments and levies, this would provide an insight into taxpayer reaction to increased taxation, and further, would indicate one result of property-owner indignation toward taxes

Column 2 of Table 2 shows the yearly level of one kind of improvement—private residential housing starts in California since 1948 The trend of these starts is clearly upward, though irregular There are several apparent reasons for this irregularity The large increase in residential starts in 1950, following the recessions of 1948–49, reflects the catching-up process on construction foregone during the Second World War The Korean Conflict caused a renewed reduction in 1951 starts The 1953–54 recession, and an accompanying increase in net migration of California (column 6) had a small net effect upon starts Column 5 of Table 2 shows, for example, an erratic number of starts per thousand of California population from 1952 through 1955. (This series will be discussed in greater detail below) By 1956, rising costs of construction and financing led to a decline in the absolute number of starts, which continued into the recession of 1957–58 However, as monetary conditions became less stringent in this recession, the money market allowed an increase in both California and nationwide housing starts It is useful, therefore, to compare California starts with those of the United States, for this technique makes possible at least partial isolation of effects unique to the state

Column 4 gives California starts as a percent of United States starts, combining columns 2 and 3 During the years 1948 through 1963, California starts increased 95 6 percent above their 1948 level, while United States starts rose 70 9 percent As a percent of United States starts, California starts reached their highest point in 1963, when 18 6 percent of nationwide starts occurred in California This figure does not indicate the absolute effect of California property taxes, but it shows that in relation to the United States, other factors favorable to continuation of California property development have swamped the rise in property tax levies, leading to a pronounced rise in the 1963 California-United States ratio Except for the modest downturn in this series in 1960, it has risen rapidly since 1959

Thus, housing start figures do not suggest that fear of present levels of property taxes have interfered with the smooth functioning of the California housing industry This point is even more dramatically seen in the comparison of proportions of total property taxes levied in California to total state and local revenue of the state with the similar proportion for the entire United States The data have been shown in Table 1 In 1946, property taxes accounted for 40 4 percent of total

United States state and local revenue In 1962, the nationwide proportion was 32 7 percent, a decline of 7.7 percentage points. California, in contrast, levied 48 4 percent of total state and local revenue in property tax form in 1946, and 49 percent in 1963, an increase of six-tenths of a percentage point While the United States ratios have been declining since 1946, California's ratios have risen. Thus, if it can be shown that property tax levels threaten the smooth functioning of the California economy, the preceding data suggest that the *trend* of these levies over time, in addition to their absolute level, may be responsible for watever apprenhension attaches to them. The contrast of California experience with that of the United States underscores the basis for apprehension

As new residents arrive in California, swelling the population base, it is reasonable to expect this population increase to cause a decline in housing starts per thousand population in the state There is no clearly discernible trend in starts per thousand population for the period 1948–63. The series is erratic, ranging as high as 18.3 in 1950 and as low as 11 7 in 1957 Net yearly migration into California (column 6) reached a peak in 1957, but has not fallen below 325,000 since 1955 Column 9 expresses yearly changes in migration, relating these to yearly changes in housing starts (column 7) and to changes in starts per thousand population (column 8) Both of the last mentioned series bear the maximum relationship to changes in migration when they are lagged two years behind the change in net migration, to allow the housing industry to recognize an increased market for housing and to undertake the details which precede the actual start of construction. Casual observation of the three series supports this lag. Yet, even in their closest (lagged) relation, changes in migration explain only 5 percent of lagged private residential housing start changes, and less than 1 percent of the changes in the lagged starts per thousand population. Further, changes in migration bear a negative relationship to changes in California starts as a percent of United States starts, lagged two years In each case, it is clear that yearly changes in net migration have had little to do with yearly changes in the number of housing starts It is equally clear that recent increases in property tax levies have not effectively discouraged migration into the state, there being persuasive positive aspects which make California residency, on balance, relatively attractive to potential immigrants Further, the high level of California starts as a percent of United States starts in 1963 indicates that the level of property taxation has not effectively discouraged absolute levels of improvement to property in the state.

Had property taxes increased at a rate in excess of the rate at which rents and property prices could be increased, and the developer had been unable to pass along to the tenant or ultimate buyer of the improved property the increase in tax costs, then development of property presumably would have proceeded at a less rapid pace than it has. In other words, so long as the housing market would support the increase in housing prices which in part stemmed from increased property taxes, development proceeded, and newly arrived migrants into California paid the price of at least the housing standard to which they

had become accustomed in prior locations. Although the year-to-year relationship of housing starts to net migration has not been a close one over the decade 1940–49, the population of California increased 53 3 percent while the number of dwelling units increased 53 4 percent In the decade 1950–59, the corresponding figures were 42 9 for California population and 52 2 for the number of dwelling units. In this decade, development of dwelling units outran the arrival of new population.

Thus, over two decades, it does not seem to be true that increasing property taxes have restrained the improvement of property by construction of housing It is likely that the arrival of new residents into the state has been the determining factor in encouraging property development, and the encouragement has apparently been more warmly received in the 1950–59 decade than in the prior decade It is safe to conclude that rising property taxes have not restrained the development of property with respect to the population to be housed Further, rising property taxes also failed to affect the rate at which new residents entered the state to live and work, in comparison with earlier similar rates But the possibility can legitimately be raised that newly arrived residents entered the state's population either in ignorance of the relatively high property taxes in California, were attracted by other more attractive and positive features of the state, or were transferred by their employing firm and moved to California out of necessity In any of these cases, the decision to locate in California was made irrespective of the level of property taxation. But it can be supposed that the response of new residents to their property tax bills in California is, typically, one of surprise, perhaps of indignation The reason for this is, as outlined in Table 1, that per capita California property taxes are higher and have risen more rapidly than those of the United States as a whole.

If the preceding analysis is correct in stating that property tax increases have been passed on to buyers or tenants by builders or owners, then the prices paid for housing in California could be expected to have risen relative to those in the United States. The study now concerns itself with this question.

D. The Cost of Housing

Table 3 presents yearly data describing the costs of shelter in the United States, California, Los Angeles, and San Francisco for the years 1947–63 These index figures are compared with the total Consumer Price Index figures, year by year They show a California rental price progression which has proceeded from a level below the rental price for the United States in 1947 to a 1963 level which surpasses that of the United States. Put in other terms, if the California rent index had increased in the same proportion as that of the United States, it would have only risen to 100 6 instead of 112 4 in 1963. Conversely, had the U.S. rent index increased proportionally with the California index, it would, in 1963, have been at a level of 119.3, instead of 106.8. In this period, while U.S rent prices increased 55 5 percent above their 1947 level, California rents increased 73 7 percent As previously indicated, one explanation for this difference lies in the ability of

TABLE III

Consumer Price Index, With Housing and Rent Components, for the United States, California, Los Angeles, and San Francisco, Yearly, 1947–1963. (1957–59 = 100)

Year	Total index				Rent component				Housing component			
	U S	California	Los Angeles	San Francisco	U S	California	Los Angeles	San Francisco	U S	California	Los Angeles	San Francisco
1947	77 8	76 1	76 6	75 3	68 7	64 7	63 0	66 1	74 5	72 8	70 7	74 7
1948	83 8	81 5	82 1	80 6	73 2	69 5	69 2	69 6	79 8	77 3	75 7	78 7
1949	83 0	81 3	81 9	80 6	76 4	72 5	73 6	71 2	81 0	78 7	77 7	79 5
1950	83 8	81 6	83 4	80 5	79 1	70 4	76 4	72 1	83 2	80 9	80 9	80 9
1951	90 5	88 4	89 4	87 0	82 3	82 2	86 2	77 9	88 2	87 4	87 9	86 5
1952	92 5	91 2	92 0	90 1	85 7	85 8	89 8	81 6	89 9	89 3	89 8	88 5
1953	93 2	92 3	92 8	91 6	90 3	89 9	93 2	86 4	92 3	91 7	92 3	90 9
1954	93 6	92 3	92 7	91 7	93 5	92 4	95 3	89 2	93 4	92 2	92 9	91 3
1955	93 3	92 1	92 7	91 1	94 8	93 8	95 9	91 2	94 1	92 4	93 9	90 4
1956	94 7	93 8	94 1	93 3	96 6	95 5	97 5	93 3	95 5	94 6	95 2	93 7
1957	96 0	97 1	97 2	97 0	98 3	97 3	98 6	96 0	95 5	97 4	97 5	97 3
1958	100 7	100 6	100 6	100 5	100 1	100 0	100 4	99 5	100 2	100 6	100 8	100 2
1959	101 5	102 3	102 2	102 4	101 6	101 9	101 6	102 8	101 3	102 1	101 7	102 5
1960	103 1	104 3	104 1	104 5	103 1	104 6	102 6	106 7	103 3	104 9	103 8	106 0
1961	104 2	105 6	105 4	105 8	104 4	106 6	104 1	109 2	103 9	106 2	105 1	107 2
1962	105 4	106 9	106 6	107 4	105 7	109 6	105 5	113 8	104 9	107 3	105 8	108 9
1963	106 7	108 4	108 2	108 9	106 8	112 4	107 3	117 8	106 2	109 5	108 3	111 0
Percent increase, 1947–1963	37 1	42 4	41 3	44 6	55 5	73 7	70 3	78 2	42 6	50 4	53 2	48 6

SOURCE Department of Commerce, Bureau of Labor Statistics

property owners to pass on to tenants the increases in property taxes charged to owners During the same period, California property levies as a percent of California personal income increased 79 3 percent, similar to the increase in the proportion of personal income of Californians which a large segment of the population spent for property taxes and rent [7]

Turning to the housing component of the CPI, it is not so apparent that this category of costs has risen as rapidly as the rent component. Although the California housing index increased 50 percent from 1947 to 1963, and the index for the United States increased 43 percent, the California rise in costs of housing has not so far outstripped the U S. rise as in the case of rent. Instead of 106 2 percent of the 1957–59 average, the housing index for the United States would have been 112 had it increased in the same proportion as the California housing index since 1947. But the 3 3 percentage point difference in the 1963 indices of United States and California is slight.

The reason for the lag in housing costs behind rental costs lies in the definition of the housing index This index includes, in addition to rental costs, the costs of acquiring and operating homes, which involve such items as financing charges, insurance, gas and electricity, taxes, repairs, fuel, house furnishings, and household operation, many of which are far removed from relationship to the costs of housing as affected by property tax levels In total, the housing index items are estimated by the CPI to account for about one-third of family expenditures by those families to which the index applies [8] Thus, relatively little importance can be attached to the housing index as a device by which to measure the impact of property taxes The rental index, which pertains only to the cost of rent, does not obscure this effect to the degree that the housing index does Although the latter includes a direct accounting of the property taxes which accrue to housing, the importance of such taxes is diminished by the other items which are included, so that this housing index is a relatively insensitive measure of the tax impact on the cost of housing

Among those persons who have elected to purchase shelter, many have been recipients of California Veterans' Farm and Home Loan Program financing aid, made available to California veterans of military service and supported by general obligation state bonds [9] In addition to this form of subsidy, the California veteran is eligible for a yearly exemption of $1,000 on assessed value to property so long as the total tangible property he owns is not in excess of $5,000 [10] Thus, the state has encouraged veterans to purchase shelter, both by direct and indirect subsidy. In doing this, it has increased the property tax base of dwellings owned by veterans If California property tax limits are being reached, the altruism of the State of California has inadvertently been converted to an invitation to tax resentment on the part of veterans, partly *because* of the veteran's exemption

[7] This evidence tends to indicate that property tax increases are passed on from owner to tenant

[8] U S Department of Commerce, Bureau of Labor Statistics, *Consumer Price Index*, various dates

[9] The federal government has also been active in the underwriting of various loans for the purchase of residences

[10] *California Constitution*, Article XIII, Section 1¾.

An additional aspect of Table 3 is of interest Comparison of the costs of all items in the CPI relating to the United States and to California reveals an increase of 37 percent in the U S index since 1947, and an increase of 42 percent for California The all-item index, while presently higher in California than the United States, is not greatly so, and California's increase since 1947 closely parallels the U S experience Only in the rent category have California prices risen very much more rapidly than U S prices If this behavior could be ascribed to increased demand for housing brought about by the growth in California's population, then why have costs other than rent in California not shown increases surpassing those of the U S all-item index by as wide a margin as the California rent index shows? Demand for other goods and services has also increased in California as the population has increased The small difference between the United States and California all-item indexes of goods and services does not support the view that rising rental costs have resulted only from increases in California population Other factors have also been present, among which, increases in property taxes presumably rank high in importance If increases in property taxes have appeared as increases in California rents, and if this fact is widely known among tenants, then it must also be true that the association between rising property taxes and rising rents has been made in the mind of tenants If so, the analysis has shown that increases in taxes have not caused resentment among homeowners alone, but have also become a source of what resentment exists among those who rent their shelter It is not hard to conjecture that what tenant resentment generated in this way is present, has become more vehement since 1959 Prior to that time, the California rent index had been below the U S rent index, and the relative price advantage which California tenants enjoyed had persisted at least since 1947, as Table 3 indicates After 1959, however, California rents began a climb that has been persistent in its acceleration past the U.S rent index In the same period, California property levies have been growing at an increasing pace

E *Assessment Valuation Protests*

The State Board of Equalization, through its Assessment Standards Division, is charged with the duty of assisting county assessors in the task of maintaining high levels of intracounty equalization as well as equalization among counties as stipulated by the Constitution California was one of the first states in centralizing this duty, which makes possible the minimizing of tax resentment arising from gross inequalities of assessment at the county and subcounty levels Each year, the BOE samples randomly by stratum of property type and value within one-third of the counties of California The sample is expanded to estimate the full cash value of property in the sampled counties which is subject to the general property tax This estimate is then projected to the lien date of the county rolls through use of certain economic indices, which, in conjunction with the current assessment roll totals

TABLE IV

Summary of Yearly Ratios of Assessed to Market Values of Locally Assessable Tangible Property, Fiscal Years 1951 and 1955–1963

Fiscal year	Average of ratios	Standard deviation of ratios	Number of counties				Range of county ratios	Spread of ratios
			1 Standard deviation		2 Standard deviations			
			Above mean	Below mean	Above mean	Below mean		
1951	25 9	3 5	11	10	0	2	17 0–31 8	14 8
1955	22 8	2 2	10	5	3	0	18 7–29 5	10 8
1956	23 1	2 3	9	8	3	0	20 1–32 8	12 7
1957	23 5	2 1	12	9	1	0	20 1–30 4	10 2
1958	23 8	2 0	12	8	2	0	20 2–29 5	9 3
1959	23 1	2 1	11	6	2	3	18 4–28 8	10 2
1960	22 4	1 8	6	10	2	0	19 2–27 0	7 7
1961	22 3	1 8	8	10	2	0	19 2–26 5	7 3
1962	22 8	1 7	10	9	1	0	19 8–26 6	6 8
1963	22 6	1 9	11	9	1	0	19 1–27 1	8 0

SOURCE California State Board of Equalization.

by county, gives the ratio of assessed to full cash value of real property in the counties [11] These are the ratios presented by county for the years 1955–63 in Table 4, which includes the statewide average and range within which the ratios occurred each year.

Since 1955, Board of Equalization has issued 19 orders to counties to change the county ratio of assessed to cash value, in order to more equitably distribute the tax burden among counties.[12] In these 19 cases, the board felt that the assessment ratios of the counties involved had fallen outside the tolerance zone of deviation from the statewide average ratio Thus, in 522 reviews of county assessment ratios, the board has been convinced of the necessity to raise a county's ratio in only 3.6 percent of the cases, indicating acceptable similarity of assessment results among counties in 503 cases The range of county ratios narrowed and their standard deviation decreased in each fiscal year, except in 1956, 1959, and 1963, as Table 4 shows.

If the ratios were normally distributed among counties, the average of the ratios, plus and minus two standard deviations, would include about 95 percent of all ratios in that year. Except in 1959, the yearly number of counties within two standard deviations of the statewide average of ratios is at least 95 percent of the 58 counties. Further, the standard deviation of ratios shows a marked tendency to decline from year to year, indicating increasing uniformity of assessment among counties This trend is to be applauded, however, it is difficult to understand why there should be any variance at all in ratios among counties A county is surveyed triennially by the board under Section 1815 of the Revenue and Taxation Code of California Thus, two-thirds of the counties are not surveyed in any given year Their total full cash value of locally assessable tangible property is estimated under Section 1817 by the board If equity in assessment among counties is to be served, it is not clear why the board should not, at this point, impose equal ratios on all counties for that year, so that the ratio on which taxes are computed, could be the same for all counties

When assessments on the various classes of real property are examined, the equity effects are less satisfactory. Although, as shown above, the average of assessed to cash value for all types of property is relatively uniform among counties, there is a basis for the impression of inequitable treatment of owners of various types of property. Table 5 outlines the nature of the problem. In the two years shown, 1956 and 1961, the ratios of assessed value to market price at which property changed ownership show considerable variance between property types within each year. Further, the ratio of assessed to sales value changed differentially between 1956 and 1961. The nonfarm residential ratio declined only one-half percent, while the ratio for vacant lots decreased 21 3 percent, the acreage and farm ratio decreased 14 7 percent, and the commercial and industrial ratio fell 9 8 percent Although

[11] California Board of Equalization, *Annual Report*, 1962–63, p 12

[12] *California Constitution*, Article XIII, Section 9 empowers the State Board of Equalization to equalize intercounty assessments The board also has statutory duties of intracounty equalization prescribed by *Wells Fargo & Co v State Board of Equalization*, 56 Cal 194 (1880), Revenue and Taxation Code, Section 1821, and *McDougall v County of Marin*, 208 Cal App 2d 65 (1962)

TABLE V

Assessed Values and Sales Prices of California Real Property, by Property Types, 1956 and 1961

	Nonfarm residential		Acreage and farm		Vacant lots		Commercial and industrial		All property	
	1956	1961	1956	1961	1956	1961	1956	1961	1956	1961
Number of sales	105 096	107,730	14,097	11,024	37,212	26,054	5,189	7,499	163,094	152,287
Aggregate assessed value ($000)	299 841	413,257	27,033	48,574	31,001	24,952	39,248	112,732	397,197	599,515
Aggregate sales price ($000)	1,513,830	2,099,131	212,232	440 858	173,668	178,353	213,900	681,32b	2,113,630	3,399,663
Sales as percent of assessed value	19 8	19 7	12 9	11 0	17 8	14 0	18 3	16 5	18 8	17 6
Percent change in preceding ratio, 1956–1961		−0 5		−14 7		−21 3		−9 8		−6 4

SOURCES 1956 data, Advanced Release #7, May 5, 1958, *Assessed Values and Sales Prices of Transferred Real Property*, U S Department of Commerce, Bureau of the Census 1961 data, Census of Governments, Volume II, *Taxable Property Values*, U S Department of Commerce, Bureau of the Census.

the Board of Equalization assists the counties in equalizing assessments at one point in time, it does not necessarily undertake to equalize various assessment to cash value ratios *through* time In consequence, the difference in the changes in ratio among types of property through time may engender resentment of some owners toward the assessment outcome Table 5 provides a basis for this contention. It is in this task of equalizing assessment ratios among property types through time that the board of equalization and the county assessor face the greatest difficulty. For in the attempt to assess at highest and best alternative property use, the assessor necessarily involves himself in a certain amount of guesswork There is, for example, no established market price for an orange grove adjacent to an industrialized area, so long as the grove has not changed hands in a fairly recent period The assessor, to discharge his duty of estimating the price the land could command in the market if it were to be offered as an industrial site, must value the land as though it were in fact available for industrial development, if it is his professional opinion that this is the use which would yield the greatest return. Relevant to this decision, the United States Supreme Court found that,

> ". . . the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use The amount and profitable character of such use determine the value and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put." [13]

Clearly, however, the task of determining highest and best use of property cannot always be objectively undertaken The assessment and equalization outcome, apart from the question of the *level* of property taxes, is of great importance to the capacity of the taxpayer to tolerate the property tax. One estimate of the equity of the assessment procedure for all types of tangible property can be obtained through a summary of recent California protests by property owners to county boards of equalization over assessed values, their disposition, and the amounts involved in the appeals. This aspect deals with owner recourse to assessed valuation, an integral part of the equity of the entire assessment process.

Table 6 presents a record of such protests heard by county boards of equalization or tax appeals boards during the period 1959–63. The number of protests within this five-year period exceeded 17,000, although their number in 1963 (2,838 was 13 percent below that of 1959, and was the lowest in any of the five years The number of reductions granted under Sections 1607–11 of the Revenue and Taxation Code of California rose 94 percent, from 872 in 1959 to 1,693 in 1963, indicating an increasing willingness of county boards to sympathize with property owners in their appeals to have assessed values lowered This observation is further bolstered by the 122-percent increase in the ratio of reductions to protests, which occurred during the period The number of counties making reductions each year increased 75 percent, from 20 in

[13] *Cleveland, C C, and St L Ry Co v. Backus*, 154 U S. 445 (1894)

1959 to 35 in 1963. During the same period, the number of counties hearing protests increased only 12 percent, from 41 to 46 Four counties received no protests.[14] The average value of reductions increased 30 percent, though the total of such reductions rose 153 percent

The preceding summary figures indicate an increase in all phases of the assessment protest procedure except the number of protests heard, showing either a general acceptance of the assessment levels and procedures set by assessors, or a reluctance on the part of some property owners to formally protest assessment levels. It is significant that in 1963 the statewide number of protests declined to its lowest level for the five-year period, the dollar value of reduced assessments reached a five-year peak. An investigation of the facts surrounding this large increase in the average size of reduction per protest indicates considerable variation in assessment reduction practices among the counties, as it will be subsequently shown

As indicated by Table 6, the statewide number of protests per 100,000 population has declined every year except 1961, falling from 21 in 1959

TABLE VI

Summary of California County Boards of Equalization in Dealing With Protests of Assessed Property Values During the Years 1959 to 1963

	1959	1960	1961	1962	1963	Five-year average	Percent increase 1959-1963
Number of							
Protests heard	3,250	3,386	4,390	3,278	2,838	3,416	—13
Counties hearing protests	41	41	42	43	46	43	12
Protests per 100,000 population ("Propensity to protest")	21	21	26	18	16	20	—24
Assessments reduced	872	1,065	1,741	1,045	1,693	1,283	94
Counties making reductions	20	29	26	30	35	28	75
Reductions per 100 protests ("Propensity to reduce")	27	31	40	32	60	38	123
Dollar amounts of							
Total reductions ($000)	6,189	12 770	11,765	12 329	15,631	11 737	153
Average reduction per protest	$1,904	$3,771	$2,717	$3,761	$5,508	NA	$189
Average reduction	$7,097	$11,991	$6,757	$11,798	$9,233	NA	$30

SOURCE: *Activity of County Boards of Equalization, 1959–1963*, an unpublished table reporting results of a survey taken by the County Supervisors Association of California in 1964, and made available by Vincent T Cooper, Assistant General Manager, Sacramento

N A , not applicable

to 16 in 1963. As the state has grown, the "propensity to protest" assessed valuations has declined. Offsetting this tendency in some degree, have been two factors The statewide probability of obtaining a reduction, the ratio of number of reductions to number of protests, has more than doubled in these five years, rising from 27 per 100 protests in 1959, to 60 in 1963. In the latter year, more than one-half the protests resulted in some reduction. How large a reduction is indicated by what might be called the "propensity to reduce," the ratio of statewide total reductions in assessed value in a year to the number of protests This average dollar reduction per protest has increased from $1,904 in 1959 to $5,507 in 1963, and its course is clearly upward Both of these factors

[14] Alpine, Amador, Mariposa and Sutter Counties, whose 1960 combined population was 48,831

have tended to result in the accrual of a certain amount of concentration of growing economic benefit (assessment reduction) in the hands of a declining number of property owners.

The degree of concentration can be estimated by the relationship of total dollar reductions to the number of reductions—the average size of reductions obtained. This average has risen from $7,097 in 1959 to $9,232 in 1963, and represents a 30-percent increase, after having been as high as $11,990 in 1960. Because the average residential property is not subject to assessment misquotation of such magnitude, it must be concluded that owners of relatively highly valued property have tended to receive a preponderence of valuation reductions. Several examples support this point; one 1959 reduction in Yolo County was for $112,000, six in San Francisco County in 1962 averaged $309,423, and one in Sierra County in 1963 was for $64,600. Reductions of these magnitudes obviously involve property of very high total value, and likely apply to large enterprises, whose staffs are equipped with persons trained in presentation of protests of this and similar nature. Their success is underscored by Chart 1 and Table 7 which show concentration ratios for each of the five years for which data are available. The ratios shown are the percentages of total statewide dollar assessment reductions absorbed by the various percentages of the number of reductions. For the five years, the 10 percent of reductions having the largest average

TABLE VII

Size Concentration of Assessment Reductions in California, Yearly and Five-Year Average: 1959–63

When this percent of the total number of reductions was granted...	*...this percent of the total dollar amount of reductions was granted*				
	1959	*1960*	*1961*	*1962*	*1963*	*1963 5-year average* *
0	0	0	0	0	0	0
10	1.5	0 7	1.8	1.1	1.7	1 8
20	3 1	1 5	5.3	3.4	4 7	3.7
30	5.0	2.7	10 7	6.2	8.1	6 7
40	8 4	0 5	18.2	10 8	12 3	11 5
50	17 0	15 2	25 7	22 0	19 4	19.9
60	30 0	30 5	33.3	33 9	33 2	32.4
70	45.9	46 7	40 9	46 6	47 0	45 5
80	61.8	62 8	56 1	59 3	60 8	60 1
90	77.6	79 0	71 7	72 0	74 7	74.7
100	100 0	100 0	100 0	100.0	100.0	100.0

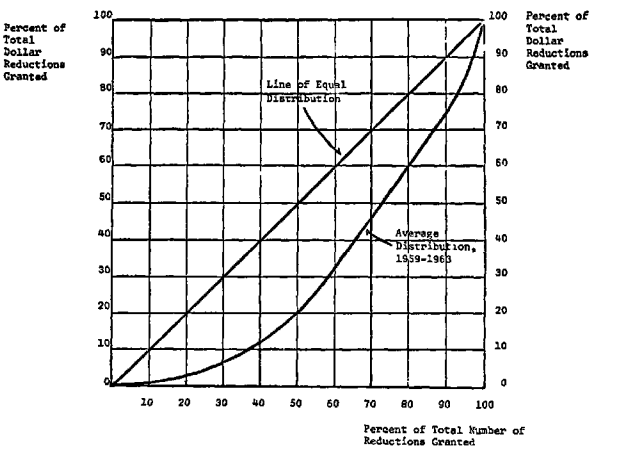
* Plotted as Chart 1

SOURCE *Activity of County Boards of Equalization, 1959–1963*, an unpublished table reporting results of a survey taken by the County Supervisors Association of California in 1964, and made available by Vincent T Cooper, assistant general manager, Sacramento The author is responsible for summary computations.

value provided an average ratio of 25.52 percent. Put another way, if the 10 percent of the *number* of reductions having the largest average dollar value is divided into the total *dollar amount* of reductions, the result is 25 52. The yearly ratios reached a low of 21 0 in 1960 and a high of 28 4 the following year. The number of years involved is too small to suggest a trend toward increased concentration of the benefits of reductions in favor of large property owners, but they do suggest that the total amount of reductions is biased strongly in favor of the large dollar reduction

CHART 1

Lorenz Curve Showing Average Degree of Size Concentration of Assessment Reductions in California During 1959–1963



SOURCE: Derived from Table VII

This bias is not equitable to the owner of moderately valued property, and is suggested as one reason for the decline in number of protests heard by county board. The Lorenz curve of Chart 1 is the most conservative possible statement of the degree of concentration of assessment reductions toward large values. The reason for this conservatism is found in the nature of the available data, which show only county totals of the number of protests heard, number of reductions, and dollar reductions. Chart 1 is conservative because it is based on *average* dollar reductions per county. Thus, in 1963, the Los Angeles County Board of Equalization granted 821 reductions out of 914 protests. The total reduction was $10,494,200, and the average dollar reduction per reduction was $13,784. The Lorenz curve embodies the assumption that each of the 821 reductions granted was $13,784. At the extreme, is possible that 820 reductions of one dollar each were made, and that one reduction of $10,493,380 filled out the total. This would indicate a very large concentration in the county; one reduction would account for 67 percent of the statewide total of dollar reductions in that year.

It is reasonable to argue that if individual assessment reductions were available for all counties, the concentration shown in Chart 1 would be even greater than the chart reflects. It is also reasonable to argue that the relatively high average concentration in favor of large reductions (and therefore in favor of owners of property the value of which is high) has been associated with the failure of protests to keep pace with the growth in dollar value of total reductions.

The following letter, taken from a California newspaper, although wrong in criticizing the county board of equalization or the assessor for his statement that "there were less requests for adjustments due to fewer complaints," catches the central idea of the above argument.[15]

> Editor of the Bee—Sir: I have attended the hearings of the board of supervisors [sic] on property appraisals and the protests by property owners on the values set on their property. Those protesting are wasting their time doing so as the board has no intention of changing as indicated by its actions at these hearings
>
> For example, a chicken raiser with property at the north end of McClellan Field stated he had offered to sell his land at $20,000 or $25,000 as it was strictly undesirable due to the location and the assessor's office had it assessed at $30,000 even though the deputy stated to Mr. Barbaria he had no idea how he arrived at this figure The property owner's request was denied.
>
> Another property owner sold a small parcel to the county as demanded by the county for a sewer pumping plant and those in the purchasing part of the county stated the land was worth $5,000 per acre yet the assessor has this same land assessed at $17,000 per acre The property owner's request for reduction was denied without explanation.
>
> The assessor's statement, "there were less requests for adjustments due to fewer complaints," is strictly unfounded as the people have learned that the board of supervisors will only listen to the assessor and his large staff and the taxpayer is only wasting his time by appearing
>
> A grand jury review of this department is needed right now
>
> LAWRENCE ROCHOA
> North Highlands

Although the owner of less highly valued property may have been discouraged from formally protesting assessed valuations by his relative lack of success in obtaining reductions evident in Table VII and Chart 1, it is also apparent that his "propensity to protest" has been affected by his general level of economic well-being For example, statewide protests per 100,000 population were steady at 21 in 1959 and 1960, but they rose to 26 in 1961, a year in which the California unemployment rate rose from 5 8 to 6 9 In the following year, the protests per 100,000 declined to 18 The implication is that protests are stilled by prosperity, when marginal effort in increasing income is more adequately rewarded than it is in protesting tax levies, while in recession, when the marginal tax dollar takes on a relatively greater taxpayer disutility, the reward for successful protest becomes more attractive This conclusion is supported also by the average reduction in each year, which reached its lowest point in 1961, when a large number of small protests were heard

Turning now to an analysis of the results of protests and reductions by counties, a disclaimer is necessary. It is not the purpose of this section of the study to point an accusing finger at various county boards, for the very diversity of situations among counties should preclude this. However, in the county-by-county analysis, it is possible

[15] Letter to the editor of the Sacramento *Bee*, August 5, 1964

TABLE VIII

County Totals of Property Tax Assessment Protests and Reductions, 1959–1963

County	Total number of protests	Protests per 1,000 of 1960 residents	Total number of reductions	Probability protest resulted in reduction	Average dollar reduction per 1960 resident	Average dollar reduction per protest	Average dollar reduction	Total dollar reduction	Average per reduction minus average per protest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Alameda	327	36	197	* 60	$2 37	$6,579	$7,522	$2,151,375	$943
Alpine	0	0	----	----	0 00	----	----	----	----
Amador	0	0	----	----	----	----	----	----	----
Butte	13	15	----	00	0 00	----	----	----	----
Calaveras	58	*5 63	19	33	1 81	322	982	18,650	660
Colusa	1	08	----	00	0 00	----	----	----	----
Contra Costa	250	61	173	* 69	9 84	884	1,277	220,950	393
Del Norte	99	3 88	48	* 70	†25 75	6,632	9,533	457,605	2,902
El Dorado	43	1 46	25	* 58	5 48	4,370	7,518	187,900	3,146
Fresno	44	12	----	00	0 00	----	----	----	----
Glenn	1	06	1	1 00	0 00	35	35	35	0
Humboldt	45	42	25	56	0 43	980	1,781	44,518	792
Imperial	31	42	6	19	0 26	614	3,174	19,042	2,560
Inyo	49	4 19	34	* 69	2 73	580	646	28,410	66
Kern	34	11	3	09	0 07	921	7,040	21,120	6,419
Kings	8	16	1	13	0 25	281	2,250	2,250	1,969
Lake	111	†8 02	22	20	1 00	131	659	14,495	528
Lassen	20	1 47	----	00	0 00	----	----	----	----
Los Angeles	5,952	98	2,490	42	5 69	5,770	13,791	34,340,245	8,021
Madera	2	04	----	00	0 00	----	----	----	----
Marin	1,346	†9 16	688	51	9 34	1,919	1,993	1,371,085	974
Mariposa	----	----	----	----	0 00	----	----	----	----
Mendocino	160	3 13	75	47	2 92	929	1,982	148,650	1,053
Merced	27	29	3	11	0 21	710	6,393	19,180	5,683
Modoc	13	1 56	1	08	4 12	2,553	33,250	33,250	*30,892
Mono	21	†9 48	7	33	†18 65	1,965	5,896	41,270	3,931
Monterey	88	44	73	† 83	1 06	4,423	5,331	389,190	908
Napa	16	24	1	06	0 02	63	1,000	1,000	937
Nevada	7	33	----	00	0 00	----	----	----	----
Orange	1,101	1 56	607	55	2 82	1,902	3,208	1,943,842	1,466
Placer	632	†11 08	167	26	*14 93	1,347	5,008	851,485	3,752
Plumas	3	25	1	33	0 20	797	2,980	2,980	1,573
Riverside	228	74	81	36	1 27	1,707	4,905	380,210	3,098

Sacramento	3,026	*6 01	904	30	8 92	1,482	4,962	4,485,646	3,480
San Benito	7	45	1	14	0 14	307	2,150	2,150	1,843
San Bernardino	710	1 40	273	38	5 34	3,793	9,863	2,692,700	6,070
San Diego	422	40	195	46	2 03	4,979	10,776	2,101,310	5,797
San Francisco	78	10	35	45	7 22	†65,602	†152,884	5,350,958	†84,282
San Joaquin	88	35	50	* 57	0 64	1,733	3,050	152,500	1,317
San Luis Obispo	182	2 24	53	29	0 19	865	2,971	157,460	2,106
San Mateo	232	52	24	10	0 21	405	3,913	93,902	3,508
Santa Barbara	147	87	61	41	1 70	1,961	4,726	283,286	2,765
Santa Clara	9	01	----	00	0 00	----	----	----	----
Santa Cruz	127	1 51	14	11	0 44	201	2,636	36,910	2,345
Shasta	21	35	13	* 62	0 16	457	738	9 590	231
Sierra	11	*4 89	3	27	†28 75	5,909	21,662	64,955	15,754
Siskiyou	141	4 28	6	04	2 91	678	15,938	95,630	15,260
Solano	22	16	2	09	0 00	35	380	760	345
Sonoma	47	31	7	15	0 10	324	2,177	15,240	1,853
Stanislaus	12	07	4	33	0 06	826	2,477	9,908	1,651
Sutter	0	0	----	----	0 00	----	----	----	----
Tehama	1	03	1	1 00	1 24	†31,265	31,265	31,265	0
Trinity	5	51	----	00	0 00	----	----	----	----
Tulare	1,032	*6 12	5	‡	0 08	14	2,758	13,790	2,744
Tuolumne	2	13	----	00	0 00	----	----	----	----
Ventura	44	22	15	34	1 16	5,247	15,391	230,860	10,144
Yolo	6	00	1	17	1 70	*18,666	†112,000	112,000	93,334
Yuba	10	29	1	10	0 02	47	465	465	418
Number of items	54	54	45	42 with 10 or more protests	43 nonzero	45	45	45	39 with 10 or more protests making one or more reductions
Average	NA	1.81	NA	33	3.87	4,290	11,795	1,304,232	6,128
Standard deviation(s)	NA	2 7	NA	23	6 5	11,056	27,351	NA	15,039
Average + 1s	NA	4 5	NA	.56	10 37	15,346	39,146	NA	21,167
Average + 2s	NA	6 3	NA	.78	16 87	26,402	66,497	NA	36,206

Column (5) is the ratio of number of reductions to number of protests
Column (7) is the ratio of total dollar reduction to total number of protests
Column (8) is the ratio of total dollar reductions to number of reductions
Column (10) is Column (8) minus Column (7)
* More than one standard deviation above the column average
† More than two standard deviations above the column average
‡ Less than 01

SOURCE *Activity of County Boards of Equalization, 1959–1963*, an unpublished table reporting results of a survey taken by the County Supervisors Association of California in 1964, and made available by Vincent T Cooper, Assistant General Manager, Sacramento

to indicate why the statewide averages have behaved in the fashion indicated above, to identify those counties which appear to have been instrumental in contributing to the shape of the Lorenz curve previously shown, why property taxpayers in some counties have been at a disadvantage in making their protests effective, and to state that the variation among counties is sufficiently large to have given rise to the sort of impression indicated in the preceding letter.

Column 3 of Table 8 lists the number of protests per thousand of the 1960 population of each county Measured in this way, four counties have very high "propensities to protest" Lake, Marin, Mono and Placer Counties show that protests per thousand are above the mean more than two standard deviations for the 54 counties in which protests were heard during this five-year period, and that Calaveras, Sacramento, Sierra and Tulare Counties were more than one standard deviation above the 54 county mean Taken alone, the "propensity to protest" reveals only one side of the assessment reduction market—the demand for assessment reductions Apparently, this demand has not been structured in a very consistent manner from county to county The average is 1 81 protests per thousand population, but the standard deviation is 2 7, which, considering a floor of zero protests, indicates a pronounced skew in the distribution of propensities among counties toward those with relatively high propensities

Looking now at the side of the market which describes the supply of reductions in response to the demand for reductions, column 5 of Table 8 shows the probability that a protest resulted in a reduction. This column is the ratio of number of reductions to protests for the five-year period Only one county, Monterey, had a probability that was more than two standard deviations above the average of 42 counties which heard 10 or more protests Seven counties were more than one standard deviation above the same average It is significant that only one of the eight counties with high propensities to protest (more than one standard deviation above the average) experienced a probability of reduction (in response to protest) in excess of the average probability Marin County, with a propensity to protest of 9 16, experienced a probability that 51 percent of protests resulted in reductions. The 42-county average was 33 percent.

At the other extreme of the distribution of reduction probabilities, lie nine counties showing a propensity to reduce more than one standard deviation below the county average of which they are a part [16] In aggregate, these nine counties heard 1,335 protests and granted 18 reductions, for a combined probability of 0 013 In these nine counties during the period indicated, about 13 out of every thousand protests resulted in a reduction of assessed valuation One county, Tulare, heard 1,010 protests in 1959 without making a reduction Special circumstance undoubtedly entered here, but if the Tulare experience is omitted from that of the counties more than one standard deviation below the 42-county average, the combined number of reductions in ratio to the number of protests shows that 43 in every thousand protests resulted in reductions, where the 42-county average (including

[16] Butte, Fresno, Kern, Lassen, Modoc, Napa, Siskiyou, Solano, and Tulare Counties

these low-propensity counties) was 330 per thousand protests With no judgment on the acceptability of assessment procedures in these eight counties, and referring only to the average experience of the 42 counties, it is not difficult to conjecture that property owners in these eight counties have reconciled themselves to acceptance of the assessed valuations which they receive in the mail.

Three additional aspects of Table 8 remain to be discussed. Each relates to the dollar amounts of total valuation reduction in the five-year period. Among 43 counties which allowed reductions in assessed valuations during this period, column 6 shows that the per-resident value of the total dollar value of reductions was very high in Del Norte, Mono, and Sierra Counties, and was more than one standard deviation above the average of the 43 counties in Placer County. It is not possible to state categorically that the per-resident value of reductions were unjustly biased in favor of large reductions. All that is possible is to observe that the per-resident figure in these counties has departed noticeably from the statewide average among those counties which allowed reductions The three counties which departed from the statewide average most significantly were counties in which population did not exceed 18,000 in 1960, and two of the three had populations under 3,000. Placer County, with population in excess of 50,000 and pre-resident reductions totaling $14 93, had a high "propensity to protest" and a below average "propensity to reduce."

Continuing with the value of reductions granted by counties, column 7 of Table 8 shows the dollar value of reductions per protest (column 9 divided by column 2), and column 8 the value of reductions per reduction (column 9 divided by column 4). In the first category, San Francisco County, granting reductions to 42 percent of protests, showed the highest per-protest reduction value in the state. The average value of protests was $68,602. The average dollar reduction was $152,884. Yolo County was the second county with very high ratios, $18,666 and $112,000 respectively, but it should be noted that only one reduction was granted during the five years, in this county Tehama County shows a per-protest value of $31,265, more than two standard deviations above the statewide average, but that county heard only one protest in the five years covered. The value of its average reduction was less than one standard deviation above the statewide average

The spread between average value of reduction per reduction and average value of reduction per protest for all counties hearing at least 10 protests and allowing at least one reduction, was $6,128, as shown in column 10. Counties hearing less than 10 protests were excluded as being unrepresentative in showing the disposition of protests. Of the 39 counties which fall in this over-ten protests category, only San Francisco County was more than two standard deviations above the average spread of the 39, and Modoc County was more than a single standard deviation above the average Had all protests been granted reductions in these counties during the five years considered, the difference described above would have been zero, as in Glenn and Tehama Counties. In San Francisco and Modoc Counties, the difference between the average value per reduction and the average value per protest was

enough larger than the statewide average difference to indicate bias toward the large reduction. In other words, they tended to allow relatively large dollar reductions in assessed valuation, as a percentage of the total number of protests heard. And although in the case of Modoc County, the "propensity to reduce" was only 0.08, and only one reduction was allowed, it was of sufficient size to cause the spread of ratios to be large relative to the statewide average. San Francisco County, with a "propensity to reduce" of 0.45 (45 in 100 protests resulted in reductions) also allowed a large spread in the ratios of dollar value of reductions and protests.

The preceding figures tell nothing of the protests which were disallowed. It is possible that the average assessed valuation of property on which the protest was denied, may be even larger than that on which the protest was allowed. However, if this were the case, the point could still be made that protests tend to be undertaken by owners of large-value property. The protest mechanism either is not familiar to owners of small-value property and they therefore do not, in the main, avail themselves of this machinery, or they are not dissatisfied with the assessed valuation of their property. In the latter case, the immediate question becomes, "why do owners of large-valued property make as great use of the appeal machinery as they obviously do?" One plausible answer is the bias observed in obtaining reductions by the large application, together with the ability of the owner of high valuation property to undertake his protest with competent legal staff and appraisal resources. These aids are not economically feasible for the owner of lower valuation property; the costs of obtaining such aids are higher than the reduction in taxes would be even if the protest were successful. It is not unthinkable that the state might make available at reduced private cost, the competent requisite aids for owners of property below a certain before-protest valuation who wish to protest the assessed valuations of their property. It is in the interest of the state to insure the smooth functioning of the machinery of county, city, local property taxation, and part of this task lies in opening the appeal route to equitable assessment where this is thought by the property owner to be other than equitable. To allow the residential taxpayer equal economic access to competent help in preparing his protest would assure him of a modicum of equality with the owner of high-value property in the protest proceedings. The latter should not benefit from the unequal feasibility of such assistance to all property taxpayers.

F. Property Tax Delinquencies

Delinquencies in payment of secured property tax charges are prepared by each county tax collector and presented to the county auditor on May 10 of each year, describing the total taxes due February 1 but uncollected April 10, as outlined in Sections 2617 and 2618 of the Revenue and Taxation Code of California. Owners of property described on the delinquent roll are then subject to charges of 6 percent of the amount outstanding, plus three nominal charges. If the taxes remain unpaid after June 30 of the same year, the state takes title to the de-

linquent property and credits the prior owner with payment of taxes within five days The data presented are therefore the totals of delinquencies and charges on May 10 of each fiscal year The delinquency totals indicate either an unwillingness or an inability to pay the taxes charged on secured property No figures are presently available to show the proportion of properties whose taxes have become delinquent and which have been sold to the state after June 30 The data merely indicate the difficulty of collection in the years 1951–52 through 1962–63, and are shown, together with related data, in Table 9 below.

TABLE IX

Statewide Totals of Property Tax Charges, Delinquencies, Delinquency Ratios, Median and Average County Delinquencies, and California Personal Income, 1952–1963

Year or fiscal year	Total tax charged ($000)	Total delinquency ($000)	Delinquency per $1000 charged	Median county delinquency	Total delinquency as percent of increase in tax charge above previous charge	California personal income per capita
	(1)	(2)	(3)	(4)	(5)	(6)
1952	759,770	9,828	$12 95	$48,648	--	$2,129
1953	834,400	10,460	12 54	58,672	14	2,165
1954	921,900	12,931	14 03	59,623	15	2,154
1955	1,017,260	12,859	12 34	64,554	13	2,297
1956	1,130 072	13,402	11 86	77,826	12	2,424
1957	1,287,370	16,195	12 58	83,458	10	2,500
1958	1,484,429	20,509	13 88	104,114	10	2,626
1959	1,613,278	21,917	13 58	94 355	17	2,671
1960	1,801,554	26,066	14 89	125,339	14	2,725
1961	1,971,559	33,525	17 00	105 201	20	2,791
1962	2,160,546	38 589	17 79	186,266	19	2,881
1963	2,375,310	42,889	18 06	196,058	21	2,974
Percent increase, 1952–1963	213	337	39	303	--	40

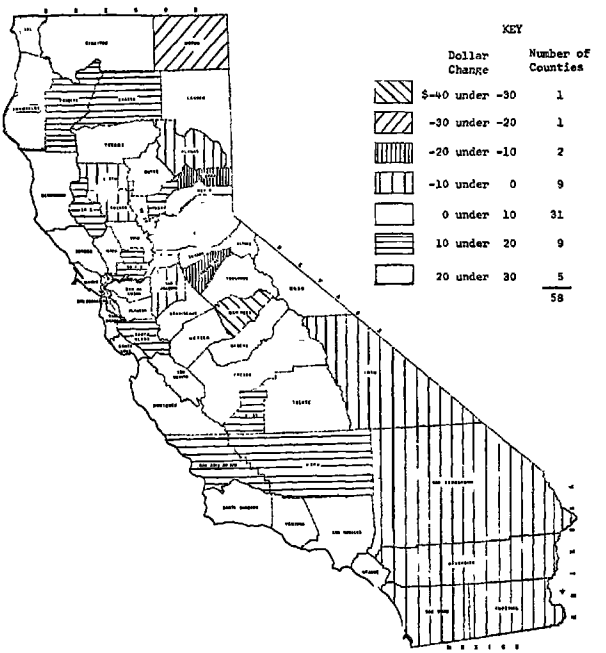
SOURCES Columns 1 through 4, H W Myers, Fresno County Tax Collector Column 5, U S Department of Commerce, Office of Business Statistics

Chart 2 showing geographic distribution of the changes, since 1951-52, in the county property tax delinquencies per $1,000 of tax charged, may be compared with Chart 3, which gives a similar distribution of the percent change in "inside" county tax rates for the same period There is no systematic relationship between the changes in delinquencies and tax rates, leading to the conclusion that other factors than the tax rate have been responsible for the increase in delinquencies This observation is supported by the correlation between tax rate changes and changes in delinquency ratios of counties during the period The correlation is -0.17 which indicates that for a rise in tax rates of 10 percent, the county delinquency ratio has *fallen* about 3 percent $[(-0.17)^2 = 0.03]$ The relationship obviously is not strong among counties, and the preliminary conclusion is that changes in tax rates do not significantly affect the tendency of property owners to allow delinquencies to occur It will be apparent below that changes in income, however, do bear a significant relationship to delinquency totals

The ability of the owner of real property to pay the taxes charged him is strongly related to his particular income situation Because it is with respect to a level of income that statements about the property tax ceiling can most usefully be made, Table 9 includes California per capita personal income By 1963, this income series increased 40 percent above its 1952 level Total secured property tax charges increased 213 percent above the same base, and total dollar delinquencies rose 337 percent. The outstanding delinquency amount in the median county in-

CHART II

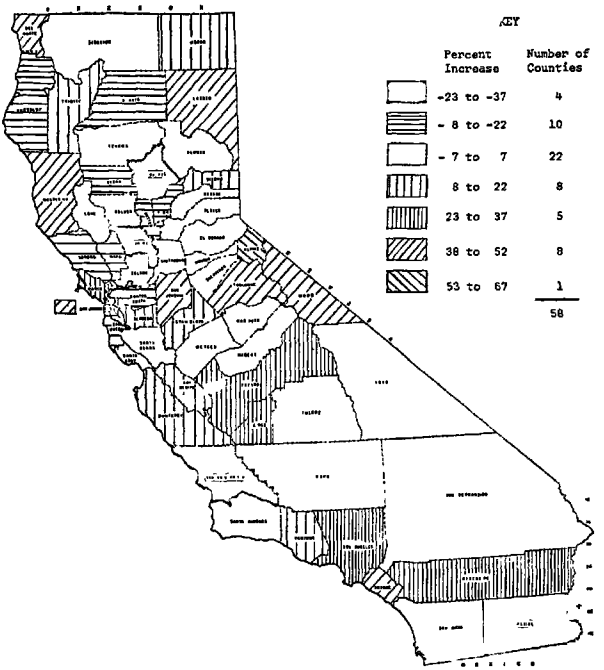
Change in County Property Tax Delinquencies per $1,000 Tax Charged: 1951–52 to 1962–63



creased 303 percent Clearly, the tendency of property owners to allow property taxes to become delinquent has risen faster than the total taxes charged, though the statewide delinquency per thousand dollars of taxes charged has remained below 2 percent, even in years during which incomes increased less rapidly than the tax charge However, the statewide delinquency rate has itself risen 40 percent in the last 12 years, slowly through 1959, and then at an accelerated rate of increase Since 1960, the delinquency rate has increased 22 percent, while per

CHART III

Percent Increase in Inside County Tax Rate: 1951–52 to 1962–63



capita income rose only nine percent More important, at least from the view of a possible ceiling on property taxes, is column 5, which shows the percent of the yearly increase in total tax charge absorbed by delinquency. Since 1953, this figure has increased 7 percentage points, from 14 to 21. In 1963, therefore, for every increase of $100 in tax charge, delinquencies increased $21 If the state found itself in a position in which, for every $100 of increase in property taxes charged, delinquencies rose $100, then it would be obvious that the ceiling had been surpassed In the present circumstances, in which owners of relatively high-valued property meet the tax deadline prior to delinquency date, as conjecture suggests is the case, then it follows that the majority of delinquencies appear against smaller (residential) property. This point will reappear below in the discussion of tax relief for elderly citizens.

In addition to the ability to pay, the desire of the taxpayer to avoid tax delinquency status is related to a number of determinants. These presumably include his view of the equity of the assessment process and the setting of tax rates, as well as the regard in which he holds the benefits of public expenditure. Thus, his willingness to pay increasing dollar amounts of property taxes depends upon his being correctly assured that there is equity in assessment and collection as well as in value received in the expenditure of the resulting revenues There is no evidence that at present levels of taxation, property owners have chosen to allow due taxes to become delinquent through a desire to protest the amount of taxes charged them, or through lack of knowledge of the pattern of expenditures out of revenues

To the extent that variations in personal income have been strongly associated with changes in county delinquency ratios, the willingness of taxpayers to meet the tax deadlines has been less closely related to the equity of assessment procedures, distribution of revenues, and penalties for delinquency The strength of the income determinant in prompt payment of property taxes is the next aspect of tax delinquency to be considered

It is useful to introduce an uncommon statistic in the exploration of the income determinant, the elasticity of tax delinquency. This is simply the response of changes in statewide delinquency, first to changes in California personal income (the income elasticity of delinquency), and second to changes in the amounts of statewide property taxes charged (the charge elasticity of delinquency). The income elasticity of delinquency for a given year is computed as the percentage change in dollar amount of delinquency from one year to the next in ratio to the percentage change in California personal income between the same two years The computational procedure is shown in the footnote to Table 10, which contains, in column 4, the income elasticities of tax delinquency for the years 1952–63 The charge elasticity is shown in column 6 of the same table, and is also defined in a footnote.

Several characteristics of the two elasticities are important to the ensuing discussion. First, the income elasticity of delinquency has twice as high a yearly average (2.81) as the charge elasticity (1 32) This result suggests that on the average, a percentage change in income

TABLE X

Income and Charge Elasticities of Property Tax Delinquency, and Their Underlying Statistics: 1953–1963

Fiscal year	Change from previous year's total tax charge ($000)	Change from previous year's personal income ($000)	Change from previous year's total delinquency ($000)	Income elasticity of delinquency[a]	Three-year Moving average of income elasticity	Charge elasticity of delinquency[b]	Three-year Moving average of charge delinquency
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1953	75,630	1,553	632	1 04	----	65	----
1954	87,500	790	2,471	7 97	2 91	2 25	87
1955	95,360	2,792	−372	− 28	2 79	− 26	83
1956	112,812	3,049	943	67	1 13	61	61
1957	157,298	2,309	2,791	3 00	3 17	1 51	1 30
1958	197,059	1,659	4,406	5 84	3 16	1 78	1 34
1959	129,549	3,719	1,818	64	3 49	73	1 45
1960	187,576	2,223	4,749	3 92	2 95	1 95	1 77
1961	170,995	2,265	5,859	4 23	3 45	2 73	2 03
1962	197,987	3,245	5,054	2 13	2 08	1 60	1 80
1963	205,784	3,264	4,300	1 67	----	1 17	----

[a] The ratio of percentage change from previous year's total delinquency, to percentage change from previous year's personal income The 1963 income elasticity of delinquency is computed as,

$$\frac{\frac{632}{9,828}}{\frac{1,553}{25,089}} = \frac{06430}{06189} = 1\ 04$$

[b] The ratio of percentage change from previous year's total delinquency, to percentage change from previous year's total tax charge The 1953 charge elasticity of delinquency is computed as,

$$\frac{\frac{632}{9,828}}{\frac{75,630}{753,770}} = \frac{06430}{09967} = 0\ 65$$

SOURCE: H W Myers, Fresno County Tax Collector, provided the basic data The author is responsible for subsequent calculations

has been associated with a percentage change in delinquencies more than twice as large as the percentage change in tax charge. Obviously, the extent of change in delinquencies has tended to move opposite to the extent of change in income When income has taken a large upward jump, delinquencies have taken a large downward move. The same holds for the charge elasticity figures, except that the degree of movement in delinquencies for a given percentage change in tax charge has been less than one-half as great as for income elasticity. The conclusion is that delinquencies respond more drastically to income changes than to charge changes. If a tax ceiling were in the offing, it is likely that a given percentage change in tax charge would produce a much larger response in delinquencies than it has seemed to produce, because the tolerance of taxpayers for increased charges would be lower, and their tendency to allow delinquency much higher.

A second aspect of the elasticities of Table 10 relates to this point The three-year moving average of charge elasticities shows a definite upward trend, indicating an increasing sensitivity of property owners to increases in tax charges The moving average of income elasticity, while more volatile than that of charge elasticity, does not show such a trend It is dominated by a sharp dip in 1956, when personal income increased more than 10 percent, while delinquencies increased less than 7 But the 1954 moving average of income elasticity was lower than the moving average of the terminal year in the series Nonetheless, it is apparent that the two series are moving closer together through time—that the response of delinquencies to changes in tax charge is approaching that of changes in income In 1955, the two elasticities took the same value, but this was due, in the main, to a recovery by taxpayers from the recession-induced rise in delinquencies in 1954, while both the tax charge and personal income in the state increased 10 percent above their 1954 level

One limitation attaches to the elasticity figures. The income elasticity purports to measure the sensitivity of changes in delinquencies to changes in personal income alone, and the charge elasticity, to measure the sensitivity of delinquencies to changes in the dollar amount of total tax charge on property Thus, in the first case, the taxpayer is assumed to react only to changes in personal income, *given* the tax charge, while in the second, he is assumed to react only to changes in the charge, *given* the level of personal income. The total tax charge does not react to changes in income, which, of course, is a central weakness of the property tax But the elasticity figures do not show the interaction (which can be assumed to be present) between income changes and changes in the tax charge, and which produce jointly, the changes in outstanding delinquencies Yet, enough has been shown to allow the conclusion that delinquencies respond in more dramatic fashion to changes in income than to changes in the tax charge, and they have done so consistently.

G. School Bond Elections

The search for evidence of the approach toward a property tax ceiling next leads to the outcome of various votes on proposed bond issues for California elementary and unified school districts, high school districts and junior college districts[17] The outcome of any bond proposal is obviously contingent upon more than voter awareness that the approval of a bond issue will make necessary future servicing and amortization expenditures by the district involved. In the case of school bonds, interest and retirement charges fall upon the school district's property revenue, and very likely involve future property tax rate increases Knowing this, California voters have approved 75 percent of the bond issues brought to a vote since 1954–55, a high tribute to the traditional regard in which Californians have held education

Since 1954–55, the dollar amount of school bonds authorized by voters has exceeded $2.25 billion, out of a total of $3 02 billion proposed, as the summary results of Table 11 indicate. No other state in the United States has approached this outlay, during the time period in question In approving 74 5 percent of the dollar amount of proposed issues, voters have either placed a very high value on the education of California children, or have shown no lack of ability and willingness to incur higher property taxes or both; they have approved 1,706 issues and rejected 568.

The *trend* of bond votes is an important part of this study. The appearance of a downward slope in the proportion of bonds approved during the period 1954–55 to 1963–64, could, all other things equal, be interpreted as a sign of increasing unwillingness of voters to lend approval to rising property taxes In any case, Table 12 does not indicate such a trend Californians, in 1963–64 passed the largest single issuance of school bonds during the entire period, $330 million, approving the issuance of $79 of each $100 they voted upon. For the entire period, junior college proposals have received least voter support—35 percent of the dollar amounts of proposed bonds were not approved, although in 1963–64, more than $70 million passed Other types of issues received warmer welcome, though not consistently throughout the period.

The level of California personal income has exerted a powerful influence on the outcome of school bond elections, as it did in the cases of protests of valuation and delinquencies of property taxes. In fiscal year 1962, for example, one-half of all proposed bonds were rejected. Most of the rejected bonds were defeated in calendar year 1961, when the state and nation were emerging from the recession of 1960–61, and uncertainty about the future course of the economy was high. In that year, voters evidently preferred to support relatively smaller sizes

[17] School bond issues have been chosen for this purpose because they have been proposed in all counties of the state during the period in question Data on their number, dollar amounts and percent accepted or rejected have been carefully collected and reported by the California State Department of Education, Bureau of Education Research Other types of bond issues have not been centrally collected

TABLE XI

Number and Amount of School Bonds Proposed, Accepted, and Rejected by California Voters, 1954–55 to 1963–64

(Amounts in thousands of dollars)

	Proposed		Accepted		Rejected		Proposed		Accepted		Rejected	
	Amount	Percent of total	Amount	Percent of proposed	Amount	Percent of proposed	Number	Percent of total	Number	Percent of proposed	Number	Percent of proposed
All issues	$3,012,442	100 0	$2,244,592	74 5	$767,850	25 5	2,275	100 0	1,707	75 0	568	25 0
Elementary and unified	1,790,647	59 5	1,352,265	75 5	438 382	24 5	1,817	79 9	1,402	77 2	415	22 8
High school	844,816	28 0	648,813	76 8	196,003	23 3	397	17 4	264	66 5	133	33 5
Junior college	376,979	12 5	243,514	64 6	133,465	35 4	61	2 7	41	67 2	20	32 8

SOURCE The California State Department of Education, Bureau of Education Research provided basic data The author is responsible for the summary results

TABLE XII

Amounts of School Bond Proposals, Percent Accepted and Rejected by California Voters, by Type of Proposed Issue, Yearly: 1954–55 to 1963–64

(Amounts in thousands of dollars)

Fiscal Year	All issues							
	Total proposed	Total approved	Total rejected	Percent of total rejected	Average size proposed	Average size accepted	Average size rejected	Average size rejected as percent of proposed
1954–55	$354,434	$312,801	$41,633	11 7	$1,174	$1,351	$801	68 2
1955–56	271,341	234,776	36,565	13 5	907	962	665	73 3
1956–57	314,402	240,721	73,681	23 4	1,104	1,191	1,084	98 1
1957–58	231,345	162,157	72,188	30 8	1,100	1,052	1,224	89 9
1958–59	245,789	156,856	88,933	35 7	913	871	999	109 4
1959–60	124,508	107,713	16,795	13 5	1,186	1,539	479	40 4
1960–61	284,272	220,951	63,321	22 3	1,317	1,331	1,407	101 4
1961–62	441,454	221,121	220,333	49 9	1,908	1,436	339	16 5
1962–63	326,037	256,511	69,514	21 1	1,555	1,056	1,215	80 1
1963–64	418,370	330,963	87,917	21 0	2,353	2,488	1,951	83 0
Totals	$3,012,442	$2,344,592	$767,850	25 5				

Fiscal Year	Elementary and unified				High school				Junior College			
	Total proposed	Total approved	Total rejected	Percent of total rejected	Total proposed	Total approved	Total rejected	Percent of total rejected	Total proposed	Total approved	Total rejected	Percent of total rejected
1954–55	$184,405	$170,964	$13 441	7 3	$146 489	$121,967	$24,592	16 8	$23,570	$19,970	$3,600	15 3
1955–56	174,766	157 166	17,600	10 1	81 759	65,764	15 965	19 5	11,816	11,816		
1956–57	201 087	157,597	43,490	21 6	101 475	72,284	29 191	28 8	11,840	10,840	1,000	8 4
1957–58	124,121	95,479	28,643	23 1	107,539	65,993	43,546	39 8	685	685		
1958–59	153,058	98,100	55,893	36 3	71,591	47,756	23,835	33 3	18,240	11,000	7,240	39 7
1959–60	75,783	66,893	9,150	12 0	42 255	37,440	4,815	11 4	6,300	3,500	2,800	44 4
1960–61	181,789	142,693	39,137	21 5	82 733	66,799	15,931	19 3	19 750	11,500	8,250	41 8
1961–62	270 890	122,912	147,978	54 6	59 991	36,401	22 660	38 3	111,563	61,908	49,755	44 6
1962–63	194,598	153,609	40 979	21 1	65 769	61,204	4,565	6 9	64,670	41,700	22,970	35 5
1963–64	229 090	186,983	42,107	18 4	81 235	73,275	7,960	9 8	108 545	70,695	37,850	34 9
Totals	$1 790 647	$1 352 265	$438,382	24 5	$844,816	$648 813	$196 003	23 2	$376,979	$248,514	$133,465	35 4

SOURCE The California State Department of Education, Bureau of Education Research provided basic data. The author is responsible for the computation of summary totals

of issues—the average size of issue rejected was 104 percent of the average size proposed. A similar result occurred in 1958–59, when the same ratio was 109 percent In that year, the recession of 1957–58 ended, and similar uncertainty was present In more "normal" years, voters have preferred larger issues, and have tended to reject those of smaller size This is underscored by the point that in 6 of the 10 years, the average size accepted was greater than the average size proposed. The four years in which this was not the case were years in or just following recessions. It is apparent that voters have been unwilling to underwrite long-term capital outlays in periods of income uncertainty, or in periods during which many of them were engaged in the attempt to recover income "lost" during the recession.

By type of bond proposed, there is no upward trend in the yearly percent of amounts rejected during the 10-year period covered in Table 12. Indeed, high school issues show a decrease in rejections for the period as a whole. Again, however, periods of recession obscure any smooth trend which might otherwise emerge The statewide amount of bonds approved has exceeded 1 percent of California personal income only in 1954, when an amount equal to 1.14 percent of that year's personal income was approved for issuance In the ensuing years, the ratio of approved bonds to personal income has fallen. The willingness to approve bond issues and incur higher taxes has not declined, but California personal income has increased rapidly. In 1954, when $354 million of bonds were approved, California personal income was $27 billion. In 1963, $419 million of bonds were approved, but personal income had risen to $52 billion, so that only 0 63 of 1 percent of that year's income was approved for issuance

To summarize, no increase in reluctance to approve school bond issues is apparent in California, either in numbers of issues or dollar amounts The approval of bond issues apparently has proceeded independently of the burden of property taxes, except in periods during which recessions have engendered income uncertainty The general acceptability of school bonds to voters has been high for each of the four types of school districts in which bonds are proposed.

H. County Boards of Supervisors

Members of county boards of supervisors are required to approve the tax and expenditure process of each county in each year. The five-man board approves the final county budget by September 1, and sets the tax rate necessary to provide sufficient revenue from secured property. In addition, the board frequently acts as a county board of equalization in reviewing assessment protests, and has the power to raise or lower assessed valuations Except for those of school districts, the county boards set final budgets and tax rates, and may alter assessed valuations of property on the secured roll

Clearly, members of these boards are heavily involved in the property taxation process If property taxes were approaching their ceiling, it is likely that tenure of boards would become less permanent, as tax resent-

ment caused increasing turnover of incumbents of boards in each election. Table 13, however, shows no increase in the percentage of opposed incumbents who were defeated, since June 1958, when the County Supervisors Association of California began obtaining this information. In the four primary and three general elections since

TABLE XIII

Results of Seven Recent Elections Involving County Boards of Supervisors in California

	1958		*1960*		*1962*		*1964*	*Total*	*Total*
	June	*Nov*	*June*	*Nov*	*June*	*Nov.*	*June*	*June*	*Nov*
Candidates	357	97	375	111	330	121	470	–	–
Posts in contention	123	47	168	50	121	44	171	–	–
Incumbents running	100	21	145	31	98	25	142	–	–
Opposed incumbents	75	21	110	31	75	25	110	370	77
Defeated incumbents	15	9	21	17	11	10	19	66	41
Newly elected	12	35	28	36	15	29	23	–	–
Retiring incumbents	23	–	23	–	23	–	29	–	–
Addendum: Percent of opposed incumbents defeated	20	43	19	55	15	40	17	*Averages* 18	47

SOURCE: County Supervisors Association of California

that date, 370 incumbents opposed in the primary elections have experienced 66 defeats, for an average turnover of 18 percent In the general elections, 41 were defeated, from among 77 opposed incumbents standing, an average turnover of 47 percent. The turnover of incumbents in the three elections since June 1962 is below the average for the seven elections. Again, there is no evidence of recent increase in turnover in board members throughout the state.

This result does not necessarily indicate lack of taxpayer resentment toward county boards of supervisors. Many counties have not redistricted in accordance with changes in the distribution of population within the county. One author has said.

> ". . . 21 counties have not been redistricted since 1900. In 18 of these counties, the supervisorial district boundaries today are identical with the original boundaries drawn 70 to 100 years ago The population in these counties has increased by as much as 4,800 percent during these last eight or nine decades " [18]

The County Supervisors Association of California has recently completed a survey showing that in 26 counties, control of three positions representing the three smallest supervisorial districts on the county boards rests with less than 60 percent of the population of the county which fully equitable representation would make necessary Uneven representation obscures the ability of protesting taxpayers to make changes in the incumbency of county boards, and the turnover rates shown in Table 13 probably understate the degree of taxpayer resentment toward property taxes

[18] Stuart C Hall, *County Supervisorial Redistricting in California,* Bureau of Public Administration of the University of California at Berkeley, February, 1961, pp iii and iv

I. Property Taxes and the Elderly Taxpayer

In 1960, there were 1 4 million persons residing in California who were 65 years old or older These persons comprised nearly 9 percent of the state's population By 1990, it is estimated that 12 9 percent of California's population, or 2 256 million persons, will be in this age grouping [19] Many of these persons are and will be infirm, and almost all of them are and will be experiencing the task of keeping living costs within the constraints of a budget which is fixed in amount. In this situation, elderly citizens presently face the necesisty of paying property taxes of increasing yearly amounts No figures are available to indicate the proportion of elderly persons giving up title to homes in which they may have lived as long as they were financially able Neither are there figures which indicate what happens to those elderly who have been financially incapable of maintaining their homes

As demonstrated in an earlier section, the cost of living in California is presently higher, and has risen more rapidly than costs of living in the rest of the nation. And of the total cost of living, costs of housing and rent have increased much more rapidly than they have nationwide. It has been shown that property taxes in California are also higher and have risen more rapidly than they have in the United States as a whole. Elderly taxpayers, then, view the level and direction of property taxes on their residences with an apprehension, indicated by these two letters, written to the Chairman of the Assembly Revenue and Taxation Committee

Dear Sir June 24, 1964

I am writing to see if it would be possible to get some reduction on the high taxes I have only 85 feet from a 50 by 140 ft lot I have no back yard or trees on the place, and the taxes have jumped from $263 72 to $283 25 last year And I was told that the raise will be more than that the coming year

I will be 78 years old in October of this year, and not being employed, the taxes are a problem I contacted the Assessor's Office and was referred to you May I hear from you soon

Respectfully yours,

ANNA E KUBACKI

Dear Sir: August 3, 1964

In "The Los Angeles Times" Sunday 7/26/64, there was an article that the "State Likely to Reshuffle Tax Set Up"

I am 76 years old, married, my wife is over 66 I am retired My income is a Social Security check, and I have a very small amount of saving which is diminishing rapidly; because I have to pay taxes on my home Unfortunately, the taxes were increased in the last few years, from $500 to $1200

I have put all of my life savings in the house, now I am sandwiched between two newly constructed big buildings It is very hard to sell my home for a reasonable amount I am forced to pay very big taxes. Any proper investigation will show that I was cornered in this situation

I will be grateful to you if something could be done to save my home from a future tax foreclosure

Very respectfully yours,

(Name withheld by request)

[19] California Legislature, *Report of the Senate Subcommittee on Housing and Recreational Needs of Elderly Citizens—1961.*

Each of these letters describes a common situation of the elderly Each mentions a fixed income, and each expresses concern about the level of, and recent increases in property taxes on a residence Each writer is unemployed

> "For these citizens, the ever-rising rates of property taxation present a constant irritation as well as a real financial problem Over the past several years, communities with higher-than-average numbers of low- to middle-income aged residents have had difficulty in securing approval of bond issues or tax overrides, a fact attributed to the hypersensitivity of many aged homeowners to the property tax "[20]

In addition to the threat to financial capacity of the elderly posed by the property tax, and its consequent social problem, this quotation briefly outlines a problem which affects not only the aged, but all members of a community—the support of the schools of a community Many aged property owners no longer have members of the immediate family who currently are being educated in the schools of the community in which the aged live This condition undoubtedly is true of many taxpayers who are not elderly, but the younger taxpayer is capable of working, and can depend upon an income which is not fixed in amount This makes him more likely to vote for the tax override or a school bond issue The elderly taxpayer is less able to defend himself against decreases in his spendable income which inevitably occur as property taxes rise Thus, he reaches a tax ceiling sooner than younger, employed persons. If this occurs and if the assessment protest of the owner of small-valued property is less successful than that of the large-valued property owner in obtaining reduction, (as Section V of this study has shown to have been the case in California during at least the last five years) it is not surprising that the delinquency ratio of property taxes to taxes charge has increased There can be little doubt that many of the delinquencies on due taxes have been delinquencies of the aged, whose incomes have not kept pace with the increases in property taxes Those among the aged who were unable to obtain a large enough supplement to their income to meet the delinquency prior to the sale date, were therefore in the position of having their homes sold for taxes

The county assessor cannot be criticized for having assessed the property as his professional abilities allowed, and as demanded by the state Neither can the school board or the county supervisors be criticized for having set a budget requiring the tax rate which applied alike to the housing of the young and the aged The aged person cannot justly complain that he is not being treated equally with other taxpayers, for his home is assessed by an assessor who uses the same techniques in assessing the home of other taxpayers The aged property owner is caught in the position of being treated fairly (equitably) while simultaneously being treated inequitably because his income is fixed He has no control over this circumstance. but is, in the present scheme of things, constrained to somehow obtain the necessary payment for his home. or have it sold for taxes

[20] California Legislature, *Final Report of the Assembly Interim Committee on Revenue and Taxation*, 1961, Vol 4, No 7, p 43

In 1960, 44 percent of the California elderly lived in dwellings they owned, and only 3 4 percent were institutionalized 1,022,000 households were inhabited by 338 thousand couples, 200 thousand unattached men, and 400 thousand unattached women, all 65 or more years old.[21] In 1941, only 26 thousand old age and survivors monthly payments were made to California residents By 1950, the number had risen to 275 thousand, and by 1961, to nearly 1 3 million [22] The number as well as the amount of benefits has greatly increased in the last 20 years, but among the aged, there are many who, because they may never have held jobs which qualified them for coverage, do not receive OASI payments Even among those who do receive these benefits, the amounts are such, that in 1958, an average of $10 72 was diverted from OASI checks to cover housing expenses [23] At this time, California's sole contribution to the housing of needy aged persons is through cash payments for housing to OASI recipients Thus, California is in the position of supplementing housing expenses of needy aged persons while simultaneously extracting from them, an increasing amount of property taxes

For these reasons, one author has written,

> "Either we must accept increasing poverty as a concomitant of old age, or we must make such well-designed community plans to protect the elderly as will support a decent standard of housing and maintenance for them " [24]

As a technique for extending the property tax ceiling, it is difficult to imagine a more fertile area to begin than the taxation of the residential property of the elderly Oregon, in 1963 adopted a system by which persons 65 or older were accorded the privilege of accepting property tax exemptions and/or tax deferrals, provided they met certain minimum tests of their income and wealth, involving an income of $2,500 or less in gross receipts in the previous year, and a "true cash or market value of the taxpayer's principal personal residence " [25] The amount of true cash value exempted from taxation is scaled according to the age bracket in which the person who passes the "means" test belongs.

The tax deferral for elderly citizens of Oregon is available to those who are unable to entirely exempt their residence because of income receipts in excess of the above minimum, or who have not reached the age (80) at which all property taxes on the residence have become exempt These property owners may defer due property taxes on their residence by giving the state a lien against the property of the same sort as the customary unpaid taxes lien, in the amount of the taxes deferred. Upon the death of the owner of the tax-deferred property and his spouse, if she is also a resident of the home, the state receives full payment of the deferred taxes plus the accumulated (6 percent) in-

[21] Wallace F Smith, "Housing for the Elderly in California," *Research Report No. 15*, Real Estate Research Program, Institute of Business Research, University of California at Berkeley, pp 1–3

[22] U S Department of Health, Education, and Welfare, *Social Security Bulletin*, various dates

[23] California State Department of Social Welfare, *Survey of Housing of Old Age Security Recipients*, October 1958

[24] Maurice D Van Arsdol, *Supplement to the Appendix to the Journal of the California Senate*, 1961, Reg Sess, p 47.

[25] *ORS* 307.350 to 307 365, which became Oregon law in 1963

terest on these, and returns the balance of the estate to the heirs. At any time, the owner, next of kin, or heirs, may pay any fraction of the deferred taxes and interest without affecting the deferred status of the property, as long as the taxpayer gives his assent

Counties of Oregon in which the tax deferred property is located, receive payment from the state each year in the total amount of deferred taxes of the county In Oregon, these payments are financed out of the Public Employees Retirement Fund, which receives interest on the amount of tax deferrals outstanding at the yearly rate of 6 percent, and which accrues as part of the lien on the property.

Briefly, this is the program as it has been adopted in Oregon In effect, it defers each year, the payment of property taxes out of the frequently limited income of the aged, and affords them a substantial increase in real spendable income, thus providing financial aid of a voluntary nature in preference to old age assistance payments which might otherwise necessarily be increased, and which would involve an involuntary subsidy to the aged paid by the nonaged.

A program of this sort operating in California would undoubtedly provide property tax relief to those aged who badly need it In doing this, it would also therefore extend the capacity and willingness of property taxpayers as a group throughout the state to tolerate the current levels of property taxes An important byproduct of such a program would be the accordance of an increased degree of dignity to the aged, who would be able to continue to live within their own home, on a fixed income.

J. Miscellaneous Psychological and Equity Aspects of the Property Tax Ceiling

This study has concerned itself mainly with the tax on real property, the largest base among those to which the property tax applies. Yet, other property tax sources commend themselves to attention, not only because they involve substantial revenue, but because they also contribute to the ceiling limitations upon growth of this revenue

HOUSEHOLD FURNISHINGS

In particular, the tax upon household furnishings is a sore point with taxpayers if casual inspection of letters appearing in California newspapers give valid clues. The valuation of these personal items is frequently made by persons unprepared professionally to make such estimates, and who often do nothing more than estimate the value of household furnishings according to the valuation placed on the house, in many cases, not entering the house at all This practice understandably leads to a degree of taxpayer contempt for the entire property tax administration The "assessor" who does enter homes is regarded as a "snooper for the county." Further, the revenue produced by this tax is not large, in comparison with the costs of administration and collection, which in Los Angeles County alone, have been estimated to run as high as $250,000 annually [26] The costs to the local government

[26] John P. Shelton and Bruce F Davie, "How to Keep Local Expenditures Under Control," Chapter 4 of *California Local Finance Trends, Prospects, Standards*, Claremont Social Research Center, Claremont, California, January 1959, p 4–59 This volume contains much additional information about California taxation and expenditures

in terms of restrictions on the ability of property taxes to be collected smoothly, as well as the high dollar costs of administration and collection of this revenue, indicate that California should follow the lead of New York and several other states which terminated this form of property taxation, making up for the revenue lost by slightly increasing the rate on real property Such a plan would seem to benefit residents of unfurnished apartments, who now pay a small tax on furnishings which they own If the furnishings tax were dropped, and the rate on the building slightly increased to compensate for the revenue loss, the owner of the apartment would then pay the taxes to replace those lost on the cessation of the furnishings tax It is assumed the owner would then pass along this tax increase to the tenants as increased rent Thus, the tax would impact in the same manner as it presently does, but without the onus or expense involved in "assessor snooping." (For a more detailed discussion of the assessment of household personalty see Section Five, Part Two)

PROPERTY TAX EXEMPTIONS

In fiscal year 1963, 988,102 exemptions from taxation removed over $1 6 billion assessed tangible property from the tax base Veterans received 98 percent of the number and 55 percent of the statewide dollar total of exemptions Churches received 16 percent of the number and slightly more than 1 percent of the total dollar amount of property exemptions The remainder was distributed between colleges, schools of less than collegiate grade, hospitals, and miscellaneous other exemptions, most of them serving various welfare functions. Two constitutional amendments affecting veterans' exemptions, proposed by the Legislature, were submitted to the electorate and approved in the general election of 1964 One restricts eligibility for exemption to veterans or surviving wives or parents of persons who were residents of the state when they entered service or who were receiving the exemption when the amendment was approved The other increases from under $5,000 to under $10,000 the value of property a widow of a veteran may own without being disqualified

Such exemptions shrink the tax base, and must be made up for by a transfer of the burden to nonveteran property owners. This subsidy to veterans is in the nature of a transfer payment for services rendered in the past It is difficult to recommend that the veteran's exemption be removed, but it is equally difficult to give approval to the continued unequal treatment of the taxpaying body For a more detailed discussion of the veterans' exemption see Section Three)

THE INVENTORY TAX

Finally, in this section of miscellany, is a consideration of the method by which inventories are assessed Section 441 of the Revenue and Taxation Code of California fixes noon on the first Monday in March as the moment when the business inventory is to be valued for tax purposes. This is at variance with the state procedure for the valuation of rolling stock, set forth in Section 1103, which specifies that the board "shall determine and assess the average amount of rolling stock habitually in this State." In the latter case, state-assessed rolling

stock is valued for tax purposes at its average amount Business inventories, on the other hand, are assessed by the county assessor at one point in time, a technique which allows firms to minimize inventories at the tax date, avoiding a portion of this tax by running their inventories down and shrinking the tax base To the extent that the "running down" of inventories is disruptive to the smooth course of business, reporting of inventory values at only one point in the tax year contributes to interference with economic efficiency This interference, it will be recalled, was one test of the suitability of the property tax Further, it is apparent that the tax as it now is imposed, yields less revenue than it would under an averaging technique. Such a change in the tax base would improve the equity of this tax by ceasing to penalize firms whose seasonality requires a relatively heavy inventory on the assessment day, while giving a relative advantage to firms which are normally able to deplete inventory at the assessment date, thus partially avoiding the tax As it has previously been argued, improvements in equity would tend to raise the ceiling of this particular tax (For a more detailed discussion of the inventory tax see Section Five, Part One)

K Summary, Conclusions, and Recommendations

SUMMARY

Property tax revenues in California have increased nearly five times since the end of World War II, outrunning the rise of California personal income The increase in this source of revenue has been nearly twice as fast in California as in the United States On a per-head basis, too, the California rise has exceeded the United States increase Further, property tax revenues have continued to rise as a proportion of state and local revenue in California, while, for the United States as a whole, the opposite trend has set in. California property tax levies have increased to a point beyond the levies of other state and local taxes in California. The continued large net yearly migration into California has made necessary in the rapidly growing areas of the state, large capital outlays and increased operating expenses for the governmental functions supported by property taxes

Continued increases in its yearly yield have drawn attention to certain aspects of the property tax which could, in time, impose a limit to further expansion The contention that a ceiling on these revenues is approaching, has concerned apparent inequities of the tax, involving assessment procedures and laws, the regressivity of distribution of the burden (particularly of the tax paid on residential property) and the excessive burden upon the elderly living on fixed incomes Other difficulties of the tax have to do with its insensitivity to cycles of income, which makes its burden relatively larger in recession periods than in periods of high income, as well as with the complexity of laws under which assessment, collection and expenditure of property tax revenue remain a near mystery to many Californians These provide the conditions for resentment of the tax, and make necessary the question, "What are the economic and psychological limits of the property tax in California?"

The manifest impossibility of estimating a rigid ceiling beyond which property tax charges seriously affect economic efficiency, work and investment incentives, and cause general price levels to increase, permits only an identification of factors which have affected economic and psychological limits of the property tax in the past two decades

This study has shown that the rise in housing rents has been more rapid in California than in the United States, and that recent rent increases have tended to match property tax assessment and rent increases in the state, an indication that part, if not all residential property taxes have been passed along to tenants. There has been no support for the argument that lag in the development of property has occurred as a result of the tax increases on property. Housing starts have responded to population increases in the state, and so long as California personal income continues to advance, and Californians continue to be willing to absorb the increasing costs of shelter, housing starts will proceed with population growth. Net yearly migration into California has shown no tendency to decline, a fact which supports the view that high property taxes have been less important in discouraging movement into the state, than other, more positive aspects of life in California, have encouraged it.

As a check on the relationships of housing starts, population growth and property taxes, the study examined the changing costs of obtaining housing, showing that California rents have increased more rapidly than the changes in housing supply (housing starts) and housing demand (net migration) suggest they would have in the absence of rising property taxes passed along to tenants as rent.

Assessment valuation protests of property owners to county boards of equalization represent a recourse to the taxpayer, and also provide a measure of taxpayer reluctance to accept the assessment and taxing process. Between 1959 and 1963, the number of assessment protests declined, though the dollar value of reduction in assessed valuation granted more than doubled, suggesting a concentration of reductions in favor of property having a relatively large value. In 1963, the average assessment reduction was $5,507. The study has shown that during the five-year period, when 50 percent of the total *number* of reductions had been granted, only 20 percent of the total dollar *amount* of reductions had been allowed. The decline in number of protests very likely has been related to the inability of the owner of property of relatively small value to obtain assessment reductions. This study indicates that the assessment protest has been most frequently undertaken by owners of property of comparatively large value.

Another measure of taxpayer reluctance to submit to the payment of property taxes has been his willingness to allow delinquencies to occur against property on which taxes have become due Since fiscal year 1952, the statewide delinquency of due taxes has more than tripled while the total property tax charge has doubled. There are powerful indications that yearly delinquency totals are greatly affected by the behavior of such indicators of economic health as income and employment, as well as the amount of taxes charged. Since 1960, the delinquency rate has increased more rapidly than the rate of increase in California personal income, so that in 1963 for every $100

increase over the 1962 level of property tax charged throughout the state, delinquencies increased $21

Yearly variations in California personal income have, since 1952, produced about twice as great an effect on statewide delinquency totals as yearly variations in the total tax charged. However, the response of delinquency totals to the rising tax charge has accelerated rapidly in the last few years, and increases in delinquencies have become nearly as sensitive to increases in the taxes charged as to income changes.

California voters have, since 1954, approved 75 percent of the total dollar amount of bond issues proposed for construction of school facilities Inevitably, the issuance of school bonds has required increases in property tax revenue for the school district floating the bonds In approving the issuance of $2 25 billion of school bonds, Californians have shown either a very high regard for the role of education in our society, or have not thought the property tax burden so high it could not be increased There has been no tendency for the proportion of bond issue amounts rejected by voters, to increase over time, a fact underlined by the approval in 1963–64 of $330 million new school bonds throughout the state, the largest dollar amount approved in the period since 1954

It is significant that declines in the growth rate of California personal income have been accompanied by increased rejection of proposed issues This occurred in each recession period, with a consistency which suggests that a fundamental limitation of the property tax, its failure to respond to variations in income, was asserting itself, as it has done in the case of tax delinquencies cited above Over the period studied, however, no evidence suggesting increasing taxpayer antipathy to school bond proposals, has been apparent

If taxpayers experienced a growing hostility to the property tax level, a hostility so great as to overwhelm all other considerations of the conduct of local government, they could express this by voting out of office, all incumbent members of county boards of supervisors There is no evidence of increased turnover of incumbents of these boards in California since 1958, and therefore, no evidence of a high degree of property tax resentment such a turnover could suggest.

There is abundant evidence that many elderly property taxpayers find difficulty in meeting the increased levies upon their residences. In 1960, there were 1 4 million persons 65 or over living in California, representing nearly 10 percent of the state's population In the same year, 1 2 million old age and survivors monthly payments were made to residents over 65 or their spouses About 200 thousand elderly persons were not eligible for this benefit Among these elderly citizens are many whose incomes from retirement, pension and welfare sources are fixed in amount Rising residential property taxes impinge more heavily upon spending power of these than upon younger persons, whose family incomes grow over the years The property tax ceiling is accordingly reduced by the fixed incomes of the elderly It is likely that the rising delinquency rates described above are in part related to inability of the elderly to keep pace with increasing residential tax burdens.

Several aspects of the propery tax involve a psychological reaction among taxpayers to what they could be expected to interpret as in-

equitable treatment in the tax process Among these, the assessment practices for valuation of house furnishings, the California-based insurance company deduction from their net premiums tax of property taxes paid on principal office buildings, the growing dollar amount and number of property tax exemptions, and the assessment technique for inventories, involve apparent inequities which cannot be held to increase the property tax limit in the state.

CONCLUSIONS

1. Rent increases in San Francisco and Los Angeles have paralleled the rise in California property taxes, suggesting that the taxes have been passed along to tenants by property owners

2. There is no evidence that the development of property has been hampered by increased property taxes Housing starts have responded to the increase in California population

3. Net migration into California has apparently proceeded independently of the level of California property taxes

4 Since 1953, county boards of equalization have been more sympathetic to assessment protests lodged by owners of high-value property, than to those protesting assessments of property of lower value This conclusion is consistent with the observation that the yearly number of assessment protests has declined since 1959, while the yearly dollar amount of reductions in assessed valuation has continued to increase Effective redress of assessment grievances has not been equally available for all taxpayers, and the tax ceiling has been accordingly reduced.

5 The California delinquency rate on due taxes has risen very rapidly in the past three years, and there are indications that the response of the delinquency rate is nearly as great to increases in taxes charged as to changes in income This provides a strong indicator of the approach of a ceiling on property taxes for the growing number of those who have been affected

6 Simultaneously, Californians have shown a readiness to undertake increased property taxes by approving 75 percent of the dollar amounts of school bonds proposed for issuance since 1954. This tendency has, however, been strongly affected by recession in the economy. This, and the preceding point. illustrate a frequently noted limitation of the property tax—its rigidity in the face of income declines

7 Property tax resentment, if very high, could be expected to cause a rise in the statewide turnover rate of incumbents on county boards of supervisors opposed in elections This rate has not increased since data became available in 1958.

8. Elderly taxpayers are unable to respond to increased residential property tax charges because many of them are constrained by incomes which are fixed in amount The elderly are a focus of resentment toward the residential property tax

9 Several miscellaneous inequities exist in the present property tax procedures of assessment and exemption, and these are resented by those of the majority of taxpayers who are treated unfairly.

RECOMMENDATIONS

This study has shown that several facets of California's property tax are inequitable. The measures proposed below are intended to increase the ceiling of the tax by lessening or removing these inequities as causes of psychological and economic resentment which tends to lower the tax ceiling.

1. California should make available to elderly citizens who reside in their own homes, and who are declared eligible by certain "means" tests, a voluntary program of property tax exemption/deferral, which would reduce the effects of rising taxes upon the ability of these citizens to defend themselves against a fixed income

2. Dweller-owners of residential property below a certain minimum before-protest assessed valuation, should receive aid in preparing and protesting to county boards, assessed valuations which they feel are unjust.

3 The State Board of Equalization should be charged with the responsibility of *precise* intercounty equalization of assessed-to-cash valuation ratios. Further, the board should redress apparent unequal assessment ratios among the various types of property

4 The house furnishings tax should be terminated

5. The nondisabled veteran's residential exemption should be terminated.

6 Information about the ages and income levels of owners of property against which tax delinquencies occur should be the subject of a future study by the committee

PART II

TAX RATE LIMITS

DAVID R. DOERR and RAYMOND R. SULLIVAN

In general, the public has felt the need to be protected from unlimited increases in property taxes. For this reason, many units of local government, both in California and elsewhere, are circumscribed through a variety of constitutional and statutory limitations in the use they can make of the property tax.

The pattern of tax rate limitations in California defies logical explanation. Tax rate limitations apply to some local governmental jurisdictions but not others. The constitutional limit on the property tax is the limit placed on the taxing of intangibles.[1]

By statute the Legislature has set maximum property tax rates for general-law cities, school districts and most special districts. Limitations on property tax rates have also been written into the charters of some cities.

The Legislature has not seen fit to put a cap on county property tax rates, however, and in almost all jurisdictions with limits (except for some special districts), the maximum tax rate may be exceeded·

1. By a vote of the people, or
2. For a specially designated purpose, or
3. For repayment of bonded indebtedness

It should also be noted that the limit on the assessed value—the other half of the combination which determines the tax bill—is "full cash value" although most assessments (except for some cities and special districts) range from 18 to 26 percent of full cash value. (For a complete summary of California's tax rate limits, see appendix.)

Other States

Most other states (43) also have property tax limits of one form or another.[2] Although there are many variations, there are two basic forms of property tax limits: (1) limits on rates of taxing jurisdiction and (2) overall limits of the amount of tax that can be levied by all taxing jurisdictions.

Nine states impose what is generally classified as an "overall rate limitation."[3] Allocation of funds is a particularly troublesome problem

[1] Article XIII, Section 14 limits the tax rate on specified intangibles to four-tenths of 1 percent of the actual value of the property. In practice, most intangibles are exempt from property taxation and solvent credits are taxed at a rate of 1 mill per dollar of full value. See Section II, Part IIIa.

[2] The seven states that do not impose any property tax rate limitations are Connecticut, Maine, Maryland, Massachusetts, New Jersey, New Hampshire and Vermont. SOURCE: Advisory Commission on Intergovernmental Relations, *State Constitutional and Statutory Restrictions on Local Taxing Powers*, Washington, D.C., October 1962, p. 39.

[3] The nine states with overall rate limitations are Indiana, Michigan (excluding cities), Nevada, New Mexico, Ohio, Oklahoma, Rhode Island, Washington and West Virginia. SOURCE: *Ibid.*, p. 41.

in states with overall rate limitations. The method of allocation varies among the states. According to the Advisory Commission on Intergovernmental Relations:

"In Ohio the constitution directs that the local taxing units (primarily counties, municipalities, and school districts) be given the same relative proportion of the 10-mill limit that they previously received from the county budget commissions under the pre-1934 15-mill limit. In that state the allocation of the tax limits, which existed as of January 1, 1934 (the effective date of the new 10-mill limit), and varied from county to county under the old 15-mill limit requiring allocation by the counties, was frozen into law at two-thirds of the former rates New Mexico and Washington also froze, by statute, the allocation of the overall limits. In contrast, the statutes of these two states specify a given rate limitation for each class of local taxing unit, a basic limitation that does not vary among local taxing units of the same class.[4]

"West Virginia also froze by statute (in 1933) the allocation of the overall property tax rate limit (adopted by constitutional amendment in 1932) among the various contending taxing jurisdictions. As in Ohio, for different reasons, the rate limit varies for local taxing units of the same type The Constitution of West Virginia classifies property into four broad classes for purposes of taxation A different overall rate limit is applied to each class Class I property (intangible personalty and agricultural personalty, including agricultural products while owned by the producer) has a rate limit of 5 mills. Class II property (owner-occupied property used exclusively for residential purposes, farms occupied and cultivated by owners or bona fide tenants) carries a 10-mill rate limit Class III property (all other property situated outside of municipalities) has an overall 15-mill limit, and class IV property (all other property situated inside municipalities) has the top limitation of 20 mills. Of the 5 mills allowed on class I property municipalities are allocated by statute 1 25 mills; counties receive 1.215 mills; school districts get 2 295 mills; special districts are allotted 0 215 mill; and the state obtains the balance of 0 025 mill The allotments in the other classes of property are in the same proportion Depending upon the composition of property in the local taxing units, the maximum property tax can vary from 1.215 to 4 86 mills for counties, 1.25 to 5 0 mills for municipalities, 2.295 to 9.18 mills for school districts, and 0 215 to 0 86 mill for special districts.

"Michigan and Oklahoma leave the determination of each local unit's share of the overall rate to county allocation boards The allocation of Michigan's 15-mill limit deserves a closer look As initially passed, the 1932 constitutional amendment establishing the overall limit was intended to apply to all local units of government However, a Supreme Court decision of that state ruled in 1933 that municipalities were not automatically under the overall limit, but could choose to do so by amending their charters Only 11 cities availed themselves of the opportunity. Subsequently, a 1949 amendment to the General Property Tax Act prohibited a

[4] The mill limitation refers to mills of tax per dollar of assessed value.

municipality from including a tax limitation in its charter if it would result in reducing the combined taxing power of the other taxing units to less than 15 mills At the present time the 15-mill limitation is allocated among counties, school districts, and townships The county allocation board is authorized by the statutes to allocate a minimum of 3 mills to the counties, 4 mills for school, 1 mill for townships, and (where applicable) 2 mills for port districts The board allocates the residue on the basis of need

"The Nevada State Tax Commission apportions the overall rate among the various political subdivisions only when the combined (proposed budget) levies would exceed the 50-mill limit, but the mandatory state and school district rates cannot be reduced (The specific rate limits in the Nevada statutes total more than 50 mills.)[5]

Effects of Rate Limitations

It is difficult to measure the effectiveness of rate limitations in holding down property taxes. In California, as elsewhere, the property tax burden has been mounting steadily despite the existing rate limitations One can only speculate whether property taxes would be even higher without existing limitations.

Data presented by the Advisory Commission on Intergovernmental Relations show that, in the no-limit states, the average per capita property tax is the highest in the country Ironically, the percentage increase of the property tax in these states since 1941 has been lower, on an average, than in more restrictive states.

TABLE I

Trends in State and Local per Capita Property Tax Collections, by Stringency of Limitation Groups: 1932 to 1961

Group	Number of states	Per capita general property taxes					Per capita general and special property taxes		
		Amount			Percent increase or decrease (−)		Amount		Percent increase
		1932	1941	1957	1932 to 1941	1941 to 1957	1957	1961	1957 to 1961
U S total*	48	$37	$33	$73	−11 4	122 8	$76	$99	30 7
I	7	47	50	99	5 4	97 8	103	130	26 5
II	20	41	37	80	−8 4	112 7	82	106	28 8
III	12	29	19	51	−11 4	164 2	52	67	29 8
IV	9	38	27	66	−28 8	139 7	69	94	35 9

"I The seven states with no property tax limitation.
"II The 20 states with specific limitations that affect only certain types of local government, which allow considerable flexibility in the application of the limitations, or which provide relatively high maximum rates,
"III The 12 states with specific limitations applicable to all or to most of their local governments, allowing for little flexibility, or providing relatively low maximum rates, and
"IV The nine states with overall limitations"

SOURCE *State Constitutional and Statutory Restrictions on Local Taxing Powers*, Advisory Commission on Intergovernmental Relations, Washington, D C, October, 1962, pages 54, 55

* Excludes Alaska and Hawaii, for which historical data are not available Also excludes District of Columbia

[5] *Ibid*, p 41–43

Tax rate limitations often have disturbing side effects. In addition to the intended effect of holding down the property tax, they can force a curtailment of services—the services which may mean life or death to some people The substandard services can range from lack of adequate fire and police protection to inadequate schools and hospitals They can thoroughly snarl local government fiscal affairs and may lead to assessment manipulations and costly borrowing

Despite tax rate limitations, property taxes have gone up Some of the factors responsible for this increase are.

1. Demands by the people for increased and better services and the authorizing of higher tax rates through popular vote
2 The exclusion of debt service from property tax limits
3 The provisions for an excess levy for a certain specified purpose
4 The exclusion of counties, some cities, and some special districts from the provisions of rate limitation
5 The increase of local assessment levels
6. Legislative changes in the statutory maximum

Need for Additional Property Tax Limits

If the state is to provide property tax relief by allocating large sums of money to local government for this purpose or by authorizing supplemental revenue sources for local government to use, assurances are needed that this objective will actually be accomplished and that the total property tax bill the taxpayer receives will be significantly lower Without additional tax rate limits, local governments may not reduce their property tax but use the additional funds for increased services

There are other reasons for additional property tax rate limits. The property tax is the giant in the state-local revenue picture, raising as much as all state taxes combined In view of the magnitude of the property tax, other revenue sources should be encouraged to expand A limit on property taxes would encourage this development These limits would check the growth of a tax source considered by many to be regressive (See Section II, Part VI)

Tax rate limits also prevent taxes on local homeowners from increasing to the extent that a wave of delinquencies and foreclosures result, with the resultant upheaval in the social structure These are compelling reasons for tighter rate limitations; yet, there are also compelling arguments against rate limitations and certainly against tightening rate limitations For one, rate limitations are offensive to locally elected representatives of the people who have a responsibility to conduct the public's business in a prudent manner They are in a position to judge what the people in their community want and should not be tied by artificial barriers If the voters do not approve of their decisions, they will be replaced at the next election

These limits tend to place a straightjacket on local government and may cripple vitally needed services and preclude expansion and improvement of socially desirable services They result in further demands by local government for state assistance

There is always the possibility that tax rate limits have the opposite effect on jurisdictions not yet at the limit These jurisdictions may feel threatened by the limit and go to that level immediately to husband tax

revenues for the day when they might wish to exceed the limit but cannot.

If rate limits are designed to hold taxes down, property tax relief can be instituted effectively through other means. Devices such as the exemption and/or classification of property can be used. Reductions can be made through additional state school aid keyed to a drop in the existing maximum tax rate of the school district for current expenses. It would be possible to take schools off the property tax altogether

If "overall" limitations on the amount of revenue which can be collected from a parcel of property are to be considered,[6] a number of additional problems arise The problems associated with the allocations of funds among local governments would be very great, short of having all property taxes collected on a countywide basis and remitted on a per capita or ADA basis or some other formula As a hypothetical example of this problem, if the present tax rate in an area is $10 per $100, it would have to drop to $8 per $100 under a 2-percent limitation and a 25-percent assessment ratio Assume each of four levels of government (city, county, school, and special district) must drop their tax rate in this area by 50 cents It is a fundamental principle of property taxation that the burden of taxes must be borne equally by all property Thus the county tax rate would have to be reduced in all other areas of the county, irrespective of the fact that the 2-percent limit had not been reached in these areas When the great number of tax-rate areas (code areas) that now exist are considered, the effect of a flat limitation would be to reduce all taxes to the lowest common denominator, seriously interfering with local governmental activity in a number of places The impairment of local credit under such a proposal would be serious Current debts would have to be excluded; future borrowing would be impossible unless it were excluded too While it is desirable to keep property tax burdens as low as possible and preferably under 2 percent of the value of property, setting a fixed overall limit on property taxation would seriously weaken the stability and independence of local government and cause endless administrative problems Tax rate limits for various types of local governmental jurisdictions (as generally exist at present) and a standard assessment ratio would be a better approach to this problem.

[6] It has been suggested that the total property tax be limited to 2 percent of the full value of property

SECTION SEVEN

SUMMARY

Reform of the property tax is of the utmost urgency if this tax is to survive as an important revenue source. This rehabilitation is necessary to restore public confidence in the tax, to protect the taxpayers from gross abuse and discrimination, and to preserve the stability and independence of local government. Without such remedial action, the property tax may well become an historical curiosity.

This report has discussed many of the major weaknesses of the property tax. When judged against general principles of tax policy, the property tax fails badly. It is regressive, difficult to administer, and deleterious in its economic impact Without modification, some existing exemptions are inequitable and sap the integrity of the tax While this study recognizes the extremely difficult task of the county assessor, it is clear that all property is not being assessed equally in proportion to value. In addition, duplicate assessing now being performed by 54 cities is wasteful and confusing to the taxpayers

The tax puts a particular hardship on those living on retirement incomes and on those wishing to preserve prime agricultural land in the urban-rural fringe area Unique problems exist in the assessment and taxation of timber. Economic dislocations caused by the imposition of the tax as of one fixed date on business inventories are serious

Also of concern is the fact that the tax has been increasing since World War II In 1947 the property tax represented 3 2 percent of the personal income of the state By 1963 this percentage had increased to 5.3, but it has not yet reached the 5 5 percent level of 1939.

With substantial renovations and under good management, the property tax can have a proper role in the revenue structure. Without a tax on property, the price of land would increase, perhaps significantly. The property tax is a tax on wealth, and although an imperfect one, it complements taxes on incomes and transactions. Of particular importance, the property tax has been a good revenue producer and is well suited for use by local governmental jurisdictions

It is clear that the laws guiding the administration of the property tax and setting the basis of their application cannot remain as they are. The situations and circumstances in which they were conceived have changed and the laws must change too. Many reforms are necessary.

APPENDIX

PART I

RELATIONSHIP OF REDEVELOPMENT IN SAN FRANCISCO TO INCREASED ASSESSED VALUES AND TAX REVENUES

In examining the relationship of the redevelopment program in San Francisco to property tax revenues the Redevelopment Agency does not overlook the other important social, cultural, and urban design benefits of the program and the effectiveness of the redevelopment process in providing better housing for our citizens while removing unsafe, unhealthy, and undesirable slums and blighted neighborhoods.

However, the effect of the program on tax revenues is one of the most important benefits of the redevelopment process to San Francisco. The increase of tax revenues from the redevelopment program in all communities in the country has been receiving national, state and local attention for several years. Examples of recent attention given to taxation and urban renewal are the articles in the December 7, 1963, issue of *Business Week* and testimony given by William L. Slayton, Commissioner of the Urban Renewal Administration, on November 21, 1963, before the Subcommittee on Housing of the Banking and Currency Committee of the House of Representatives *Business Week* quoted Urban Renewal Administration findings that after redevelopment, assessed valuations in urban renewal projects were on the average five times greater than assessed valuations prior to redevelopment. Commissioner Slayton in his testimony pointed out that in 403 projects across the country in which redevelopment has started or been completed, assessed values have risen from $575,000,000 to $3,031,000,000, a 427-percent increase.

However, the citizens of San Francisco are most interested specifically in the effect of redevelopment on property taxes from San Francisco redevelopment projects. Therefore, it is proper to discuss in particular the three projects under redevelopment in San Francisco As background for a statement on assessed values and taxes it should be pointed out that in the three projects under redevelopment the estimated capital investment after the completion of redevelopment, including land and improvements, will exceed 300 million dollars

CHART NO. 1

In San Francisco's three projects under development, as shown in Chart No. 1, assessed values will increase, after redevelopment is completed, over 10 times above the assessed values prior to redevelopment This over tenfold increase compares very favorably to the four and a quarter times increase on a national basis described by Commissioner Slayton in testimony referred to above.

Chart No. 1 compares the assessed value of properties in the three projects under development in San Francisco in the following periods prior to redevelopment, as of the 1963–64 tax year, and as projected after redevelopment is completed.

In the Diamond Heights and the first Western Addition projects the assessed values of the partially completed projects in the 1963–64 tax year already exceed the assessed value of properties in these projects prior to redevelopment.

In the Golden Gateway on tax Monday in the 1963–64 tax year there were only limited new improvements to assess At that date the principal improvements consisted of a large excavation for the buildings which at the present time are approximately 40 percent completed This is the reason assessed values in the Golden Gateway are not yet equal to or in excess of the assessed value of properties in the project prior to redevelopment.

The composite assessed values of the three projects under development shown on Chart No 1 indicate that the total assessed values in the three projects in the tax year 1963–64 amount to $5,250,180 as compared to $7,964,200 prior to redevelopment The last bar on the right of Chart No 1 indicates that the estimated assessed values in the three projects will amount to almost $90,000,000 after the completion of development.

Three illustrations of widely differing reuses of cleared parcels further support the certainty of substantial tax increases through the redevelopment process

CHART NO. 2

Chart No. 2 illustrates what has happened and will happen in terms of taxes to the three-block parcel of land occupied by the recently completed St Francis Square development of moderate-priced private housing in the first Western Addition project. In the 1957–58 tax year, the Redevelopment Agency began to buy properties in these three blocks. From this date until the 1963–64 tax year the properties were being bought, structures cleared, and arrangements made for selling the properties During this period taxes were paid on some properties and the city received some local credits in lieu of taxes toward the financing of the project Some tax losses also occurred. In the current tax year the property was partially completed and therefore partially assessed In the 1964–65 tax year the property will again be paying full taxes, but now on the new improvements, and will return to the city in that year three times the taxes paid on the property in the 1957–58 tax year, when the agency first started buying properties

The two columns on the far right of Chart No 2 show for the period 1957–65 that had redevelopment not taken place, total taxes would have exceeded the taxes which were actually returned on this parcel to the city under redevelopment In one additional year, however, taxes actually received will exceed what would have been returned had redevelopment not occurred, and the city will be well on its way to obtaining much more tax income from the area due to redevelopment

One additional point should be made about Chart No 2 The tax rate of $7.37 per $100 of assessed value effective in the 1957–58 tax year was applied as a flat rate over the years covered by the chart in order to make the comparison simpler However, if the current tax rate of $8 82 per $100 of assessed value is applied to the assessed value in the 1964–65 tax year, the taxes received are estimated to be $104,600 rather than $87,400, as shown on the chart.

CHART NO. 3

Chart No 3 is similar to Chart No. 2 in its form of presentation, but applies to a two-block parcel for high-rise apartments in the Golden Gateway The first properties in this area were bought by the Redevelopment Agency in the 1959–60 tax year In the current year a partial assessment on the construction was made By staging the acquisition, demolition, and resale of the property, the agency was able to minimize the tax losses to the city Chart No. 3 shows that in no year was all the land in this parcel off the tax rolls of the city

Again, the two bars on the right of this chart show a comparison of what the city would have received in taxes over the years represented in the chart had redevelopment not taken place and what the city actually did and will receive in taxes with the redevelopment of the area during the years 1959 to 1965 Chart No 3 shows that during this relatively short period of time and with taxes based only on partial assessments on uncompleted buildings, the redevelopment program will result in a net gain in taxes from this parcel of land

Applying the current tax rate of $8 82 per $100 of assessed value rather than the 1959–60 rate of $8 09, the actual tax returns on this parcel in the 1964–65 tax year are estimated to be $176,400 rather than the $161,800 The lower amount stated on the chart results from using the lower tax rate as a flat rate over the years shown in the chart to make the comparison simpler

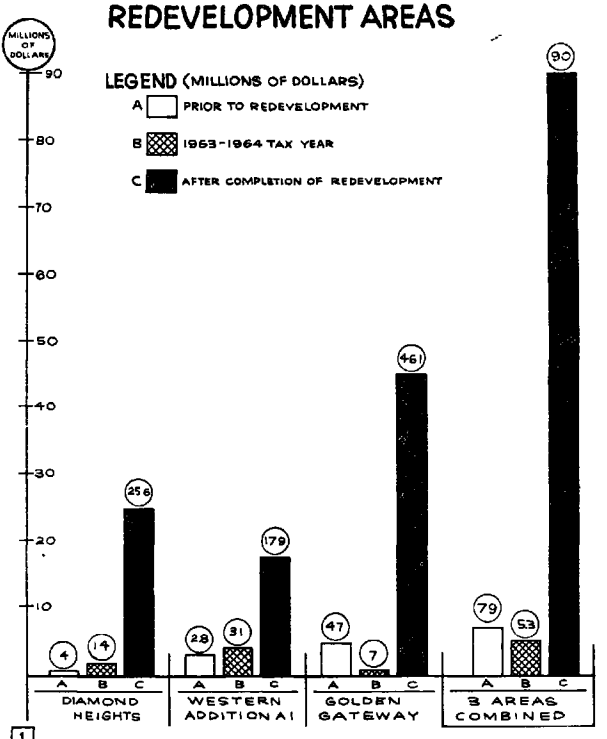
CHART NO. 4

Chart No 4 again is similar in form to the previous two, but applies to one parcel in Diamond Heights used for a single family residence This parcel was acquired by the agency during the 1956–57 tax year, during which the actual taxes paid were $13.06 The land was then off the tax rolls while the extensive grading and capital improvement program was underway in Diamond Heights. At the 1956–57 tax rate of $7 06 per $100 of assessed value, in the current tax year taxes would be $901 56 In fact, however, since the current tax rate is actually $8 82 per $100 of assessed value, the return in taxes this year to the city from this parcel is $1,126 31

The two columns at the far right of Chart No 4 compare what taxes would have been received from this parcel over the years 1956 to 1964 had redevelopment not occurred and the taxes which were received during this period In this case the temporary losses in taxes during the years 1957 through 1961 were extremely small in comparison with the tax income potential made possible through redevelopment.

These data illustrate the reasons why about 700 cities throughout this nation have undertaken redevelopment or renewal projects As was stated at the outset, there are many other considerations and values apart from taxation But it is obvious that the higher uses applied to underused or badly misused urban land are certain to create greater values and greater income and, therefore greater tax resources so sorely needed by our cities

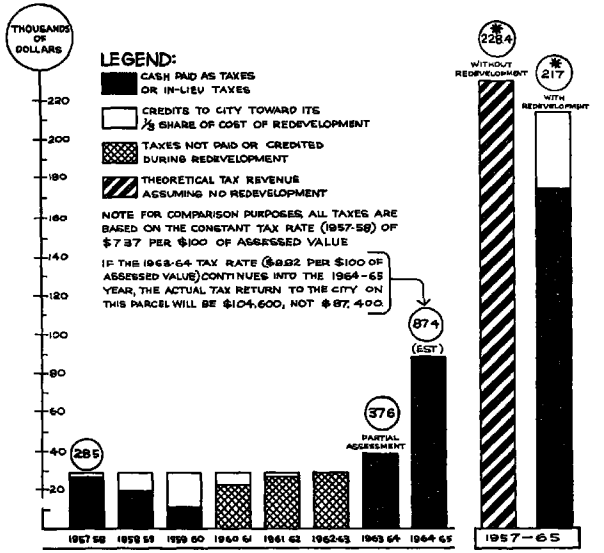
ESTIMATES OF ASSESSED VALUES IN SAN FRANCISCO'S REDEVELOPMENT AREAS



REDEVELOPMENT AND TAXES

MODERATE-PRICED PRIVATE HOUSING IN SAN FRANCISCO

ST. FRANCIS SQUARE, THREE RESIDENTIAL BLOCKS (BOUNDED BY GEARY, ELLIS, BUCHANAN, O'FARRELL, LAGUNA & WEBSTER STS.) IN THE WESTERN ADDITION
ESTIMATES BY THE SAN FRANCISCO REDEVELOPMENT AGENCY



* TOTAL TAXES, 1957-58 THRU 1964-65 AT ORIGINAL 1957-58 ASSESSED VALUE, ASSUMING NO REDEVELOPMENT AND A FLAT TAX RATE

* TOTAL TAXES, 1957-58 THRU 1964-65 ACTUALLY PAID (1964-65 EST.) OR CREDITED TO THE CITY, ASSUMING A FLAT TAX RATE

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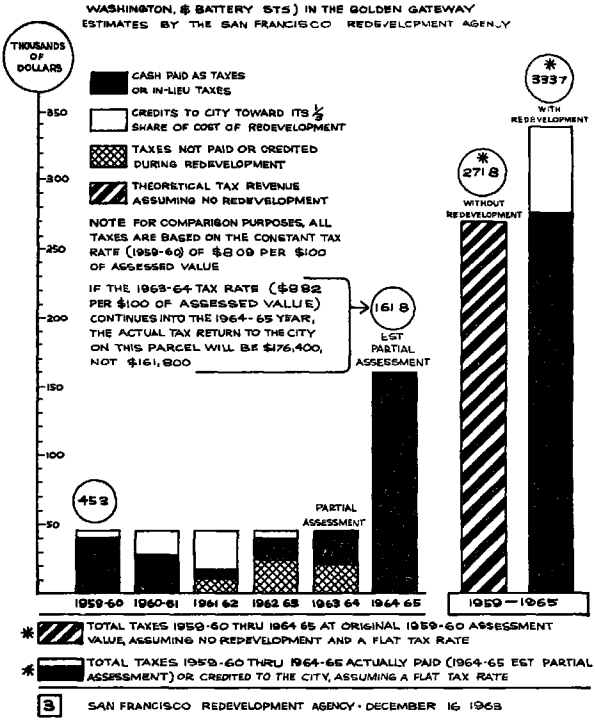
REDEVELOPMENT AND TAXES

800 UNITS OF HIGH-RISE APARTMENTS IN SAN FRANCISCO

TWO RESIDENTIAL BLOCKS, (BOUNDED BY JACKSON, DAVIS, WASHINGTON, & BATTERY STS.) IN THE GOLDEN GATEWAY

ESTIMATES BY THE SAN FRANCISCO REDEVELOPMENT AGENCY



* TOTAL TAXES 1959-60 THRU 1964-65 AT ORIGINAL 1959-60 ASSESSMENT VALUE, ASSUMING NO REDEVELOPMENT AND A FLAT TAX RATE

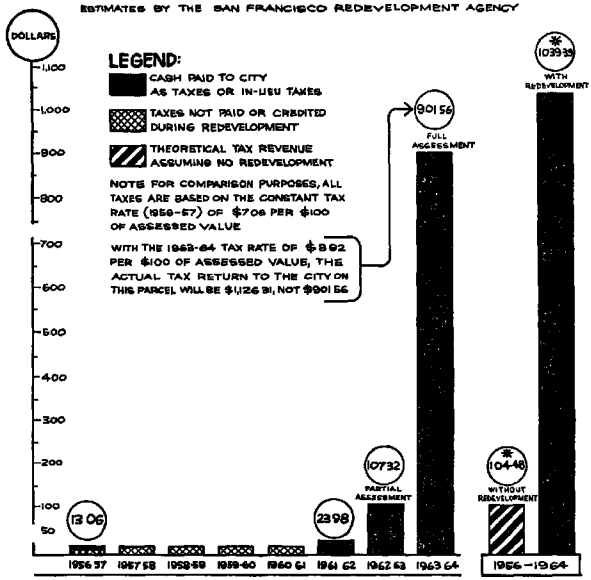
* TOTAL TAXES 1959-60 THRU 1964-65 ACTUALLY PAID (1964-65 EST. PARTIAL ASSESSMENT) OR CREDITED TO THE CITY, ASSUMING A FLAT TAX RATE

3 SAN FRANCISCO REDEVELOPMENT AGENCY · DECEMBER 16 1963

REDEVELOPMENT AND TAXES

SINGLE-FAMILY RESIDENCE IN SAN FRANCISCO

ONE RESIDENTIAL PARCEL ON DUNCAN ST (BLOCK 7513, LOT 27)
IN THE DIAMOND HEIGHTS PROJECT
ESTIMATES BY THE SAN FRANCISCO REDEVELOPMENT AGENCY



* TOTAL TAXES, 1956-57 THRU 1963-64 AT ORIGINAL 1956-57 ASSESSED VALUE, ASSUMING NO REDEVELOPMENT AND A FLAT TAX RATE

* TOTAL TAXES, 1956-57 THRU 1963-64 ACTUALLY PAID TO THE CITY, ASSUMING A FLAT TAX RATE

4 SAN FRANCISCO REDEVELOPMENT AGENCY, DECEMBER 16, 1963

PART II

HOMES FOR THE AGED

(Other than life-care homes) which were exempt from property taxation as of January 1, 1964

Assessed valuation	Name of home	Location	Capacity
$34,550	California-Nevada Methodist Homes	Oakland	
686,100	Masonic Homes of California	Union City	310
119,000	Strawberry Creek Lodge	Berkeley	
8,350	Grandview Community	Berkeley	4
197,350	Little Sisters of the Poor	Oakland	125
86,800	Our Lady's Home	Oakland	140
85,650	Jewish Welfare Federation	Oakland	47
3,000	Jewish Welfare Federation	Oakland	
2,950	Jewish Welfare Federation	Oakland	
119,800	Dominican Sisters of San Jose	Mission, San Jose	
2,920	Korean Federation	Reedley	
136,520	Poor Sisters of Nazareth of Fresno	Fresno	64
164,800	Twilight Haven, Inc	Fresno	68
33,390	Menaonite Brethern Home for Aged	Reedley	44
1,027,780	Senior Citizens Village	Fresno	
81,720	California Home for the Armenian Aged	Fresno	39
23,630	Menaonite Brethern Home for the Aged	Shafter	30
210,500	Passavant Lutheran Hospital Association	Fresno	
69,200	John Brown Towers, Inc	Long Beach	
31,420	Stovall Federation	Los Angeles	32
114,190	Pasadena Lutheran Homes	Pasadena	
98,510	Los Angeles County Physicians Aid Association	Los Angeles	40
97,560	Testamentary Trust of Winifred Stuart Mankowski, deceased	Azusa	
11,900	Pathway Haven, Inc	South Pasadena	14
8,530	Word of Life Ministry	La Verne	
66,540	The Old Time Faith	Los Angeles	
36,030	Suppes Memorial Home of the Christian and Missionary Alliance	Los Angeles	24
388,120	Eastern Star Homes of California	Los Angeles	69
27,520	Volunteers of America of Los Angeles, Inc	Sunland	38
70,320	Second Baptist Church of Los Angeles, Henderson Community Center	Los Angeles	
290,800	The Poor Sisters of Nazareth of Los Angeles	Van Nuys	94
3,700	Los Angeles Hompa Hongwanji Buddhist Temple	Los Angeles	
38,570	Verdugo Hills Sunshine Society	La Crescenta	35
34,830	California Properties of Women's Division, Inc (Theburn Terrace)	Alhambra	35
140,890	California Properties of Women's Division, Inc (Robinorcft)	Pasadena	77
323,890	California Home for the Aged at Reseda	Reseda	168
7,040	California Association of the Deaf	Los Angeles	5
15,120	Daughters of Union Veterans of the Civil War, Department of California and Nevada	Los Angeles	
21,090	The International Order of the Kings Daughter and Sons, Southern California Branch	Los Angeles	20
59,490	Casa Robles Missionary Home	Temple City	
1,935	Penuel Missions	Los Angeles	
13,810	Salvation Army (Westlake Avenue)	Los Angeles	
39,720	Salvation Army	Redondo Beach	
102,820	Jewish Home for the Aged of Los Angeles	Reseda	54
149,800	Little Sisters of the Poor	Los Angeles	162
3,800	Sunset Home League	Venice	13
12,950	Daisy Wilson Foundation, Inc	Los Angeles	4
340,570	Atherton Baptist Homes	Alhambra	298
17,890	Christ Faith Mission	Los Angeles	
8,410	Hi Crest Foundation	Inglewood	10
70,370	Martin Luther Homes	Lancaster	
60,870	California Yearly Meeting of Friends Church	Whittier	
38,340	Col R M Baker Home for Retired Ministers	La Puente	
329,740	Jewish Home for the Aged of Los Angeles	Los Angeles	262
55,780	Bureau of Welfare, CTA, Southern Section	Van Nuys	
25,210	Soroptimist Village Federation	Norwalk	
323,950	The Portals Senior Citizens Village	Antelope Valley	
366,700	Motion Picture Relief Fund, Inc	Woodland Hills	
610,770	Pilgrim Place in Claremont, Inc	Claremont	315
357,090	Westminster Gardens of the Presbyterian Church in the U.S.A	Duarte	105
225,090	Monte Vista Grove Homes	Pasadena	131
275,290	Home for the Aged of the Protestant Episcopal Church of the Diocese of Los Angeles	Pomona	
57,140	Los Angeles Home for the Armenian Aged, Inc	Los Angeles	35
136,520	Poor Sisters of Nazareth of Fresno, Inc	San Rafael	96
15,850	Grandview Community Center	Napa	19
22,310	Northern California Congregational Retirement Homes, Inc	Carmel	234
62,370	Franciscan Missionary Sisters of the Immaculate Conception	Santa Ana	65
32,350	Sunset Haven	Beaumont	13
49,280	The Evangelical Lutheran Good Samaritan Society	Corona	40
15,600	Lutheran Development Society of Sacramento	Sacramento	11

HOMES FOR THE AGED—Continued

(Other than life-care homes) which were exempt from property taxation as of January 1, 1964

Assessed valuation	Name of home	Location	Capacity
$21,670	Slovene Rest Home	Fontana	32
7	Emmanuel Ontario Gardens, Inc	Ontario	
43,550	Plymouth Village of Redlands	Redlands	
55,230	Dodson Home	San Diego	62
206,710	Carmelite Sisters of the Divine Heart of Jesus of California	La Mesa	95
50,920	Social Service League of La Jolla	La Jolla	
245,550	Lutheran Services of San Diego, Inc	Carlstad	138
197,050	St. Paul's Episcopal Home, Inc	San Diego	90
50,080	Hebrew Home for the Aged	San Diego	43
20,510	Russian Women's Home of Mercy of the Holy Virgin's Protection	San Francisco	
215,850	Home for the Aged of the Little Sisters of the Poor	San Francisco	200
5,670	Atascadero Christian Home	Atascadero	9
99,355	Lesley Foundation	San Mateo	
29,075	Valentine Residence	San Mateo	
41,845	Peninsula Volunteer Properties, Inc	Menlo Park	
177,380	Wood Glen Hall, Inc	Santa Barbara	72
50,800	Senior Center of Santa Barbara	Santa Barbara	
31,940	Santa Barbara Association for Old Age Care, Inc	Santa Barbara	30
64,420	Our Lady of Fatima Villa	Saratoga	
628,210	Channing House	Palo Alto	

LIFE-CARE HOMES FOR THE AGED

Which were exempt from property taxation as of January 1, 1964

Assessed valuation	Name of home	Location	Capacity	Life care patients	Monthly patients	Cash reserve required	Cash reserve available
$179,650	The Altenheim	Oakland	210	190	0	$1,537,546	$1,709,831
152,300	Salem Lutheran Homes Association	Oakland	134	74	44	476,981	768,998
69,725	Ladies Home Society of Oakland	Oakland	38	10	25	140,750	785,965
154,100	Beaulah Home	Oakland	110	21	88	31,848	278,213
7	Bethel Home	Selma	36	0	12	2,532	12,178
134,170	Southland Lutheran Home	Norwalk	72	49	15	290,429	193,007
58,980	Southern California Presbyterian Homes	Glendale	40	7	41	66,753	
738,810	Southern California Presbyterian Homes "White Sands"	La Jolla	299	213	0	1,188,760	2,427,992
713,660	Southern California Presbyterian Homes	Duarte	250	218	0	1,204,737	
101 200	California P E O Home	Alhambra	72	46	31	254,918	806,979
106,230	Solheim Lutheran Home	Los Angeles	99	31	52	194,189	376,177
106,090	Pacific Evangelical United Brethren Home	Burbank	72	1	79	6,356	27,000
260,130	Hollenbeck Home	Los Angeles	250	104	203	621,231	3,479,296
64,690	Verdugo Homes	Los Angeles	50	35	18	69,559	407,123
532,850	Brethren Hillcrest Homes	LaVerne	100	51	15	62,817	885,060
107,670	W C T U Home for Women	Los Angeles	116	11	101	82,681	180,264
45,420	Western Assemblies Home	Claremont	36	4	20	28,811	38,205
54,270	British Home in California	Sierra Madre	32	6	22	37,775	330,552
13,210	Sunset Hall	Los Angeles	19	2	13	10,053	273,304
309,540	Pasadena Home for the Aged	Altadena	130	114	10	750,944	4,029,703
756,640	Pacific Homes "Kingsley Manor"	Los Angeles	300	417	12	3,715,363	
542,010	Pacific Homes "Claremont Manor"	Claremont	310	250	0	2,436,702	
523,900	Pacific Homes "Casa de Manana"	San Diego	240	212	0	2,367,005	12,058,864
334,770	Pacific Homes "Fredricka Palms"	Chula Vista	274	141	49	938,522	
1,142,970	Pacific Homes "Wesley Palms"	San Diego	?	?	?		
247,350	National Benevolent Association of Christian Churches (Disciples of Christ)	Rosemead	97	25	81	184,146	190,787
353,050	Fifield Manor—Hollywood	Los Angeles	90	83	0	1,115,848	1,384,411
635,530	Fifield Manor—Wilshire	Los Angeles	200	174	4	2,286,512	2,383,525
301,160	Fifield Manor—Pasadena	Pasadena	175	143	0	1,665,671	1,339,398
487,540	California Lutheran Home	Alhambra		(New life	care)		
91,410	Azusa Valley Sanitarium and Rest Home	Azusa	90	2	90	21,975	45,208
192,790	Bureau of Welfare, CTA, Southern Section	Pasadena	75	21	4	75,563	357,805
1,059,790	Congregational Homes	Pomona	400	188	0	677,042	902,736
259,860	Dimple Homes Corp "Bethany Towers"	Hollywood	120	74	5	402,400	594,244
92,610	Christian Home for the Aged, Inc	Artesia	50	3	49	16,353	128,866
145,890	Aldersly, Inc	San Rafael	100	76	0	668,406	777,160
277,080	Calif.-Nevada Methodist Homes, Inc "Forest Hill"	Pacific Grove	118	103	0	203,703	394,763
153,480	Lutheran Home Association	Anaheim	90	66	19	477,300	756,819
221,780	Protestant Episcopal Old Ladies Home	San Francisco	83	80	3	1,039,695	3,461,020
442,820	San Francisco Ladies Protection and Relief Society "The Heritage"	San Francisco	110	20	79	173,384	2,850,311
215,935	University Mound Old Ladies Home	San Francisco	68	8	49	70,601	529,369
540,355	Hebrew Home for Aged Disabled dba Jewish Home for the Aged	San Francisco	?	6	201	56,924	1,083,447

LIFE-CARE HOMES FOR THE AGED—Continued

Which were exempt from property taxation as of January 1, 1964

Assessed valuation	Name of home	Location	Capacity	Life care patients	Monthly patients	Cash reserve required	Cash reserve available
$764,320	Northern California Presbyterian Homes, "The Sequoias"	Portola Valley	300	263	----------	$550,000 (est.)	N/A
68,230	Solvang Lutheran Home, Inc	Solvang	40	0	28	0	1,471
356,920	Samarkand of Santa Barbara	Santa Barbara	211	163	----------	1,052,335	1,215,359
117,000	Odd Fellows Home of California	Saratoga	196	89	103	518,970	746,860
185,710	Pilgrim Haven Home	Los Altos	70	25	63	205,385	216,267
62,500	Bethany Home of Evangelical Mission Covenant Association of California	Turlock	48	32	31	118,819	205,846
129,460	Seventh Day Adventists --Northern California Conference Association (Newbury Park) "The Venture"	Oakland	80	16	72	166,741	408,752
139,310	Bureau of Homes, National Retired Teachers Association "Grey Gables"	Ojai	109	78	----------	176,917	502,106
61,950	Elim Home	Tujunga	55	30	23	168,276	214,942

PART III

LOS ANGELES COUNTY

EXEMPTIONS AS A PERCENTAGE OF LOCALLY ASSESSED SECURED PROPERTY: 1963

Municipality	Total gross assessed value	Exemptions	Percent exempt
Alhambra	$89,535,030	$6,617,970	7 38
Taxation District No 1	83,945,200	5,939,320	
Taxation District No 4	5,639,830	678,650	
Arcadia	102,084,280	3,054,890	3 03
Taxation District No 1	95,546,920	2,910,670	
Taxation District No 2	3,317,330	50,890	
Taxation District No 3	3,200,030	133,330	
Artesia	12,198,590	990,170	8 19
Avalon	4,795,720	28,570	90
Azusa	34,717,210	1,764,830	5 08
Taxation District No 1	29,026,800	1,295,460	
Taxation District No 2	5,690,410	469,370	
Baldwin Park	33,050,820	2,989,120	9 04
Bell	19,020,770	746,970	3 93
Bellflower	56,386,390	4,556,430	8 26
Bell Gardens	18,684,180	857,230	4 59
Beverly Hills	208,523,830	1,821,540	87
Taxation District No 1	206,355,830	1,821,540	
Taxation District No 2	1,690,900		
Taxation District No 3	87,110		
Taxation District No 4			
Taxation District No 5	389,990		
Bradbury	3,605,080	26,000	97
Burbank	214,036,280	9,603,030	4 48
Claremont	33,694,430	11,366,870	33 74
Taxation District No 1	27,927,550	11,218,150	
Taxation District No 2	5,756,880	148,720	
Commerce	158,590,030	396,370	25
Compton	74,110,290	5,760,490	7 77
Covina	43,261,200	3,834,110	8 86
Taxation District No 1	22,975,000	2,294,700	
Taxation District No 2	18,194,250	1,317,400	
Taxation District No 3	2,091,950	221,920	
Cudahy	9,663,060	244,570	2 53
Culver City	71,488,430	2,228,170	3 11
Taxation District No 1	36,458,770	897,210	
Taxation District No 2	22,022,560	692,890	
Taxation District No 3	13,005,100	638,060	
Dairy Valley	15,548,600	273,120	1 74
Downey	136,167,730	7,774,440	5 71
Duarte	17,103,090	3,355,420	19 62
El Monte	57,079,570	2,686,770	4 70
Taxation District No 1	12,889,890	1,003,720	
Taxation District No 2	223,020		
Taxation District No 3	892,860	100,570	
Taxation District No 4	43,093,830	1,582,480	
El Segundo	101,299,170	919,990	90
Gardena	56,242,360	3,312,074	5 89
Glendale	212,060,470	11,455,060	5 40
Taxation District No 1	208,223,630	11,333,670	
Taxation District No 2	1,276,150	17,220	
Taxation District No 3	1,627,410	32,850	
Taxation District No 4	992,280	70,820	
Glendora	36,467,640	2,299,470	6 30
Hawthorne	80,446,020	4,005,480	4 98
Taxation District No 1	47,290,110	3,123,500	
Taxation District No 2	33,055,910	881,980	
Hermosa Beach	21,875,550	928,580	4 24
Hidden Hills	3,555,670	14,000	39
Huntington Park	44,915,460	1,548,420	3 44
Industry	35,042,210	46,170	13
Inglewood	134,347,080	6,444,150	4 79
Irwindale	13,086,840	29,050	22
Lakewood	83,198,500	8,489,535	10 20
La Mirada	36,950,280	4,027,380	10 90
La Puente	24,754,030	2,854,700	11 93
La Verne	9,495,890	1,852,510	19 50
Taxation District No 1	7,037,470	1,814,140	
Taxation District No 2	1,558,420	38,370	
Lawndale	18,116,650	962,440	5 31
Long Beach	564,092,320	30,592,230	5 42
Los Angeles City	4,477,846,100	237,990,747	5 31
Taxation District No 1	4,339,830,980	232,386,287	
Taxation District No 1—Ann St Redevelopment Project No 1-A	1,200,500		
Taxation District No 1—Bunker Hill	2,513,560	40,580	

LOS ANGELES COUNTY
EXEMPTIONS AS A PERCENTAGE OF LOCALLY ASSESSED SECURED PROPERTY: 1963—Continued

Municipality	Total gross assessed value	Exemptions	Percent exempt
Los Angeles City—Continued			
Taxation District No 2	$4,908,060	$52,280	
Taxation District No. 5	38,826,400	3,300,200	
Taxation District No 6	267,720	2,000	
Taxation District No 7	44,297,230	185,000	
Taxation District No. 10	11,907,510	352,450	
Taxation District No 11	30,974,200	923,230	
Taxation District No. 12	943,160	7,000	
Taxation District No 13	38,680	1,000	
Taxation District No 14	43,560		
Taxation District No 15	24,400	3,000	
Taxation District No 16	16,720	16,720	
Taxation District No 17	2,054,420	721,000	
Lynwood	48,315,780	4,737,700	9 80
Manhattan Beach	51,198,800	3,134,200	6 12
Maywood	13,638,070	966,600	6 70
Monrovia	47,460,110	2,384,700	5 02
Montebello	71,597,170	3,960,635	5 53
Taxation District No 1	70,909,050	3,958,635	
Taxation District No 2	688,120	2,000	
Monterey Park	62,416,340	3,341,230	5 35
Taxation District No 1	53,485,160	3,231,340	
Taxation District No 2	178,310	10,000	
Taxation District No 3	8,022,110	99,420	
Taxation District No 4	733,760	470	
Norwalk	72,586,340	9,695,580	13 35
Palos Verdes Estates	33,984,030	384,490	1 13
Palmdale	8,809,320	693,340	7 87
Paramount	37,017,380	1,512,710	4 28
Pasadena	241,863,400	24,990,050	10 34
Pico Rivera	67,169,860	5,584,905	8 31
Pomona	105,172,630	9,562,745	9 09
Taxation District No 1	101,310,350	9,390,045	
Taxation District No 2	2,170,450	103,000	
Taxation District No 3	1,840,240	69,700	
Taxation District No 4	51,090		
Redondo Beach	65,098,020	3,590,379	5 65
Taxation District No 1	23,410,370	1,079,989	
Taxation District No 2	33,947,110	1,859,370	
Taxation District No 3	7,740,540	741,520	
Rolling Hills	8,100,780	4,000	08
Rolling Hills Estates	13,317,340	275,382	2 06
Rosemead	18,219,610	1,524,220	8 36
San Dimas	11,333,370	990,060	7 93
San Fernando	21,679,300	1,768,634	8 16
San Gabriel	38,651,280	2,018,280	5 22
Taxation District No. 1	36,882,190	1,957,280	
Taxation District No. 2	1,342,420	57,000	
Taxation District No. 3	626,670	4,000	
San Marino	56,856,930	7,487,110	13 21
Santa Fe Springs	58,269,380	1,966,360	3 37
Santa Monica	166,221,670	6,354,530	3 85
Taxation District No 1	164,854,380	6,362,290	
Taxation District No. 1—Ocean Park Redevelopment Project No 1A	160,120		
Taxation District No 1—Ocean Park Redevelopment Project No 1B	477,170	22,240	
Sierra Madre	16,137,160	1,345,510	8 33
Signal Hill	20,474,680	155,140	75
South El Monte	14,168,320	106,350	74
South Gate	111,919,310	3,736,770	3 40
South Pasadena	32,129,730	1,186,320	3 69
Taxation District No 1	32,087,710	1,186,320	
Taxation District No 1—Monterey Hills Project No 1	42,020		
Temple City	35,370,300	2,302,550	7 70
Torrance	225,863,490	12,574,409	5 56
Vernon	168,509,180	13,800	.01
Taxation District No 1	149,729,950	13,800	
Taxation District No 2	18,779,230		
Walnut	3,755,470	155,380	4 13
West Covina	86,525,690	7,586,920	8 76
Taxation District No. 1	84,412,590	7,291,340	
Taxation District No 2	2,113,100	295,580	
Whittier	114,888,370	8,939,225	7.82
Taxation District No. 1	60,300,990	5,447,025	
Taxation District No. 2	504,430	30,000	
Taxation District No. 3	54,082,950	3,512,200	
Total cities	$8,513,288,870	$524,704,668	

PART IV

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
Sacramento, October 8, 1963

HONORABLE NICHOLAS PETRIS
815 Financial Center Building
405 14th Street
Oakland 12, California

PROPERTY TAXES—#954

Dear Mr. Petris:

You have asked us two questions relating to property taxation. These questions are set forth and considered separately below.

QUESTION NO. 1

What are the constitutional and statutory limitations on the rates of property taxation for general law cities and counties, school districts, and special taxing districts * ?

ANSWER NO. 1

A. State Constitutional Limitations

Under the California Constitution, the Legislature has power, by a two-thirds vote of all of the members elected to each of the two houses, to limit the amount of taxes which may be imposed upon real and personal property according to the value thereof for county or city and county purposes (Sec. 20, Art. XI, Cal Const). If a deficiency in local revenue is sustained by any county or city and county as a result of any such limitation, the Legislature must apportion to the county or city and county out of state revenue an amount equal to the deficiency (Sec. 15, Art XIII, State Const)

The California Constitution provides that the rate of any tax imposed on notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, mortgages and any legal or equitable interest therein, may not exceed four-tenths of 1 percent of the actual value of such property (Sec 14, Art. XIII, Cal Const) With respect to solvent credits, the Legislature has fixed a rate of one-tenth of 1 percent of actual value (Sec 2153, R & T.C)

The California Constitution also provides that the Legislature may classify any taxable personal property for tax purposes "in a manner and at a rate or rates in proportion to value different from any other property . . " (Sec 14, Art. XIII, Cal Const)

The taxes levied upon unsecured personal property and possessory interests must be based upon the rates for taxes levied for the preceding year on secured property (Sec 9a, Art XIII, Cal Const)

* You have informed us that by "special taxing districts" you have in mind those special districts that impose taxes on land, improvements and personal property, as distinguished from those that impose taxes or assessments only on land or land and improvements and not on personal property

B. Statutory Limitations

1. *Generally*

When, following an intercounty equalization of property by the State Board of Equalization, a decrease in the valuation of property on a county's or city's secured tax assessment roll requires an upward adjustment in tax rates for county, city or district purposes to produce the revenue that was anticipated at the time of the tax levy, the adjustment may be made irrespective of any tax limitations elsewhere in the law (Sec 1825, R. & T.C.).

As noted above, the maximum tax rate on solvent credits is one-tenth of 1 percent of actual value (Sec. 2153, R & T C.)

The rate of tax on baled cotton is one-tenth of 1 percent of its full cash value (Sec 2192 3, R & T C).

The rate of tax on aircraft is 1¼ percent of the market value of the aircraft (Sec 5391, R. & T.C).

2. *General Law Cities*

Except with the consent of the city electors expressed at an election held for that purpose, and except as otherwise specifically authorized, the annual property tax levied by general law cities may not exceed $1 per each $100 of assessed valuation. This general rate, however, is exclusive of taxes to pay the following· costs of any pension plan for city employees, civil defense or disaster preparedness (not exceeding five cents on each $100 assessment), sewage, park and recreational facilities (Sec 43068, Gov C.); veterans' homes (not exceeding three mills on each $1 of assessed valuation (Sec 37465, Gov.C.)), museums (not to exceed two mills on each $1 of assessed valuation (Sec 37558, Gov C)); embankments, sea walls, storm drains and other flood control works (not exceeding 20 cents on each $100 of assessed valuation (Sec 43069, Gov C)); public parks and boulevards (Sec 5304, P R C); and libraries (not to exceed from two to three mills per dollar of assessed valuation (Sec. 27401, Ed.C)) (Sec 43068, Gov C.).

The general rate limitation does not prevent a city having a validly contracted bonded indebtedness from levying and collecting taxes for the payment of such indebtedness, in addition to other authorized taxes (Sec 43070, Gov.C.).

A general law city may also levy special taxes for the following purposes at the rates indicated 15 cents per $100 of assessed valuation for parks, music, and advertising (Sec 43200, Gov.C); 50 cents per $100 of assessed valuation for municipal improvements generally (Sec 43225, Gov.C).

3. *Counties*

There is no general statutory limitation upon the tax rate levied by counties However, limitations are imposed in many cases with respect to tax levies authorized for specific purposes These include the following: four cents per $100 of assessed valuation for advertising county resources (Sec 26100, Gov C); three mills per dollar of assessed

valuation for airports (Sec 26020, Gov.C.); three mills per dollar of assessed valuation for libraries (Sec 27263, Ed.C.); 40 cents per $100 of assessed valuation for county highways (Sec. 1550, S. & H.C.); four cents per $100 of assessed valuation for fairs and expositions (Sec. 25904, Gov C.); from 1½ to 2½ mills per dollar of assessed valuation for buildings for veterans' purposes (Sec 1262, M. & V C), 1½ mills per dollar of assessed valuation for veterans' homes (Sec 1121, M. & V C).

4 *School Districts*

Subject to certain exceptions, the statutory limitations upon the rate of property taxes, exclusive of bond interest and redemption, authorized to be levied by school districts, per $100 of assessed valuation, are as follows:

(a) Separate elementary school district, the boundaries of which are not coterminous with those of a high school district, 80 cents for elementary school purposes, or 90 cents for combined kindergarten and elementary school purposes.

(b) Separate high school district, the boundaries of which are not coterminous with those of an elementary school district or with those of a junior college district, 75 cents for high school purposes, or $1.10 for combined high school and junior college purposes.

(c) Separate junior college district, the boundaries of which are not coterminous with those of a high school district, 35 cents for junior college purposes.

(d) Unified school district, $1 55 for combined elementary and high school purposes; or, $1 65 for combined kindergarten, elementary, and high school purposes; or, $1 90 for combined elementary and high school, and junior college purposes; or, $2 00 for combined kindergarten, elementary school, high school, and junior college purposes

(e) High school and junior college district the boundaries of which are coterminous and which are governed by the same governing board, $1 10 for combined high school and junior college purposes. (Sec. 20751, Ed.C.)

Various special tax levies are authorized over and above the foregoing limitations, including levies for the following:

(1) Costs of providing breakfasts and lunches for needy pupils (Sec 11706, Ed C.).

(2) Costs of contributing to the Retirement Annuity Fund (Secs 14210 and 14214, Ed.C.).

(3) Costs of making payments required by a district retirement plan (Secs. 14657 and 14758, Ed.C.).

(4) Costs of installing fire prevention facilities (Sec 15517, Ed.C.).

(5) Costs of maintaining a child care center (Secs. 16633-16635, incl., Ed.C.).

(6) Replacement of the amount withheld from a district by the State Controller for state school apportionments (Secs 19443 and 19619, Ed C.).

(7) Costs of district contributions to the State Employees' Retirement System (Sec 20532, Gov C).

(8) Costs for use of school property for pubic purposes and community recreation (Sec. 20801, Ed C).

(9) Costs for the Old Age and Survivors' Insurance System (Sec 20801.5, Ed.C.).

(10) Costs for operating a junior college district or a unified school district maintaining a junior college Effective for three consecutive fiscal years following date of first election at which junior college bond issue is passed, or until end of any four year period in which no bond issue is submitted to voters. (Sec. 25541.5, Ed.C.)

(11) Costs of the premiums payable for medical and hospitalization premiums, but only in a school district whose boundaries are coterminous with the boundaries of a city and county (Sec 20802 6, Ed C)

(12) Costs of the premiums payable for health and welfare benefits (Sec. 20806, Ed C.).

(13) Costs of making payments for special programs for the education of educationally handicapped minors (Sec 20807, Ed C)

(14) Costs of making payments to county school service fund for education of mentally retarded children where county superintendent of schools educates mentally retarded minors for school districts (Sec 8955 1, Ed C ; operative July 1, 1964).

(15) Costs for the program of adult education not to exceed 10 cents per each $100 of assessed value (Sec 20802 8, Ed C)

(16) Costs where any school district is obligated to pay another school district tuition or other expenses of educating pupils in grades 7 and 8 in a junior high school (Sec 20810, Ed C)

(17) Costs of educating mentally retarded minors (Sec 6913 1, Ed.C.).

(18) Costs of establishing and maintaining child care centers for physically handicapped and mentally retarded children (Sec 16645 5, Ed C).

5 *Special Taxing Districts*

There is no general statutory limitation upon the rates of property taxes authorized to be levied by special taxing districts Many of the special taxing district laws, however, contain rate limitations The table following shows such limitations It might be noted that in some instances the limitations are exclusive of the district's power to tax to pay off bonded indebtedness.

DISTRICTS (GENERAL LAW)—STATUTORY TAX LIMITATIONS [1]

District	Limitation	Citation
Airport districts	†$0 20/$100	P U C, Sec 22907
Bridge and highway districts	0 10 / 100 if the purpose of the taxation is to supply funds for investigating the project prior to the issuance of bonds and the payment of the officers and employees of the district prior to the time when the works of the district are earning revenue	S & H C, Sec 27201
Cemetery districts	0 002 / 1	1909 106 156, Sec 4 (Repealed 1941 933 2519)[2]
Cemetery districts	0 002 / 1	H & S C, Sec 8981
Community services districts	1 00 / 100	Gov C, Sec 61755 5
Fire protection districts (in one or more counties)	Not to exceed 1 percent of assessed valuation for (1) establishing and equipping district and (2) maintaining district	H & S C, Secs 14703, 14704
Garbage and refuse disposal districts	0 15 / 100	H & S C, Sec 4183
Harbor districts, small craft	0 75 / 100	H & N C, Sec 7262
Harbor districts	0 03 / 100 for capital outlay	H & N C, Sec 6093 4
Health districts, local	0 15 / 100	H & S C, Sec 952 (Repealed)
Hospital districts, local	0 20 / 100	H & S C, Sec 32203
Labor camps (public service districts)	0 005 / 1	Lab C, Sec 2145 (Repealed)
Library districts	0 15 / 100	Ed C, Sec 27803
Limited water districts	0 20 / 100	D A 5243a, 1959 2136, Sec 19
Memorial districts (veterans)	0 003 / 1	M & V C, Sec 1192
Metropolitan water districts	0 05 / 100	D A 0129, 1927 439, Sec 5(8)
Mosquito abatement districts	0 15 / 100, unless board of directors finds necessity for higher rate, and then allows maximum of $0 40 / $100, providing district covers more than one county	H & S C, Sec 2302 1
Planning districts	0 01 / 100	Gov C, Sec 66361
Police protection districts in unincorporated towns	Not to exceed 1 percent of assessed value for establishment and equipment of police department Not to exceed one-half of 1 percent of assessed value for maintenance of department	H & S C, Secs 20101, 20110, 20111
Police protection districts in unincorporated territory	Not to exceed in any one year, $3,000	H & S C, Sec 20332
Recreation and park districts	0 50 / 100	P R C, Secs 5784 5, 5784 7
Regional park districts	0 05 / 100 Also $0 05 / $100 through 1968–69 for land acquisition and capital improvements	P R C, Sec 5545
Regional shoreline park and recreation districts	0 10 / 100	P R C, Sec 5728 (Repealed)
Resort improvement districts	1 00 / 100	P R C, Sec 13161
Road districts	0 40 / 100	S & H C, Sec 1550
Sanitary districts (1923 Act)	0 60 / 100, except if district board elects to use the county assessor's tax roll pursuant to law, no more than $1 / $100	H & S C, Sec 0605
Sewer districts, municipal (1911 Act)	0 20 / 100	H & S C, Sec 4640
Student transportation districts	0 05 / 100	Ed C, Sec 16972

DISTRICTS (GENERAL LAW)—STATUTORY TAX LIMITATIONS [1]—Continued

District	Limitation	Citation
Water authorities, county	$0 05 / $100	D A 9100, 1943 545, Sec 5(8)
Alameda County Flood Control and Water Conservation District	0 015/ 100	D A 205, 1949, 1275, Sec 12, subd 1
Alpine County Water Agency	0 05 / 100	D A 270, 1961 1896, Sec 45
Amador County Water Agency	0 10 / 100	D A 276, 1959 2137, Sec 14
Antelope Valley-East Kern Water Agency	0 10 / 100	D A 9095, 1959 2146, Sec 79
Avenal Community Services District	1 60 / 100	1955 1702, Sec 8
Bay Area Air Pollution Control District	0 01 / 100	H & S C, Sec 24370 1
Bethel Island Municipal Improvement District	2 00 / 100	1960 (1st Ex Sess) 22, Sec 181
Contra Costa County Flood Control and Water Conservation District	0 02 / 100	D A 1656, 1951 1617, Sec 12
Contra Costa County Water Agency	0 03 / 100	D A 1658, 1957 518, Sec 12
Crestline-Lake Arrowhead Water Agency	1 00 / 100	1962 (1st Ex Sess) 40, Sec 29
El Dorado County Water Agency	0 10 / 100	D A 2245, 1959 2139, Sec 47
Embarcadero Municipal Improvement District	2 00 / 100	1960 (1st Ex Sess) 81, Sec 162
Estero Municipal Improvement District	5 00 / 100	1960 (1st Ex Sess) 82, Sec 162
Fresno Metropolitan Transit District	0 10 / 100	1961 1932, Sec 6 55
Guadalupe Valley Municipal Improvement District	5 00 / 100	1959 2037, Sec 162
Kern County Water Agency	0 05 / 100	D A 9098, 1961 1003, Sec 14
Lake Cuyamaca Recreation and Park District	0 50 / 100	1961 1854, Sec 75
Lassen-Modoc County Flood Control and Water Conservation District	0 10 / 100	D A 4200, 1959 2127, Sec 18
Marin County Flood Control and Water Conservation District	1 00 / 100	D A 4599, 1953 666, Sec 12, subd 3
Mariposa County Water Agency	0 10 / 100	D A 4613, 1959 2036, Sec 14 1
Mendocino County Flood Control and Water Conservation District	0 02 / 100	D A 4830, 1949 995, Sec 12
Monterey Peninsula Airport District	0 02 / 1 00	1941 52, Sec 23
Napa County Flood Control and Water Conservation District	0 15 / 100	D A 5275, 1951 1449, Sec 13
Nevada County Water Agency	0 05 / 100	D A 5449, 1959 2122, Sec 45
Orange County Flood Control District	0 20 / 100	D A 6682, 1927 723, Sec 14
Placer County Water Agency	0 10 / 100	D A 5935, 1957 1234, Sec 14 1
Plumas County Flood Control and Water Conservation District	0 10 / 100	D A 5964, 1959 2114, Sec 18
Riverside County Flood Control and Water Conservation District	0 025/ 100 for district, 0 40 / 100 for district and district zones	D A 6642, 1945 1122, Sec 14
Sacramento County Water Agency	0 15 / 100	D A 6730a, 1952 (1st Ex Sess) 10, Sec 10 1
San Bernardino County Flood Control District	0 30 / 100	D A 6850, 1957 37, Sec 7
San Diego Unified Port District	0 03 / 100 (for capital outlay)	1962 (1st Ex Sess) 67, Sec 49 5
San Francisco Bay Area Rapid Transit District	0 05 / 100	P U C, Sec 29123

DISTRICTS (GENERAL LAW)—STATUTORY TAX LIMITATIONS [1]—Continued

District	Limitation	Citation
San Gorgonio Pass Water Agency	$0 40 /$100	D A 9099, 1961 1435, Sec. 26
San Joaquin County Flood Control and Water Conservation District	0 02 / 100 (except $0 04 / $100 if district undertakes water conservation or distribution)	D A 7150, 1956 (1st Ex Sess) 46, Sec 13, subd 1
San Mateo County Flood Control District	0 40 / 100	D A 7261, 1959 2108, Sec 8
Santa Barbara County Flood Control and Water Conservation District	0 02 / 100 per district (except $0 04 / $100 on first levy), $0 20 $100 per zone	D A 7304, 1956 (1st Ex Sess) 21, Sec 12
Santa Barbara County Water Agency	0 15 / 100	D A 7303, 1945 1501, Sec 10 1
Santa Cruz County Flood Control and Water Conservation District	0 02 / 100	D A 7390, 1955 1489, Sec 193
Shasta County Water Agency	0 05 / 100 special levy authorized to raise delinquent amounts of member units	D A 1658, 1957 1512, Secs 95, 96
Sierra County Flood Control and Water Conservation District	0 10 / 100	D A 7661, 1959 2123, Sec. 18
Siskiyou County Flood Control and Water Conservation District	0 10 / 100	D A 7683, 1959 2121, Sec. 18
Solano County Flood Control and Water Conservation District	0 15 / 100	D A 7733, 1951 1656, Sec 10 1
Sonoma County Flood Control and Water Conservation District	0 04 / 100, after bonds, $0 09 / $100, additional tax $0 06 / $100 for flood control and drainage projects	D A 7757, 1949 994, Secs 12, 12 1
Sutter County Water Agency	0 10 / 100	D A 9096, 1959 2088, Sec. 14
Tehama County Flood Control and Water Conservation District	0 03 / 100 Can be raised to $0 05 / $100 with approval of Board of Supervisors	D A 8510, 1957 1280, Sec. 17
Ventura County Flood Control District	0 20 / 100 in Zone 1, and $0 40 / $100 in Zones 2, 3, 4	D A. 8955, 1944 (4th Ex. Sess) 44, Sec. 12
Yolo County Flood Control and Water Conservation District	0 10 / 100, after issuance of bonds, an additional $0 05 / $100	D A 9307, 1951 1657, Secs. 12, 30
Yuba-Bear River Basin Authority	0 01 / 100	D A. 9380, 1959 2131, Sec. 43
Yuba County Water Agency	0 10 / 100	D A 9407, 1959 788, Sec. 14

[1] *General taxes* are levies imposed on all the taxable property within the jurisdiction of the taxing agency for ordinary governmental purposes, no special benefit to the taxpayer need be shown, nor need the revenue be spent only for particular governmental functions (see 46 Cal. Jur 2nd 486 et seq)

Special taxes are like general taxes except that they are levied for a designated purpose upon all property within a certain district. The fact that some property benefits more than other property does not prevent the levy from being a tax (see *Anaheim Sugar Co.* v. *Orange County*, 181 Cal 212).

Special assessments are not taxes in the constitutional or usual sense, although sometimes spoken of as taxes (see *San Diego* v. *Linda Vista Irrigation District*, 108 Cal 189), but are levied upon real property in a district for the purpose of paying for improvements, the amount of the levy being based upon the benefits accruing to the property as a result of the improvements

This table lists only the rate limitations on taxes and not those on assessments

† Here and in the following the figure after the slant sign represents the amount of assessed valuation to which the figure preceding the sign is applicable Here, therefore, the rate is 20 cents per each $100 of assessed value

[1] District laws which have been repealed are included where a savings clause, as to existing districts formed under the act, has been enacted by the Legislature

QUESTION NO. 2

What provisions are there for levying taxes at rates above the statutory limits without a vote of the people?

ANSWER NO. 2

As noted in our consideration of Question No. 1, there is no general statutory limitation upon the tax rates that may be levied by counties.

In the case of a general law city or a school district, a vote of the people is necessary before a tax may be levied at a rate in excess of the statutory limit (see Sec 43068, Gov.C.; and Sec 20803, Ed C.)

As for special taxing districts, some of the special taxing district acts contain no provision for an increase in the tax rates authorized without further legislative action (see, e g., Alpine County Water Act, Sec. 45, D A 270, Stats 1961, Ch. 1896). Where this is the situation, the district involved apparently cannot levy taxes above the statutory limit Other district laws permit an increase in the tax rate only after an election (see, e g, Crestline-Lake Arrowhead Water Agency Act, Stats. 1962 (1st Ex. Sess.), Ch 40, Sec. 29).

Very truly yours,

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FINANCING LOCAL GOVERNMENT IN CALIFORNIA

A Major Tax Study

Part 6

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DECEMBER 1964

PUBLISHER'S NOTE

This report on revenue and expenditure trends of local government is the sixth in a series of interim studies to be published this year by the Committee on Revenue and Taxation The recommendations in this report are those of the researcher and should not be construed as representative of the views or decisions of the committee. The committee recommendations will be made in due course.

ABOUT THE AUTHOR

This report on local government finance was prepared for the committee by Mrs. Wilma Mayers, a lecturer on economics at Sacramento State College. Mrs. Mayers graduated at the head of her class when she received her A B. in economics from the University of British Columbia From 1944 to 1947 she was a teaching assistant in economics and statistics at the University of California in Berkeley and at that same time she was on the staff of the university's Bureau of Business and Economic Research. In 1949 she became a lecturer in economics at U.C.L.A , leaving in 1950 when she began work for the State Board of Equalization on property and sales taxes.

Mrs Mayers has been active in civic affairs in Sacramento and was president of the League of Women Voters in 1958–59. She is now a candidate for the Ph.D. at the University of California, Berkeley.

FINANCING LOCAL GOVERNMENT IN CALIFORNIA

by

Mrs. Wilma Mayers

December 1964

FINANCING LOCAL GOVERNMENT IN CALIFORNIA

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INTRODUCTION

FINANCING LOCAL GOVERNMENT IN CALIFORNIA

Local government in California is big government—in every sense except the way we usually see it Total expenditures by our cities, counties, school districts, and special districts are more than double total state expenditures, and revenue from the property tax alone exceeds $2 billion a year, or the entire yield of *all* state taxes Over half of the state budget itself is devoted to assistance to the 5,441 local governments, and federal funds for various programs also go both directly and through the state to local government

Local government expenditures have more than doubled in the last decade, having risen about 10 percent a year—considerably faster than population growth and personal incomes Owing to the surge in school age population and the move to the suburbs, the fastest rising sectors were school and special district expenditure Meantime, state subventions and grants have almost doubled, but this local assistance has been unable to keep pace with the expansion in local spending

Accordingly, local governments have had to raise more revenue at the local level for both current and capital expenses They are restricted by law and by the State Constitution in the means that they may use, and have been pressed into greater reliance on the property tax Fortunately, economic growth, with an assist from the statewide property reappraisal program, produced rising assessed valuations, but property tax rate increases were also required to plug the revenue gap A disproportionately heavy burden on property taxpayers has developed, and more frequent failures of bond issues for capital improvements perhaps indicate that the fiscal limits of this tax are being approached

A great boon to the cities, and to a lesser extent the counties, has been the improvement of the local sales tax under the Bradley-Burns Act In addition, those local governments in a position to do so have made increasing use of service charges Both municipally owned enterprises and special districts have made maximum use of the benefit theory of taxation, with charges or taxes levied on those who use the service, although these districts have often been small, uneconomical, and without sufficient tax base or borrowing power to provide for needed expansion

The search for other non-property-tax revenues is on Business licenses have attracted increasing attention, though a statutory change would apparently be necessary to make this a real source of revenue at the county level Hotel taxes are being adopted to finance civic and convention facilities And more sustained thought is being given to developing long-range equitable new sources of revenue Should they be of the sales or income type, or additional fees for service? Should they be levied by local governments at their own discretion, or by the state on behalf of its local jurisdictions?

There are very few signs of diminishing needs. Population is expected to keep right on increasing, with the most rapid rate of growth in the age group which will increasingly attend junior colleges. Urbanization continues and produces more demand for transit, water, sewage disposal, parks, mental health services, smog control, and planning. Prices and salaries will probably increase.

How should the needed capital outlays be handled? Four alternatives are possible: financing out of general revenues (but these amounts are limited), financing by a lease-purchase arrangement; increasing bonded indebtedness at the local level (which may be difficult where a two-thirds majority vote in favor is required, and which of course increases interest costs); and making use of the borrowing capacity of the state government. (There are, of course, other competing demands for state funds, such as higher education, corrections, and water development; and more state assistance may mean less local fiscal independence.)

Should there be a reorganization of functions among the state and local governments? Can we afford to get less for our tax dollars in some areas for the sake of preserving "home rule"? How can the state and local governments cooperate to form a stronger, fairer revenue system?

Another aspect of local finance is the great diversity in the economic capacity of the individual cities, counties, and districts,* often leading to great divergence in levels of service and in the cost at which supposedly comparable services are rendered. This must be kept in mind in observing the aggregates and averages with which we must deal in discussing local government on a statewide basis.†

This report discusses first the total expenditures of all local governments over the last decade; then breaks these down into current and capital (since current expenditures can be expected to be much more closely related to changes in workload than capital outlays, which tend to be more uneven in their rates of change); then analyzes expenditures by function in order to lay the basis for projection of local government needs in the future. Secondly, the changing patterns of local revenue are discussed. Finally, present and possible additional sources of local revenue are evaluated, from the point of view of their impact on individuals, businesses, and the economy as a whole, revenue-raising potential; administrability, and effects on state-local relationships.

The objectives of this study are to examine the expenditures and revenues of the cities, counties, school districts, and special districts of California, in order to determine their present and anticipated needs, and to appraise the adequacy of local sources of revenue in meeting these needs. For this purpose, the 11-year period from fiscal 1952–53 to 1962–63 will be studied (1962–63 is the last year for which complete data are available from the office of the State Controller), with particular attention to areas of rapid growth and to changing patterns in both expenditures and revenues. The main question to which the study is addressed is, "How can local jurisdictions obtain additional revenues to meet necessary expenditures?"

* See Assembly Committee on Revenue and Taxation, *Taxation of Property in California*, Vol 4, No. 12, A Major Tax Study, Part 5, December 1964, Section Two, Part IV.

† See income figures by city and by county in Appendix A.

TABLE I

SOME DECADE COMPARISONS: 1952–53 AND 1962–63

(Dollar figures in thousands)

	1952–53	1962–63	Percent increase
Personal income of Californians	$25,866,000	$50,685,000	96 0
Population of state	12,309,000	17,357,000	46 2
Price level of state and local government purchases	100 0	139 3	39 3
Assessed valuations subject to local tax rates	$17,171,000	$33,326,914	93 8
Total local government general fund expenditures			
Cities	$499,434	$1,152,595	130 7
City-owned enterprises	221,451	394,906	78 3
Counties	718,194	1,651,473	129 9
School districts	636 880	1,903,843	198 9
Special districts†	35,585	471,906	1,226 1
Total	$2,111,544	$5,574,723	164 0
Total locally raised revenue for general fund expenditures			
Cities	$391,498	$961,903	145 6
City-owned enterprises	257,799	515,073	99 7
Counties	339,986	928,729	173 1
School districts	344,953	1,117,088	223 8
Special districts†	35,329	465,256	1,216 9
Total	$1,369,565	$3,988,099	191 1
State assistance to local governments			
Schools		$744,713 0	
Special districts		5,039 3	
Cities		143,190 0	
Counties		450,757 0	
Total	$649,219	$1,343,099 3	106 9
Federal assistance to local governments			
Schools		$50,448 0	
Special districts		7,245 0	
Cities		21,819 0	
Counties		300,214 0	
Total	$196,047	$379,726 0	93 6
Local government bonded indebtedness (general obligation and revenue bonds)			
Schools		$3,137,300	
Special districts		1,476,541	
Cities		1,644,188*	
Counties		195,558	
Total	$1,560,498	$6,466,313	314 3

* Including city owned enterprises
† Data appear to be incompletely reported for special districts 1952–53

Source: Controller's *Annual Reports*, 1952–63

In the aggregate, local government expenditures have risen sharply in the 11-year period at an average rate of more than 10 percent a year, compared with an average population growth of about 3 5 percent and an annual growth in personal incomes of Californians of 7 percent The cost of local government services in our state has thus increased from 9 1 percent of personal income to 11 1 percent of personal income Because local governments are restricted in their taxing powers to those sources of revenue granted to them by the State Constitution

and Legislature, there has developed an imbalance between rapidly rising revenue requirements and limited revenue-raising powers And, although state assistance to local governments is over half the state budget and has increased by 8 percent a year during this period, it has not kept pace with the even faster climb of local expenditures Consequently, there has been increasing pressure on traditional local sources of revenue, notably the property tax, and a mounting search for additional revenue.

What should be the criteria employed in the choice of future revenue sources? What criteria should be used in evaluating local needs? Are there adjustments in the functional responsibilities of the state and its local jurisdictions which could result in greater economy without destroying the desired balance of powers and responsibilities?

It is apparent that the answers to these problems go far beyond the practical limitations of the present study Nevertheless, some estimate of local government needs is essential as a guide to tax policy, particularly in areas where state policy is to provide a minimum–adequate level of service, as in the field of education It would be helpful if there were more objective criteria of the results obtained from governmental expenditures, to assist in arriving at an optimum output of services per dollar of input This would involve greater use of performance budgeting at the local level

One approach to the measurement of local needs is to project them on the basis of past trends and patterns For this purpose data have been gathered in this study on the operating expenditures and capital outlays of cities, counties, school districts and special districts over a 10-year period Because of problems of noncomparability in the data, this has been a time-consuming task, and attempts to obtain complete data for the earlier years could not be accomplished in the time available. Some existing projections of need are considered

Second, expenditures have been analyzed by functions performed, such as education, welfare, streets and highways, health, mental health, corrections, and so on Some possible future trends in the level or quality of these services are noted

Finally, local revenues are analyzed over the same period, with an overall view of the changing patterns under the impact of expenditure growth in each type of jurisdiction, and with a longer look at each of the individual sources of revenue Emphasis has been placed on nonproperty-tax revenues, since the property tax will be treated in greater detail in another section of the committee study *

* See Assembly Committee on Revenue and Taxation, *Taxation of Property in California*, Vol 4, No 12, A Major Tax Study, Part 5, December 1964

TOTAL EXPENDITURES OF LOCAL GOVERNMENTS

A. Rapid Growth 1952-53 to 1962-63

(1) In the Nation

State and local governments together provide by far the largest share of civil government services In the nation as a whole, in the postwar period, state and local governments employed 1 out of 12 persons in the country, and state and local construction accounted for one-fifth of all new construction State and local expenditures have thus both stimulated the growth of the economy and been stimulated by it, in the sense that relative affluence has led to a demand for new and better services

Economic growth tends to increase the revenue from existing taxes, and to thus provide part of its own fiscal solution to rising expenditures But studies indicate that various tax sources respond quite differently to economic growth For example, income taxes tend to rise about 1 7 percent for every 1 percent increase in the economy, while sales tax receipts go up only about 1 percent † One explanation for the relative lag in sales taxes is that "the proportion of income spent on commodities—as contrasted to services—tends to decline as income increases" ‡ One of the best measures of economic growth is gross national product, the value of all the goods and services produced in the nation as a whole In the decade 1953–63, gross national product rose 60 percent, but the nation's local expenditures rose 132 5 percent.

State and local expenditures have thus increased twice as fast as gross national product, and three times as fast as federal civilian expenditure Some of the main reasons for this rapid growth are

(a) A general rise in prices and salaries The price index of state and local government purchases rose 39 percent

(b) The increase in population, and changes in its structure and mobility In particular, a high rate of increase in the school-age group as a result of the postwar baby boom called for extraordinary expenditures for education, as well as aid to needy children The growth in numbers of persons over 65 years of age also brought higher welfare expenditures

(c) Increased urbanization, since two-thirds of the population increase in the 1950–59 decade occurred in metropolitan areas both inside and outside cities This has increased traditional government costs, and added new ones such as mass transportation, water and sewage improvements, and smog control

* Lillian P Barnes etc "State and Local Government Activity," *Survey of Current Business*, March, 1961, p 16
† Joseph Robertson "Possible Alternatives to State Tax Increases," *National Tax Association*, Proceedings 1960
‡ State of California *Budget*, 1963–64, p A-13

(d) Improved levels of service, in part the result of increased affluence

(2) In California

One measure of the aggregate increase in local government expenditures in California is provided by the State Controller's total payments figure for counties, cities, school districts and special districts These figures exclude disbursements made from moneys derived from indebtedness.

TABLE II

LOCAL GOVERNMENT EXPENDITURES: 1951-52 TO 1962-63
(Dollar figures in thousands)

1951–52	$2,096,838
1952–53	2,349,560
1953–54	2,612,657
1954–55	2,820,061
1955–56	3,067,227
1956–57	3,491,161
1957–58	3,943,752
1958–59	4,324,419
1959–60	4,823,255
1960–61	5,282,108
1961–62	5,727,573
1962–63	6,286,848

Source State Controller, *California Statistical Abstract*

The average annual growth rate of over 10 percent illustrates the aggregate movement of local expenditures

A somewhat narrower measure of this movement is provided by total general fund expenditures This excludes the various bond and other special purpose funds, and therefore includes only such capital outlay as has been made out of regular income.

TABLE III

GENERAL FUND EXPENDITURES OF LOCAL GOVERNMENTS: 1952–53 AND 1962–63 *

(Dollar figures in thousands)

	1952–53	1962–63	Percent change 1963 from 1953
Counties	$718,194	$1,651,473	129 9
Cities	499,434	1,152,595	130 7
City-owned enterprises	221,451	394,906	78 3
School districts	636,880	1,903,843	198 9
Special purpose districts	35,585	471,906	1,226 1
Total	$2,111,544	5,574,723	164 0

* The City and County of San Francisco is included in cities and excluded from counties to avoid double counting
Special purpose districts excludes irrigation districts
City-owned enterprises are separated from cities because they are treated differently in the earlier and later data

Source State Controller, *Annual Reports*, 1952–63

B. Current Expenditure and Capital Outlay

(1) All Local Governments

The two decades between 1937 and 1957 are discussed in the Claremont Social Research Center Study, *California Local Finance* The authors conclude that although the dollar amounts spent by California local governments for operating expense rose quite sharply from 1937 to 1957, this was nearly all accounted for by price and population increase, and that furthermore the taxpayer was probably getting somewhat better service for his dollar. They also concluded that this growth did not represent any real increase in the economic burden of financing local government, since the cost remained fairly constant as a share of the personal income of Californians. (This situation has now changed)

For the latter of the two decades, between 1947 and 1957, per capita operating costs in constant dollars rose 26 percent for cities and 30 percent for counties, but most of the increase was between 1947 and 1950 when wartime shortages were being made up Current expenses of education, on the other hand, increased 30 percent even after adjustment for changes in enrollment and general price level. Increases in teachers' salaries accounted for part of the rise Capital outlays for education rose sharply, with major factors being increasing school population and rising construction costs Special district expenditures increased, but even when capital spending was included, the increase could be accounted for by population and price level changes. When capital spending was included in county expenditure, this expenditure had risen even after adjustment for population and price level changes

During this period counties grew in fiscal importance, partly because of the move to the suburbs, and also because of the growth of welfare costs A wide range existed in per capita operating costs among various cities and counties in California City costs per capita apparently do not fall as cities become larger. Economies of scale may be offset by higher costs of administration However, some city services, such as libraries, may be better in quality in larger cities.

For the period which they studied, the authors concluded that if there was a crisis in local government finance, it could not be blamed on an excessive increase in local expenditures, and that the fault must lie elsewhere, perhaps the following

(a) An inequitable or ill-administered tax system that causes the cost of local government to seem more burdensome that it really is.

(b) A slight increase in capital investment in real dollars, due primarily to rapid population growth, which might have been the straw breaking the camel's back

(c) The taxpayer may be venting his economic uneasiness and frustration against local taxes, although the real fault lies elsewhere, perhaps with federal taxation, heavy interest payments on time purchases, or perhaps inflation.

Leaving the Claremont study and turning to the most recent decade, we observe that current expenditures of all local governments increased

by almost 170 percent between fiscal 1953 and fiscal 1963.* Only part of this could be accounted for by population and price increases, since population increased by 46 percent and prices of things purchased by governments by 39 percent Thus the total real per capita burden of local government current expense has increased significantly Even when the increase in personal incomes is taken into account, the relative burden has increased, since in the earlier year current local government expenses were just over 7 percent of personal incomes of Californians, whereas they had increased to over 9 percent of personal incomes by 1963

When capital outlays are also included, total local government expenditures rose from 9 1 percent of personal incomes in fiscal 1953 to 11 1 percent in fiscal 1963 Capital outlays alone more than doubled over the decade, but did not increase as fast as current expenditure This suggests that capital outlays have been postponed, because of the necessity of taking care of the day-to-day needs brought on by increasing population, growth of the suburbs, and demand for improved services

Because current revenues have generally provided but a sparse margin for capital outlays, increasing recourse to borrowing for capital improvements has been necessary This shows up in the fact that debt service expenditures have more than tripled in the 11-year period

Some areas in which greater capital outlay may be expected in the coming years will be in the construction of facilities for junior college education, correctional facilities, and mental health facilities, with current levels in other categories probably continuing to keep pace with current growth in population and relevant price levels

(2) By Jurisdiction

(a) Counties

From fiscal 1953 to the end of fiscal 1963, current county expenditures rose from $669,603,000 to $1,551,701,000, an increase of 131 6 percent At the same time population increased 46 2 percent and prices of the things bought by 39 percent

Capital outlays from general funds have averaged slightly in excess of $127 million a year in the last 7 years, and capital outlays from bond funds over the same period have varied from a low of $11 million in 1957–58 to $31 million in 1962–63 The fastest growing item in county budgets has been interest payments and debt redemption, which increased from a low of $1,621,000 in 1952–53 to $17,040,000 in 1962–63, an increase of 1,051 percent, but this is largely due to a low volume of long-term bond financing in the earlier years

In general, it may be concluded that although county expenditures about doubled in the 11-year period, almost all of this increase can be explained by population and price increases

Looking at the last six years, in order to observe more recent changes, we note the following

Current expenses increased 60 7 percent from fiscal 1958 to fiscal 1963, while prices of local government goods and services rose about 16 percent and population rose almost 20 percent

* Total expenditures are not broken down into current and capital for the earlier years in the data collected by the State Controller, but estimated amounts are given in the tables on pages 17 and 18

TABLE IV

ESTIMATED CURRENT EXPENDITURES OF LOCAL GOVERNMENTS IN CALIFORNIA: 1952–53 TO 1962–63

(Dollar figures in thousands)

Fiscal year	Counties*	Cities*	School districts†	Special districts‡	City-owned enterprises§	Total
1952–53	$669,603	$529,109	$580,249	$19,105	----	$1,798,066
1953–54	706,677	548,177	674,597	56,833	----	1,986,284
1954–55	737,441	591,720	742,158	80,172	----	2,151,491
1955–56	789,277	631,169	823,046	107,593	----	2,351,085
1956–57	857,144	710,570	950,214	129,639	----	2,647,567
1957–58	905,829	588,705	1,100,347	148,802	$235,163	3,038,906
1958–59	1,051,584	683,854	1,217,443	192,702	283,635	3,429,218
1959–60	1,124,998	746,428	1,372,561	222,372	306,306	3,772,665
1960–61	1,225,998	811,246	1,518,184	259,724	330,781	4,145,933
1961–62	1,325,547	870,726	1,654,892	275,749	366,003	4,492,917
1962–63	1,551,701	944,566	1,800,196	298,046	394,906	4,989,415

*Excludes debt service Years 1952–53 through 1956–57 from Vieg, *California Local Finance* Cities for these years includes city-owned enterprises
†Current expense of education Excludes debt service
‡Excludes debt service
§Included in "Cities" before 1957–58.

Source State Controller, *Annual Reports*, 1952–1963

TABLE V

LOCAL GOVERNMENT DEBT SERVICE EXPENDITURES: 1952–53 TO 1962–63

(Dollar figures in thousands)

Fiscal year	Counties	Cities	School districts	Special districts	Total
1952–53	$1,621	$62,011	$52,141	$5,168	$120,941
1953–54	2,166	63,310	61,634	30,823	133,932
1954–55	2,513	65,185	73,705	39,221	180,604
1955–56	3,899	74,608	85,082	41,412	204,908
1956–57	4,477	82,527	96,358	43,048	226,410
1957–58	5,878	80,737	113,903	48 731	255,248
1958–59	6,607	73,594	132,544	57,070	269,815
1959–60	7,014	80,637	151,778	79 144	318,573
1960–61	10,817	83,081	170,864	84,336	349,098
1961–62	13,402	88,967	186,702	98,111	387,182
1962–63	17,040	96,309	203,057	109,122	425,528

Source State Controller, *Annual Reports*, 1952–1963

TABLE VI

ESTIMATED TOTAL CAPITAL OUTLAYS BY LOCAL GOVERNMENTS: 1952–53 TO 1962–63

(Dollar figures in thousands)

Fiscal year	Cities*	Counties†	School districts‡	Special districts§	Total	Increase or decrease from previous year
1952–53	$168,843	$53,146	$292,043	$24,587	$538,619	
1953–54	198,081	62,838	283,244	82,587	646,740	$+108,121
1954–55	200,897	81,993	319,672	106,795	709,357	+62,617
1955–56	224,343	66,261	345,169	117,147	751,920	+42,563
1956–57	245,559	126,981	395,812	129,466	899,818	+147,898
1957–58	273,110	120,332	418,181	153,058	964,681	+64,863
1958–59	334,516	135,162	449,192	240,350	1,159,220	+194,539
1959–60	300,314	123,900	451,272	250,885	1,126,371	—32,849
1960–61	263,905	130,170	468,445	276,750	1,139,270	+12,899
1961–62	277,235	138,716	508,083	305,588	1,229,622	+90,352
1962–63	330,153	114,054	412,212	309,701	1,166,120	—63,502

* *Cities*, 1952–53 to 1956–57, Vieg et al , *California Local Finance*, Table 2c Appendix
1957–58 to 1962–63, State Controller, *Annual Reports*
†*Counties*, General Fund Capital Outlays, 1952–53 to 1956–57, Vieg, *California Local Finance*, Table 2d, Appendix, to which has been added outlay from Bond Funds
‡*School Districts*, 1952–53 to 1957–58, State Department of Education
1958–59 to 1962–63, State Controller, *Annual Reports*
§*Special Districts*, State Controller, *Annual Reports*

TABLE VII

COUNTIES, CURRENT AND CAPITAL EXPENDITURE: 1957-58 TO 1962-63

(Dollar figures in thousands)

Fiscal year	State population* July 1 later year	Total expenditure	Current expenses	Capital outlay	Expenditure from bond funds	Debt service
1957–58	14,741,000	$1,080,990	$965,829	$109,284	$11,048	$5,878
1958–59	15,288,000	1,163,513	1,051,584	113,189	21,973	6,607
1959–60	15,803,000	1,236,617	1,124,891	104,712	19,188	7,014
1960–61	16,453,000	1,342,028	1,225,998	105,213	24,957	10,817
1961–62	17,094,000	1,436,448	1,325,547	97,499	41,217	13,402
1962–63	17,675,000	1 651,473	1,551,701	82,732	31,322	17,040

* State Budget 1963-64 Department of Finance

Source State Controller, *Annual Reports*, 1957–1963

(b) Cities and City-owned Enterprises

TABLE VIII

CITIES, CURRENT AND CAPITAL EXPENDITURES FROM GENERAL FUNDS *

(Dollar figures in thousands)

Fiscal year	Population June 30	Current expenditures	Capital outlay
1957–58	10,064,895	$588,765	$120,831
1958–59	10,551,187	683,864	97 360
1959–60	11,157,059	746,428	101,767
1960–61	11,439,877	811,246	119,672
1961–62	11,970,075	870,726	126,348
1962–63	12,516,955	944,566	122,640

* Excluding city-owned enterprises

Source State Controller, *Annual Reports*, 1957–1963

Per capita current expenditures were up from $55 29 in 1958 to $75 46 in 1963, a 36 5 percent increase However, when these figures are adjusted for changes in the price level, the per capita increase in

TABLE IX

CITY-OWNED ENTERPRISES GENERAL FUND EXPENDITURES

(Dollar figures in thousands)

EXPENDITURES OF CITIES AND CITY-OWNED-ENTERPRISES FROM BOND FUNDS

(Dollar figures in thousands)

Fiscal year	Current expenditures	Capital outlay	
1957–58	$235,163	$67,183	$152,279
1958–59	283,635	90,353	237,156
1959–60	306,306	n a *	198,547
1960–61	330,781	83,188	144,333
1961–62	386,003	100,028	150,887
1962–63	394,906	107,412	207,513

* Not available

Source State Controller, *Annual Reports*, 1957–1963

constant dollars was from $55 29 in 1958 to $64 70 in 1963, an increase of 17.2 percent. City population on July 1, 1963, constituted 70 81 percent of the total for the state.

Current expenditures rose 68 0 percent over the six-year period.

(c) School Districts

TABLE X

SCHOOL DISTRICTS, CURRENT AND CAPITAL EXPENDITURES

(Dollar figures in thousands)

	Average daily attendance	General fund current expenses of education	General fund capital outlay	Capital outlay from building fund	Capital outlay special reserve fund	Capital outlay state school building fund
1957–58	2,750,763	$1,100,347	$68,473	$228,393	$5,088	$114,584
1958–59	2,953,156	1,217,443	58,948	254,918	11,326	123,851
1959–60	3,155,263	1,372,561	68,835	213,787	13,748	154,722
1960–61	3,361,911	1,518,184	63,077	210,000	14,054	181,012
1961–62	3,562,681	1,654,892	69,217	242,706	19,184	185,125
1962–63	3,760,237	1,809,196	58,195	173,944	21,801	157,539
1963–64 (estimate)	3,980,000					

Source State Controller, *Annual Reports*, 1957–58—1962–63, and State Department of Education

There has been about a 63 6 percent rise in current expense of education expenditure for the six-year period fiscal 1958–63, while average daily attendance has risen almost 37 percent, and the general price level of government goods and services has risen another 16 3 percent Personal incomes of California meantime have risen about 39 2 percent.

(d) Special Districts

TABLE XI

SPECIAL DISTRICTS,* CURRENT AND CAPITAL EXPENDITURES FROM GENERAL FUNDS

(Dollar figures in thousands)

Fiscal year	Number of districts	General purpose expenditures	Operating expenses	Capital outlay
1957–58	2,982	$209,750	$148,802	$60,948
1958–59	3,038	264,298	192,702	71,595
1959–60	3,123	330,162	222,372	107,791
1960–61	3,178	388,796	259,724	129,072
1961–62	3,237	436,716	275,749	160,968
1962–63	3,342	471,906	298,046	173,860

* Excluding irrigation districts

Source State Controller, *Annual Reports*, 1957–63

The number of districts increased by 360 General purpose expenditures have more than doubled during this period, with capital outlay almost tripling (up about 185 percent) Expenditures from long-term indebtedness more than doubled—for those reporting it rose from $92,109,700 to $135,814,346. Debt service expenditure rose from $48,730,500 to $109,121,583.

TABLE XII

GENERAL FUND REVENUE SOURCES FOR LOCAL GOVERNMENT, 1962-63 *

(Dollar figures in millions)

	Property tax revenue	State apportionments	Federal grants	Sales tax revenues	Other	Total
Counties	$688	$451	$300	$38	$203	$1,680
Cities	447	†143	22	223	385	1,220
Schools	1,096	745	50	21	30	1,942
Special districts	‡161	5	7		§308	481
Total	$2 392	$1,343	$379	$282	$926	$5,323

* Not including revenues to bond funds, and other special funds

† Including motor vehicle revenues, trailer coach, alcohol, gasoline

‡ Taxes and assessments Taxes and assessments were levied not only for general purposes but also for interest and retirement of long-term debt The total levy by special districts for all purposes was $225 3 million
School districts also levied an additional $212 3 million in property taxes for bond interest and redemption

§ $261 6 million was from charges for service

Source State Controller, *Annual Reports*, 1952–63

General fund revenues of local governments exclude bond funds and other special funds which are earmarked for specific purposes General fund revenues totaled $5 3 billions in 1963 Almost half of this was property tax revenue

EXPENDITURES BY FUNCTION AND REVENUES BY TYPE, 1952-53 to 1962-63

A. Counties

(1) Expenditures—Analysis by Function

County government has historically provided the basic services of courts, probation, and county jail, recordkeeping, registration of voters; testing of weights and measures, assessment of property and collection of property taxes; provision of basic police, health, and some library services to the unincorporated areas; and general relief to the needy More recently, there has been an expansion of welfare services, park and recreation services, flood control, smog control, water conservation, and areawide planning, to mention but a few of the growing services

In the 11 years 1952–53 to 1962–63, while the total of all county expenditures rose approximately 133 5 percent, general government costs increased 190 3 percent, protection of persons and property, 382 2 percent, health and sanitation, 87 8 percent, recreation, 173 8 percent, educational expense, 239 1 percent, and debt service, 945 4 percent The slower growing items, though large in terms of absolute dollars, were roads and bridges, 82 percent, and charities and corrections, 102 5 percent

The percentage of total expenditures claimed by each of these functions in 1962–63 compared to the earlier period was

TABLE XIII

COUNTY EXPENDITURE BREAKDOWN: 1952–53 TO 1962–63

	1952-53 Percent of total	1962-63 Percent of total
General government	12 09	16 02
Protection of persons and property	7 18	15 06
Health and sanitation	2 98	2 44
Roads and bridges	10 46	8 27
Recreation	1 01	1 20
Charities and corrections	61 52	54 19
Education	1 08	1 60
Miscellaneous	2 85	
Debt service	0 23	1 03
Public enterprise		0 19
	100 00	100 00

Source State Controller *Annual Reports* (excludes San Francisco, which has been included in cities)

Within the category of general government the largest items in 1962–63 were buildings and grounds expense, assessor, justice and municipal courts, surveyor and engineer, superior courts, auditor and

controller The sheriff's department, jails and rehabilitation, agricultural commissioner, communications, constables and marshals, and the recorder were the most important items in protection to persons and property.

The health and sanitation category went mostly for expenditures of health departments, with a sizeable amount for tubercular care (almost half of which was spent in Los Angeles County)

The charities and corrections item of $894,997,000 was itemized as follows:

TABLE XIV

County Expenditures Breakdown: 1963

	Current Expenses (Dollar figures in thousands)
Hospital	$183,730
Home for aged—county farm	
Welfare administration	69,322
Aid to needy—disabled	28,484
Aid to needy—children	168,689
Aid to needy—blind	15,868
Aid to needy—aged	280,166
Aid to partially self-supporting blind	380
Aid to children in boarding homes	7,234
General relief	24,152
Juvenile court wards	7,902
Crippled children	9,870
Other welfare	11,718
Probation department	21,980
Juvenile hall	17,584
State institutions	4,202
Burials, cemetery and veterans care	117
Veterans service officer	1,498

Source State Controller, *Annual Reports*, 1962–63

In the education category, library expenses were the most sizeable item, followed by expenditures of the Superintendent of Schools Debt service included $5,215,371 for interest and $8,186,500 for retirement of principal Miscellaneous included $48,018,658 for retirement, plus expenditures for advertising county resources, fairs, and airports

(2) Revenues by Type

The property tax and subventions by the state and federal governments are still the mainstays of county finance But there has been a decline over the period since 1952–53 in the extent to which outside subventions and grants meet the total cost of county government, and an increase in the extent to which counties have had to rely on the property tax Whereas total revenues increased roughly 133 percent in the 11-year period, subventions and grants increased only 97 2 percent and property taxes by 145 1 percent To look at it another way, property taxes formed 38 9 percent of total revenue in fiscal 1953, but 41 percent in fiscal 1963 On the other hand, subventions and grants made up 52 8 percent of total revenues in the earlier year, but only 44 7 percent in 1963.

Licenses and permits produced only 0 6 percent of the revenue at both ends of the 10-year period, in contrast to the case in the cities, where this category produced 6 7 percent of the total. Part of the reason is that counties are restricted to license charges for regulation

TABLE XV

COUNTY EXPENDITURE, BY FUNCTION *: 1952–53 TO 1962–63

(Dollar figures in thousands)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63	Percent of total		Increase of 1962–63 over 1952–53 in percent
												1952–53	1962–63	
General government	$91,157	$106,940	$115,742	$126,540	$172,440	$146 598	$168,474	$170,923	$198,721	$219,571	$264,631	12 69	16 02	191 2
Protection of persons and property	51,553	57,588	61,637	67,156	78,423	95,251	100,714	111,362	121,218	137 569	248,589	7 18	15 06	382 7
Health and sanitation	21,422	23,653	23,478	25,900	29,843	38 811	39,570	41,552	45,886	47,843	40,229	2 98	2 44	87 8
Roads and bridges	75,089	80,500	84,325	87,527	105,852	118,872	118,492	118,428	133,769	131 679	139,532	10 46	8 27	81 9
Recreation	7,264	8,526	8 999	10,205	12,009	13,009	13,287	14,362	15 814	17,653	16,892	1 01	1 20	173 8
Charities and corrections	441,816	460,978	475 171	493,194	521 097	573,757	622,618	659,338	708,382	784 739	894,997	61 52	54 19	102 5
Education	7,767	8,332	9,159	10,124	9,927	11,259	15,987	18,417	20,851	22,892	26,335	1 08	1 60	239 1
Miscellaneous	20,496	25,229	29,548	35 390	41,484	80,552	87,863	85,670	88,621	81,100	--	2 85	--	--
Debt service	1,629	2,078	2,514	3,898	4,478	5,978	6,606	7,014	10,817	13,402	17 039	0 23	1 03	946 0
Public enterprise	--	--	--	--	--	--	--	--	--	--	3 129	--	0 19	--
Total	$716,194	$774,135	$810,171	$859,946	$975,582	$1,080,991	$1,183,513	$1,236 617	$1 342,028	$1,436,448	$1,651,473	100 00	100 00	--

* Excludes San Francisco City and County, which is included in "cities"

Source: State Controller's *Annual Reports*

purposes only, whereas cities may levy, for example, business licenses for revenue, using gross receipts or some other measure related to the volume of business instead of a flat charge Of the total statewide of $11 4 million in this category, $7 6 million came from construction permits, $1 1 million from business and $1 7 million from animal licenses

In contrast, the revenue from charges for services, including fees and commissions, increased 301 2 percent over the decade, and the share of total revenue from 4 percent to just over 7 14 percent With a total yield of over $120 million, this category was third in importance, after property taxes at $688 million and subventions and grants at $751 million

Sales taxes increased from $21 million in fiscal 1957 (the first complete year of operation under the Bradley-Burns Act) to $38 million in fiscal 1963 They now provide about 2 26 percent of total county revenue

Fines and penalties enjoyed a slight relative increase over the decade, and at $25 3 million produce 1 51 percent of the total There was a 264-percent increase in interest income but it still provided only 0 96 percent of all revenue at $16 2 million for the counties of the state Rents, concessions, and royalties were quite small, as were receipts from privileges granted Each produced about $4 million, statewide, and each accounted for about 0 24 percent of county revenues

Sale of property is a variable item In 1963 it produced $7 1 million Miscellaneous items accounted for another $20 3 million

B. Cities

(1) Expenditures—Analysis by Function

At the end of fiscal 1963, there were 382 cities in California, of which chartered cities numbered 70, with the balance being general law cities Although charter cities have more freedom of action than do general law cities, including the use of tax sources not open to general law cities, there is no apparent rush to become chartered One reason may be the preference of the voters for the restriction of general law cities to a property tax rate limit of $1 per $100 of assessed valuation, unless an amount in excess of this is passed by the voters *

The main city expenditures, other than city-owned enterprises, are for general government, police and fire protection, public works such as streets, sewers, storm drains, and street lighting, parks and recreation; libraries, health, retirement, and debt service City-owned enterprises, including water, electricity and gas companies, public transportation systems, airports, parking facilities, harbors, hospitals, housing, and cemeteries are treated separately from other city expenditures in an effort to make comparisons between the expenditures in the earlier and later years

General government, which includes the expenses of the city council, manager, clerk, controller, treasurer, attorney, planning, and the upkeep and outlay on government buildings ($33 8 million in fiscal 1963), as well as the housekeeping functions of purchasing and personnel, apparently increased as a share of total city expenditures, but when

* Exclusive of the tax for pensions, civil defense, sewage, parks and recreation, bond service, flood control, museums, libraries, etc, as stated in various Government Code sections

TABLE XVI

COUNTY REVENUES, 1952-53 TO 1962-63

(In thousands of dollars)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63
Property taxes	$280,698	$302,080	$337,742	$388,621	$397,746	$451,117	$497,501	$549,861	$595,600	$638,234	$687,901
Licenses and permits	4,366	4,627	5,510	8,051	5,649	4,818	6,411	7,154	7,129	9,184	11,358
Fines and penalties	8,391	10,055	11,907	14,156	16,080	18,034	19,819	19,673	20,284	23,564	25 310
Privileges	1,846	2,058	2,299	2,637	3,055	3,402	2,858	3,149	3,472	3,767	3,844
Rent of property	2,166	2,078	2,095	1,942	2,378	2,498	2,503	2,817	3,466	3,550	4,298
Interest	4,438	6,468	6,175	6,241	9 624	12,294	9,931	11 862	12,580	13,988	16 150
Fees and commissions	17,534	19,514	21,766	24,445	27,142	30,710	36,155	40 728	42,662		
Charges for services	12 364	14,099	16,162	19,093	23,256	27,821	31,447	39,950	44,120	100,295	119,950
Sale of property	2,040	3,231	2,152	2,677	2,801	5,995	3,618	3,920	7,879	2,284	7,071
Sales taxes	--	--	--	*3,639	21,024	29,348	33,053	35,864	34,571	37,017	37,975
Miscellaneous	6,112	7,204	8,695	10,485	32,842	10,927	15,362	16,761	11,363	13,436	20,343
Subventions and grants	380,911	397,656	400,781	420,903	448,041	479,188	510,603	533,825	563,927	602,934	751,473
Total	$720,897	$769,072	$815,284	$899,251	$968,625	$1,075,442	$1,169,380	$1,261,575	$1,347,054	$1,446,867	$1,680,250

* County Sales Tax not in operation for full year

Source: State Controller's *Annual Reports*

San Francisco's expenditures on charities and corrections are removed (since these are largely county rather than city functions), the share of total expenditures is about 9 percent, or approximately the same as in 1952–53 *

Protection to persons and property is still the largest category in the budget, at 29 16 percent of the total compared to 29 2 percent in the earlier year, since it has grown slightly less rapidly than total expenditures The largest items here were police protection, at $182 million and fire protection at $133 million, with lesser amounts for building regulation, animal regulation and $1 6 million for civil defense

Health expenditures, though only 2 6 percent of the total (as compared with 1 9 percent in fiscal 1953), were a rapidly growing item, having increased 214 percent over the period compared with an overall increase of 116 percent in total expenditures Sanitation is still about 6 5 percent of the budget at $62 7 million

Other public works, mainly streets, storm drains, street lighting and parking, came to 14 4 percent of the 1963 budget, almost equal to the 14 0 percent of a decade ago The percentage increase was 202 percent over the period At $213 million, this was the second largest category in the total California city budget

Education, mostly libraries, was 2 6 percent of the total, or very slightly greater than the proportion in 1952 Recreation expenditure, on the other hand, grew from 7 9 percent to 8 6 percent of the total budget and cost more than $95 million

Interest on debt was actually a declining percentage of total expenses, at 2 32 percent compared to 3 8 percent 10 years ago Debt redemption was 5 96 percent compared to 8 8 percent in 1952 However, debt service requirement was equivalent to a $0 39 property tax rate † Aid to other government units (except city-owned enterprise) came to $1 8 million, but there is no comparable figure for the early year

Expenditures by city-owned enterprises rose from $221 million in 1952-53 to $395 million in 1962-63, an increase of 74 percent Cities contributed $11 million to their city-owned enterprises, but got back a net contribution from them of almost $57 million, so that on the whole these services more than paid for themselves

Total city expenditures, exclusive of city-owned enterprises, grew at an average rate of 8 9 percent a year during this period City population increased about 53 7 percent (slightly less in 1962–63, 7 2 percent), during the decade, or slightly faster than the general state population increase of 46 percent, while the price index of goods and services brought by governments increased 39 percent Therefore, about two-thirds of the increase can be explained by price and population increase alone

(2) Revenues by Type

The headline story in city revenues in the 11-year period up to the end of fiscal 1963 was the great increase in sales tax revenues under the impetus of the Bradley-Burns Act In 1952–53 sales and use taxes produced 9 6 percent of total city revenue (exclusive of city-owned

* Retirement expenses of $69 million, however, have been included in the miscellaneous category, in an attempt to make the data comparable to earlier years
† State Controller, *Annual Report for Cities*, 1961–62, p viii

TABLE XVII

CITY EXPENDITURE, BY FUNCTION: 1952-53 TO 1962-63 *

(Dollar figures in thousands)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63
General government	$49,365	$52,498	$56,950	$64,264	$75,572	$83,271	$104,384	$110,788	$129,980	$142,894	$161,055
Protection to persons and property	150,255	165,051	181,096	195,372	222,033	250,140	244,969	307,529	288,796	315,372	339,106
Health	9,069	9,990	10,665	11,255	11,926	10,829	22,936	24,817	25,727	28,345	30,377
Sanitation	33,192	34,067	36,509	40,805	45,659	55,151	57,258	57,529	66,035	70,258	62,712
Streets	70,467	83,927	83,641	91,150	105,376	123,054	165,531	175,839	192,787	201,639	213,093
Charities and corrections†	30,419	31,043	30,646	31,384	32,514	35,618					
Education and libraries	11,366	13,230	14,523	16,029	17,915	19,024	21,608	24,014	27,337	27,870	31,648
Recreation	39,267	44,256	49,307	53,048	61,347	67,915	71,082	82,822	89,341	95,086	99,609
Miscellaneous (Retirement, other)	43,452	49,403	55,963	49,199	63,451	64,560	82,040	87,627	98,076	105,784	116,706
Interest on debt	17,985	18,248	19,373	20,162	23,795	27,956	21,904	23,978	24,353	26,488	27,032
Redemption of debt	44,026	45,062	45,782	54,436	58,722	58,781	51,690	56,659	58,728	62,479	69,331
Aid to other government funds and units (except city-owned enterprise)	n a	n a	n a	n a	n a	n a	1,409	10,408	4,878	2,528	1,826
Total	$499,434	$546,145	$584,456	$627,700	$718,308	$796,335	$844,902	$922,010	$1,006,638	$1,078,742	$1,152,494

GROSS EXPENDITURES OF CITY-OWNED ENTERPRISES, 1952–53 TO 1962–63

(Dollar figures in thousands)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63
City-owned enterprise	$221,481	$255,338	$263,661	$294,322	$308,017	$355,545	$283,637	$306,306	$330,781	$366,004	$394,906
Aid to city-owned enterprise	n a	n a	n a	n a	n a	n a	9,907	6,822	7,282	7,298	10,919

*Excluding special assessments, and expenditures of city-owned enterprises (also called public service enterprises), in order to make comparable the earlier and later years
†Mostly San Francisco, which is a county as well as a city Starting with 1958–59, these expenditures are included in "general government"
Note n a—"not available"

Source State Controller's *Annual Reports*

enterprise revenue), but in 1962–63 this had risen to a large 19 54 percent While total revenues on this basis increased by 128 percent over the 11-year period, sales taxes increased 463 percent, and amounted to $223 million out of a total of $1,140 million As will be discussed more fully elsewhere in this report, this was partly due to the entrance of new cities into this field, as well as the growth of taxable sales

The growth of sales taxes permitted less relative reliance on the property tax, which formed almost 44 percent of city revenue at the beginning of this period, but only 39 percent in fiscal 1963 (In 1930, 78 percent of all revenues had been derived from this source) However, it was still the most important revenue, providing $447 million

Business licenses were the third most important tax, providing $39 million, or 3 4 percent of total revenue, almost the same percentage, however, that they had yielded in 1953

Franchise taxes, such as gas and telephone, were a relatively minor revenue producer at about 1 percent of total revenue over the decade Other nonproperty taxes raised just under $3 million These largely consisted of the San Francisco hotel tax, and minor revenues such as taxes on theater admissions and horseracing by a few California cities

Turning to the nontax revenues, licenses (other than business licenses) and permits rose from 1 5 percent of the total to 3 percent in 1963 These were largely made up of parking meter receipts, $9 33 million, building permits, $11 76 million, plumbing permits, $3 71 million, and electrical permits, $3 71 million Sewer permits, street and curb permits, and animal licenses each brought in between $1 million and $2 million

Fines and penalties held their own over the decade at 3 7 percent of total revenues Nearly $30 0 million was realized from Vehicle Code fines—some of this goes to finance driver education in the schools Other court fines and penalties accounted for an additional $10 7 million

A rewarding gain was made in the return from the use of money and property, up from 1 6 percent to 2 7 percent of total revenue Nearly $18 3 million of this was interest income, with about $11 8 million from rents, royalties and concessions This represented a 317 percent gain over the decade

Another fast-increasing source of revenue was current service charges, which increased 203 percent over fiscal 1953, and rose from 7 percent of total revenues to 9 5 percent The more than $108 3 million from this source was mainly the result of park and recreation charges, sewer charges and refuse collection charges, at $21 8 million, $13 2 million, and $22 1 million respectively Engineering fees, charges for street and curb repairs, local assessments, library fines and fees, plan checking fees, zoning and subdivision charges, health inspection fees, and sale of refuse all brought in from $1 million to $8 million

Revenue from city-owned enterprises, such as water, gas, and electric utilities, transportation systems, airports, housing, and cemetery districts is shown as a net contribution to the cities of $57 million in 1962-63 This was quite variable in the earlier years of the decade, and with the different method of reporting, comparisons may not be very meaningful

TABLE XVIII

CITY REVENUES 1952–53 TO 1962–63 *

(Dollar figures in thousands)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63
Taxes											
General											
Property taxes	$219,967	$216,875	$241,158	$257,071	$274,154	$299,706	$323,114	$354,486	$383,536	$410,214	$446,582
Franchise taxes	7,145	8,050	8,713	10,079	9,722	9,089	9 060	10,603	11 053	12,090	12,556
Sales and use taxes	48,243	40 729	66,014	87,195	134,869	152,093	166 751	183 316	192,297	204,588	228,382
Other nonproperty taxes							654	753	807	1,060	2,752
Business licenses	18,869	19,847	20,701	22 066	23 783	24,821	25,660	32,547	34,582	36,440	38,770
Other licenses and permits	5,039	5,189	6 514	6,506	6,363	6,758	27,222	28,088	30,103	33,013	34 714
Fines and penalties	19 229	20,733	22,322	25 163	28 034	30,010	31,503	32,081	36,944	39,041	40,719
Use of money and property	7 360	9 493	9,065	11,600	12,043	14,944	22,211	24 453	24,878	25 783	30,714
From other agencies	109,196	104 953	103,936	110,896	119,544	135,314	135,172	139,546	153,912	159 261	179,198
Current service charges	35,739	37,050	42 501	47,572	51 453	59,064	72,380	83,850	90,841	100,815	108 377
Sale of property	16,444	22 692	22,229	10,241	23,695	16,343	6,296	5,758	8,395	7,835	7,585
Other revenue	12,164	13,958	17,404	19 680	20,471	21,774	14,702	16,461	14,830	15,488	14,803
Total	$500,594	$508,579	$561,160	$608 070	$704,103	$770,515	$834 746	$912,538	$982,240	$1,046,528	$1,140,152

GROSS REVENUES FROM CITY-OWNED ENTERPRISES, 1952–53 TO 1962–63

(Dollar figures in thousands)

	1952–53	1953–54	1954–55	1955–56	1956–57	1957–58	1958–59	1959–60	1960–61	1961–62	1962–63
Revenue from city-owned enterprises (gross)	$257,799	$259 350	$270,406	$297 681	$325,085	$345,670	n a	n a	n a	n a	n a
Net contribution to the city	n a	n a	n a	n a	n a	n a	$34,215	$45,484	$47,062	$51,155	$56,930

*Excludes revenue from city-owned enterprises, special assessments, and trust fund transactions
Note n a—"not available"

Source State Controller's *Annual Reports*

C. School Districts

1. Expenditures

At the end of fiscal 1963 there were 1,659 California school districts 1,253 elementary, 213 high school, 46 junior college; and 147 unified school districts Their total expenditures consist of general fund expenditures and expenditures out of various building funds and a bond interest and redemption fund General fund expenditures consist of the current expense of education (including administration, teachers' salaries, other salaries, other expenses of instruction, maintenance and operation of school plant, transportation of pupils, and fixed charges), plus that part of capital outlay made from the general fund, and expenditures for food service and community service

Educational expenses per pupil vary according to the grade level, size of school district, wealth of the district and other considerations The average current expense of education for all grade levels in fiscal 1963 was $480 81 per A D A , but varied from $204 72 in Fresno County to $683 26 in Mono County *

The total current expense of education rose from $580,249,000 in 1952–53 to $1,800,196 in 1962–63, an increase of 210 3 percent Total average daily attendance meantime rose 94 4 percent, and the price level of government purchases by 39 percent Thus, the per capita (A D A) increase in constant dollars was 14 84 percent

These overall figures are more meaningful when broken down into the four main levels of public school education, as shown in the tables on the next two pages

2. Revenue

It is evident that school expenditures almost tripled during this decade Meanwhile total general fund income rose 198 9 percent Of this, district taxes rose 217 7 percent and state apportionments rose 170 8 percent The state apportionment as a percentage of the general fund

TABLE XIX

TOTAL GENERAL FUND EXPENDITURE OF ALL SCHOOL DISTRICTS, CURRENT EXPENSE OF EDUCATION AND CAPITAL OUTLAYS FROM GENERAL FUNDS: 1952–53 TO 1962–63

(Dollar figures in thousands)

	Total general fund expenditure	Total current expense of education	Capital outlay from general funds
1952–53	$636,880	$580,249	848,146
1953–54	741,744	674,597	55,192
1954–55	817,628	742,158	61,140
1955–56	897,437	823,046	57,004
1956–57	1,021,541	950,214	59,788
1957–58	1,195,554	1,100,347	68,473
1958–59	1,307,308	1,217,443	58,948
1959–60	1,474,881	1,372,561	68,835
1960–61	1 616,960	1,518,184	63,077
1961–62	1,756,471	1,654,892	60,217
1962–63	1,903,842	1,800,196	58 955

Source State Controller, *Annual Reports*

* California State Department of Education, *Recommendations on Public School Support*, 1961, p 339

fell from 42 percent to 38 1 percent The amount raised by district taxes was 56 4 percent in 1963 Federal subventions formed 2 6 percent of total general fund revenues in 1953 and 2 6 percent in 1963

TABLE XX

CURRENT EXPENSE OF EDUCATION PER STUDENT IN AVERAGE DAILY ATTENDANCE, BY LEVEL: 1952–53 TO 1962–63

	Elementary school districts	High school districts	Junior college districts	Unified school districts
1952–53	$233 60	$377 67	$426 14	$318 55
1953–54	255 51	400 10	429 47	337 86
1954–55	264 12	404 72	410 96	339 87
1955–56	272 13	417 36	436 11	353 09
1956–57	290 42	444 25	474 42	375 80
1957–58	315 61	475 80	495 17	400 39
1958–59	326 28	490 46	520 52	411 58
1959–60	342 48	517 67	575 32	423 47
1960–61	359 35	538 91	598 63	435 20
1961–62	367 01	552 80	576 22	451 19
1962–63	403 43	612 33	692 06	479 17

Source Data to 1959–60 from "Recommendations on Public School Support," State Department of Education, January 1961 Data for 1961, 1962, and 1963 computed from State Controller's *Annual Reports*

TABLE XXI

AVERAGE DAILY ATTENDANCE BY GRADE LEVEL, AND ADULTS: 1952–53 TO 1962–63

(Figures in thousands)

	Total	Elementary	High school	Junior college	Adults
1952–53	2,037	1,492	409	71	65
1953–54	2,208	1,619	454	77	58
1954–55	2,381	1,739	487	93	62
1955–56	2,552	1,868	524	100	61
1956–57	2,754	1,997	580	107	67
1957–58	2,958	2,119	649	119	72
1958–59	3,155	2,243	708	129	76
1959–60	3,362	2,401	754	129	77
1960–61	3,563	2,521	817	145	79
1961–62	3,750	2,635	892	166	83
1962–63	3,960	--	--	--	--

Source Controller's *Annual Reports* of financial transactions concerning school districts of California, 1952–53 to 1962–63

At the same time, bonded indebtedness of all school districts in California rose from $718,392,000 in 1953 to $2,270,853,000 in 1963

D. Special Districts

There has been a phenomenal increase in both the number and expenditure of special districts in California 1,322 such districts reported general fund expenditures of $35,585,000 in 1952–53 * and 3,342 districts reported $471,906,000 in 1962–63, a 1,226-percent increase.

* Data appear to be incomplete for this year, however.

TABLE XXII

SCHOOL BONDED INDEBTEDNESS, 1952–53 TO 1962–63

(Dollar figures in thousands)

1952–53	$718,392	1958–59	$1,682,318
1953–54	844,030	1959–60	1,835,060
1954–55	983,110	1960–61	2,032,397
1955–56	1,112,742	1961–62	2,192 085
1956–57	1,270,070	1962–63	2,270,000
1957–58	1,464,046		

Source Controller's *Annual Reports* of financial transactions concerning school districts of California, 1952–53 to 1962–63

TABLE XXIII

SCHOOL DISTRICT REVENUES: 1952–53 TO 1962–63

(GENERAL FUND INCOME)

(Dollar figures in thousands)

	Total ADA	Total general fund income	Property taxes	State apportionment	Federal subventions
1952–53	2,032,947	$851,819	$344,953	$275,301	$17,181
1953–54	2,203,398	756,403	362,466	359,505	16,179
1954–55	2,375,481	828,870	399,482	390,595	19,736
1955–56	2 546,281	904,113	444 413	421,381	17,411
1956–57	2,744,355	1,042,657	545,076	451,917	21,581
1957–58	2,950,705	1,214,513	636,361	524,061	22,625
1958–59	3,147,306	1,385,852	715,583	561,943	28,144
1959–60	3,353,283	1,484,681	793,349	620,242	34,602
1960–61	3,553,679	1,633,572	893,404	660,534	41,271
1961–62	3,750,642	1,787,878	996,377	699,434	43,463
1962–63	3,960,061	1,942,106	1,096,104	744,713	50,449

Source State Controller, *Annual Reports*

TABLE XXIV

SCHOOL DISTRICT REVENUES: 1952–53 TO 1962–63

(SPECIAL FUND INCOME)

(Dollar figures in thousands)

	Bond interest and redemption fund	Building fund	Public school building fund	State school building fund	Other building funds	Cafeteria fund	Child care fund
1952–53	$55,667	$183,780	$86,206	$57	$1,590	$31,825	$7,499
1953–54	70,499	189,.78	84,435	12,979	2 094	36,941	6,824
1954–55	79,591	220,977	5,417	48,315	704	41,948	6,635
1955–56	91,995	212,214	404	76,8.0	5	50,767	7,328
1956–57	108,886	255,203	35	91,578	97	60,147	7,344
1957–58	128,081	276,206	2	87,483	413	66,271	7,720
1958–59	142,059	324,970	31	111 313	8,084	76 385	8,196
1959–60	164,827	260,365	203	141,757	12,001	83,002	8,548
1960–61	177,621	324,949	10	178,951	10,319	89,039	9 142
1961–62	217,608	294,143	17	154,046	14,958	96,280	10,526
1962–63	212,265	216,530	45	140,944	18,465	102,207	10,834

Source State Controller, *Annual Reports*

Special districts are organized primarily to supply urban-type services in unincorporated areas of the counties, most of them being limited to one specific function, such as fire protection, garbage disposal, parks and recreation, street lighting, sewers and so on, but the Community Services Act of 1951 permits the formation of multiple-purpose districts Special districts may be formed by petition of residents, subject to review of the county board of supervisors and election, or by a city or county governing body They may be governed by independent, elective boards or by the county board of supervisors, or by appointed members In 1962–63, 1,223 districts were governed directly by county boards of supervisors, 2,106 by elective or appointive boards They have the power to make assessments, charges, and to levy a general property tax as provided by statute The tax base varies, being land only for water, soil conservation, and irrigation districts; land and improvements for others; and all property for others There are varying provisions for tax exemptions Many have bonding power, with varying legal limits

In addition to the small urban-type service districts are the metropolitan districts such as the Metropolitan Water District of Southern California, the San Francisco Bay Area Air Pollution Control District, and the East Bay Municipal Utility District, as well as rural service districts, for a variety of purposes ranging from police protection to weed control, and irrigation districts

There are several reasons for the mushrooming of special districts One has been the rapid growth of suburban areas with city needs, but no city government Forming a special district has been made relatively quick and easy by state law, as compared with annexation or incorporation procedures Counties were reluctant to provide urban-type services in view of their limited revenue sources, and because of problems involved in providing services to one part of the county and not to the rest Also, the patterns of growth often created one need at a time, so that the simplest solution appeared to be the formation of a single-purpose district Too often, little thought was given to planning for future expansion, and limited tax bases and borrowing power prevented the accumulation of funds for capital expansion Some districts may not incur any bonded indebtedness at all, such as highway lighting, county maintenance, and public cemetery districts

As a result, there were uneven services, gaps in service, great variation in the cost of providing service with many small uneconomic districts, and lack of jurisdiction to perform many areawide functions such as planning and transportation A typical citizen of a metropolitan area may live in two or three school districts and perhaps ten special districts, as well as in a city or county Many people are unaware of what special districts they live in, where to complain when the service is poor, who governs the district, or what it costs Few trouble to vote in the elections County offices have to provide some services to the districts, such as auditing, tax collecting, and engineering, so that citizens of the whole county usually pay part of the cost whether they live in the districts or not

One apparent advantage of the special district is that money for a particular function is earmarked and thus need not be battled for in

TABLE XXV

SPECIAL DISTRICT GENERAL PURPOSE EXPENDITURES BY TYPE OF DISTRICT, 1962–63

		Expenditures	Number of districts
1	Air pollution control	$4,341,187	7
2	Airport	324,030	3
3	Bridge and highway	2,311,396	1
4	Cemetery	3,806,287	256
5	Community services	3,178,514	122
6	Drainage	250,205	27
7	Fire protection	33,478,824	469
8	Flood control and water conservation	47,650,958	39
9	Flood control maintenance areas	214,336	13
10	Garbage disposal	1,412,704	13
11	Harbors and ports	8,136,102	14
12	Health	1,322,497	1
13	Joint highway	None	13
14	Hospital	57,015,983	62
15	Municipal improvement	191,324	6
16	Levee	215,529	22
17	Library	921,144	13
18	Highway lighting	2,019,616	392
19	County maintenance	2,160,299	260
20	Memorial	490,881	25
21	Mosquito abatement	5,684,078	50
22	Parking	224	1
23	Pest abatement	218,482	10
24	Citrus pest control	374,315	7
25	Police protection	141,411	13
26	Reclamation	3,144,499	146
27	Recreation and park	7,517,533	101
28	Road maintenance	19,704	8
29	Permanent road divisions	6,255	22
30	Sanitary	7,925,586	140
31	County sanitation	17,881,236	130
32	Sanitation and flood control	374,849	1
33	Separation of grade	46,623	1
34	County service areas	458,939	110
35	Sewer and sewer maintenance	708,997	8
36	Soil conservation	667,003	164
37	Storm water drainage and maintenance	672,880	39
38	Transit	53,555,930	3
39	Municipal utility	89,149,988	6
40	Public utility	3,685,930	68
41	California water	5,067,127	119
42	County water	28,070,091	200
43	Metropolitan water	38,425,536	1
44	Municipal water	25,314,308	52
45	Water agency or authority	10,142 012	23
46	Water conservation	1,973,053	18
47	Water replenishment	1,844,914	1
48	Water storage	1 403,567	9
49	County waterworks	3,327,434	93
	State total	$471,906,106	3,342

Source: State Controller, *Annual Report*

budget session. Yet this means that the public's relative needs and desires for many services are never measured against each other in a deliberate allocation process, so that it is possible that more urgent needs which are subject to the general budgeting procedure may lose out.

Some control over future growth of these districts may result from the local agency formation commissions created by act of the 1963

Legislature. Many such districts could probably be combined in the interests of greater economy. There is much attraction in the idea that he who receives the service should pay for it, but services should also be provided in the most economical manner, and by governmental bodies which are responsive to the electorate

(1) Expenditures

Reported expenditures in fiscal 1953 were only about $35 million, but by 1963 they had skyrocketed to $472 million, an increase of 1,226 percent.

TABLE XXVI

SPECIAL DISTRICTS (EXCEPT IRRIGATION DISTRICTS) GENERAL PURPOSE EXPENDITURES: 1952–53 TO 1962–63

(Dollar figures in thousands)

Fiscal year ending	Number of districts	Total general purpose expenditure	Operating expenditure	Capital outlay
1953	1,322	$35,585	$19,105	$16,480
1954	2,275	109,259	56,833	52,426
1955	2,409	134,980	80,172	54,808
1956	2,780	154,711	107,593	47,118
1957	2,889	196,262	129,639	66,623
1958	2,983	209,750	148,802	60,948
1959	3,038	264,298	192,702	71,596
1960	3,123	330,163	222,372	107,791
1961	3,178	388,796	259,724	129,072
1962	3,237	436,716	275,749	160,968
1963	3,342	471,906	298,046	173,860

Source Controller's *Annual Report* concerning Special Districts of California, 1952–53 to 1962–63

TABLE XXVII

SPECIAL DISTRICT BONDED DEBT, DEBT SERVICE EXPENDITURES FROM BOND INTEREST AND REDEMPTION FUNDS, AND EXPENDITURE FROM LONG-TERM INDEBTEDNESS: 1952-53 TO 1962-63

(Dollar figures in thousands)

Fiscal year ending	Bonded debt	Debt service	Expenditure from long-term indebtedness
1953	$139,089	$5,168	$8,107
1954	198,391	30,822	40,151
1955	515,167	39,221	51,987
1956	552,802	41,412	70,029
1957	588,867	43,048	62,843
1958	666,014	48,731	92,110
1959	871,339	57,070	108,755
1960	992,051	79,144	143,094
1961	1,127,581	84,336	147,078
1962	1,284,040	98,111	144,620
1963	1,476,341	109,122	135,814

Source Controller's *Annual Report* concerning Special Districts of California, 1952–53 to 1962–63.

TABLE XXVIII

SPECIAL DISTRICTS (EXCEPT IRRIGATION DISTRICTS) REVENUES, 1953–54 TO 1962–63 *

(Dollar figures in thousands)

Fiscal year ending	General fund income	Taxes or assessments	Charges for services	Subventions and grants	Other income	Bond interest and redemption fund
1953	$35,329	$30 055	$1,949	$2,256	$1,069	$4,783
1954	127,728	59,605	54,952	6,253	6,919	29,401
1955	145,894	66,280	65,684	8,049	5,881	28,590
1956	181,355	84,592	78,411	10,940	7,412	30,623
1957	207,774	93 241	93,050	11,947	9 535	32,287
1958	225,699	100,267	104,548	10,841	10,043	43,254
1959	287,526	109,609	152,470	9,478	15,068	48,376
1960	335,740	121,761	176,739	16,202	21,038	63,115
1961	379,930	132,949	204,632	18,462	23 815	64,744
1962	426,674	150 453	233,487	12,681	28,079	67,908
1963	481,370	161,184	261,940	16,114	42,432	70,809

* Data for 1953–63 were not available in these categories

Source State Controller, *Annual Reports*

(2) Revenues

Taxes and assessments, together with charges for service, are the chief means of financing special districts In 1953–54 taxes and assessments on property provided 47 percent of general fund income, and service charges 43 percent By 1963, these were in reverse importance, with charges producing 54 4 percent of revenue and taxes only 33 5 percent Subventions and grants made up another 3 3 percent and miscellaneous income almost 8 8 percent of total income

TABLE XXIX

IRRIGATION DISTRICTS, ASSESSMENTS COLLECTED FOR GENERAL PURPOSE, BY CALENDAR YEARS
(Dollar figures in thousands)

1952	$8,095	1958	$10,731
1953	7,660	1959	11,537
1954	8,217	1960	11,667
1955	8,702	1961	12,115
1956	9,461	1962	12,003
1957	9,835	1963	11,621

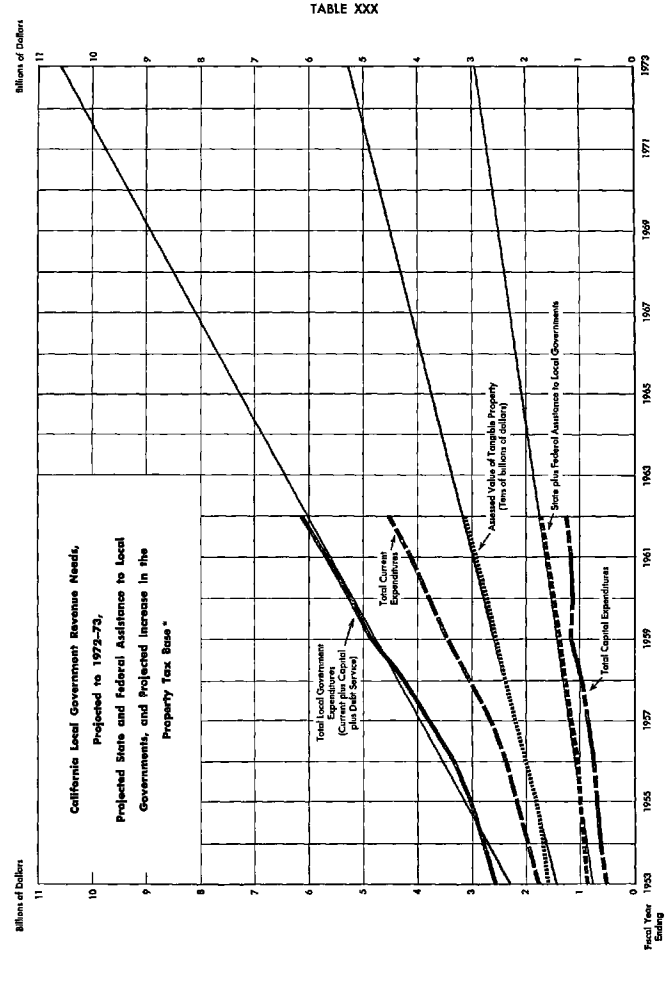
Source State Controller, *Annual Reports*

TOTAL PROJECTED NEEDS AND MAIN SOURCES OF REVENUE

The chart on the following page shows the actual total dollar expenditures of all local governments, as well as the subcategories of current and capital expenditures Current expenditures have risen more rapidly and at a more even rate than have capital expenditures There has been some slackening in the rate of capital expenditure in the last four years, producing a slight apparent slowing down in the rate of growth of total local government expenditures On the assumption that this slowing down of trend is not temporary, a visual trend line indicates that local government expenditures will rise considerably faster than the property tax base (as indicated by a projection of assessed valuation of tangible property) or state plus federal assistance to local governments

On the assumption that the slowing down of capital expenditures in recent years has represented the postponement of needed capital improvements, such as roads and public buildings, or that capital requirements will grow for such projects as junior colleges and corrections facilities, then this trend projection will prove too low In that case, the gap between local government expenditure needs and foreseeable future revenues will be even wider Additional revenues for the support of local government will be urgently required

TABLE XXX


California Local Government Revenue Needs,
Projected to 1972–73,
Projected State and Federal Assistance to Local Governments, and Projected Increase in the Property Tax Base*
Billions of Dollars
Billions of Dollars
Fiscal Year Ending
1953
1955
1957
1959
1961
1963
1965
1967
1969
1971
1973
Total Local Government Expenditures (Current plus Capital plus Debt Service)
Total Current Expenditures
Assessed Value of Taxable Property (Tens of billions of dollars)
State plus Federal Assistance to Local Governments
Total Capital Expenditures

THE ROLE OF LOCAL TAXATION IN THE TOTAL FEDERAL-STATE-LOCAL TAX STRUCTURE

We return now to a consideration of our local government tax structure, its place in the total federal-state-local tax system, and its increasingly important role both in California and the nation. Then we shall be in a position to seek some answers to the basic question of how local governments can obtain additional revenues. Can the property tax be improved and exploited more fully; can nonproperty tax revenues plug the gap, or must the local governments look to the state and federal governments for much more assistance?

For the year ending June 30, 1963, the total tax bill of 17,380,000 Californians was $15,964,900,000. This was allocated among the various levels of government for the past five years as follows:

TABLE XXXI

TOTAL TAX COLLECTIONS IN CALIFORNIA

(In billions of dollars)

	1958–59	1959–60	1960–61	1961–62	1962–63
Federal	$6.9	$8.0	$8.4	$9.0	$9.8
State*	1.9	2.3	2.5	2.7	3.0
Local	2.1	2.3	2.5	2.7	3.0
Total	$10.9	$12.6	$13.4	$14.4	$15.8

* Other than disability insurance

Source: State Board of Equalization, *Annual Report*, 1963–64

The federal taxes in 1962–63 were:
(In thousands of dollars)

Individual income	$7,058,000
Corporate income	1,439,900
Excises	846,700
Estate and gift	272,600
Other	128,100

The state taxes were:
(In thousands of dollars)

Retail sales	$794,500
Motor vehicle and gasoline	686,800
Unemployment	643,100
Personal income	324,200
Bank and corporate income	306,500
Inheritance and gift	95,000
Alcoholic beverages	72,100
Other	356,100

The local taxes were:
(In thousands of dollars)

Local property taxes	$2,679,500
Local sales taxes	261,300

(Business license taxes were $48.7 million in 1962–63, and franchise taxes $12.5 million.)

Source *Tax Digest*, 3rd Quarter, 1963, p. 78

In the nation as a whole during the 1952–62 decade, state and local expenditures increased twice as fast as the gross national product and three times as fast as federal civilian expenditures. Total taxes (excluding nontax revenues) rose 56 percent, with the different levels of government accounting for this increase as follows *

	Rate of increase 1952–62
Federal taxes	38%
State taxes	109%
Nonmunicipal local taxes (mostly property taxes)	146%
City taxes	83%

Within the federal category, federal income tax increased by only 35 percent, primarily because corporate income tax collections remained practically unchanged between 1952 and 1962, while personal income taxes rose 63 percent. Within the state and municipal categories, general sales and selective excise taxes increased 110 percent and 117 percent, respectively. Property taxes, while increasing very sharply in the nonmunicipal area, declined in importance in municipal finance, from 50 percent of the total in 1952 to 44 percent in 1962.

The total tax burden as a percentage of net national product was practically unchanged over this decade, being $24.28 per $100 of net national product in 1952, and $24.42 in 1962. Within the totals, the approximate shares in 1962 were

Federal	$16.00
State	4.00
Nonmunicipal local	2.50
City	1.70

Over the decade, federal taxes on this relative basis actually declined $2.23, but were more than offset by the combined increases of the state and local levies. The state tax burden increased $1.02, the local nonmunicipal by $0.93, and the municipal by $0.22. The property tax showed an increase in burden of $1.03, of which only $0.14 could be attributed to an increase in municipal property taxes. Sales and excise burdens increased $0.47 for the decade, with the federal declining $0.23.

* Reuben A. Zubrow, Professor of Economics, University of Colorado, "Recent Trends and Developments in Municipal Finances," paper presented at 49th Conference of International City Managers Association, October 16, 1963.

the state increasing $0 60, and the local by $0 07 The income tax showed a *decrease* of $1 86 for all levels of government combined, which was primarily due to the fact that the absolute level of corporate income taxes remained unchanged during the period

These figures demonstate the increasingly heavy burden of *local* taxes, even while the total of *all* state-federal-local taxes did not increase appreciably during the period from 1952 to 1962 What this boils down to is that tax burdens have been shifted to those who pay property taxes, and to a lesser extent to those who pay sales and excise taxes If we consider the incidence of these taxes, we will find much agreement that the net effect is a proportionately heavier burden on the lower income property owner and the lower income consumer, although exemption of food softens the latter effect in California If that part of the property tax which is levied on the improvements, as distinct from the land, of business enterprises tends to be shifted to consumers to a considerable extent, this will tend to further increase the regressiveness of the local tax structure

Equity considerations would appear to indicate that needed changes in the revenue structure should bring reforms in the property tax, with less reliance on it if possible, unless overwhelming considerations of total revenue requirements or impact on economic growth should be overruling.

CRITERIA FOR CHOICE OF FUTURE LOCAL GOVERNMENT REVENUE SOURCES

If local government expenditures continue to rise as rapidly as they have in the past decade, what should be done to meet the cost? Some of the criteria that may be considered in choosing between alternative courses of action (or inaction) are the following:

1 Balance and equity in the state-local revenue-raising system (with due regard for federal taxes as well) This means taking account of the final incidence on persons and economic groups of particular taxes and nontax revenues. All should bear a fair share of the cost of government according to some index of ability to pay. Net income is probably the best single measure, although ownership of productive resources should not be neglected.

2 Benefits received may be a fair criterion where the benefits are unusual or separable, but this approach should not be extended beyond the *limits of reasonableness.* (For example, most people would balk at separate charges for the service of a fireman in putting out a fire in their home.)

3 Economy in administration and enforcement expense.

4 Flexibility. Additional revenues should be applied where needs are greatest Jurisdictions which do not need new revenues should not be led into adopting new levies. Neither should they stand in the way of needy jurisdictions.

5. Use of revenues that minimize conflict and competition among local jurisdictions.

6 Preservation of the greatest possible degree of local independence as to what services should be rendered and how they should be financed

7. Avoidance of heavy taxpayers' compliance burden, and the levying of a lot of "nuisance" taxes that raise very little revenue.

8 Allowance of only such exemptions as are defensible on grounds of sound public policy. One suggestion is to give exemptions only to those groups or individuals that the government would give corresponding appropriations to.

9 Avoidance of an unfavorable impact on the local and state economy Stimulating economic growth will help provide jobs, incomes, and local government revenues.

10 Production of sufficient revenue to cover local government needs on which there is a citizen consensus, plus willingness to make an adequate revenue-raising effort, with due regard for fairness in the allocation of the burden.

HOW WELL DO LOCAL NONPROPERTY TAXES MEET THESE CRITERIA?

A 1961 report of the Advisory Commission on Intergovernmental Relations* has this to say·

"Many local nonproperty taxes distort competitive business relationships because the local taxing jurisdiction, even the very large city, is typically smaller than the economic area of which it is a part Its taxes, therefore, handicap local business firms in their competition with firms beyond the city line Local taxes typically entail high administrative costs for government and heavy compliance burdens for taxpayers, and all the while are not well administered Furthermore, the widespread use of these taxes handicaps state government itself, through its adverse impact on the state's economy and by limiting its freedom in shaping its own tax system."

This report goes on to suggest some general guidelines (quoted in part):

1 The case for most nonproperty taxes is strongest in the large urban places. Even here these taxes are best imposed cooperatively by a group of economically interdependent jurisdictions Therefore, the city and the other jurisdictions comprising an economic area should be provided with (a) uniform taxing powers and (b) authority for cooperative tax enforcement.

2 In states where a particular tax, such as the sales or income tax, is in widespread use by local governments and is simultaneously used also by the state, the most promising coordinating device is the local tax supplement to the state tax It gives local jurisdictions access to the superior enforcement resources of the state and eases taxpayer compliance, but leaves the decision to impose the tax to local initiative

3 In situations where a particular nonproperty tax is widely used locally but the state does not itself use the same tax, the state can nonetheless help local jurisdictions by facilitating the pooled administration of the separate local taxes by a state administrative agency; alternatively, it can authorize local jurisdictions to join in creating such an administrative agency for themselves

4 States can minimize needless variety among local nonproperty taxes by accompanying the authorization for using them with generally applicable specifications with respect to their structure (tax base, exemptions, etc) and administrative features

5 Individual states' tax policy should aim to limit local government to the more productive taxes Local jurisdictions should be discouraged from levying many different kinds of taxes, none of which produces enough to warrant reasonably good enforcement

6 States should provide their local units with technical assistance by serving as a clearinghouse of information on tax experience in other parts of the state and country

7 While the tax sharing device may run a poor second to grants-in-aid where the objective is to provide state financial assistance to local units on a stable basis, it has distinct advantages as a substitute for locally imposed taxes.

* *Local Nonproperty Taxes and the Coordinating Role of the State,* Report A-9, September 1961

STUDY OF SPECIFIC NONPROPERTY TAX REVENUES OF LOCAL GOVERNMENTS

A. Business License Taxes

After property and sales taxes, business licenses were the third most important source of tax revenue to California cities in 1962-63. They produced almost $39 million.

The cities may tax for revenue as well as for regulatory purposes. The relevant sections of the Constitution are Article XI, Sections 6, 11, 8½, 12. Both charter and general law cities have the power to license for regulation and revenue, except where the charter itself contains a limitation on that power. *

Counties, on the other hand, are not empowered specifically by the Constitution to license for revenue. They are restricted mainly to licensing for regulations by Section 16100 of the Business and Professions Code. Section 16101 and Section 16102 permit a license for revenue to be issued to hawkers, itinerant peddlers, or itinerant vendors, but exempts war veterans. It is not surprising that counties received only $1.1 million in revenue from this source in fiscal 1963. Nearly half of this was collected in Los Angeles County.

(1) Base of the Tax

(a) *Cities.* Some cities impose only flat-rate license taxes, but a larger and growing proportion relate the license tax in some measure to the volume of business. In the League of California Cities study published in 1957, half of the 287 cities included in the survey were taxing on the basis of gross receipts, less than a third on a flat-rate basis, and about one-sixth on the basis of average number of employees, and one on the basis of net income.

There was also variation in which types of business were subject to the license tax. All but 37 out of the 287 had some levy on wholesaling, all but 71 on manufacturing or processing, all but two on retailing, all but two on professions, and all but two on contracting. In general, gross receipts was defined to mean the total sale price, or charges received, minus cash discounts and taxes required to be paid by consumers. Other measures entered into the base for such businesses as dancehalls and theaters, where amount of floor space or seating capacity was used. Average number of employees was also used, either alone or in combination with gross receipts.

(b) *Counties.* Counties were restricted to the flat-rate type of license tax for regulation purposes, although the Los Angeles County ordinance appears to have used different brackets of gross receipts.

(2) Rates

Most of the ordinances using gross receipts provided for a fixed dollar tax for each bracket of gross receipts. For example, the tax might

* League of California Cities, *Business License Taxes*, June, 1957, p. 3 and following.

be $5 per quarter if gross receipts were less than $2,000, $6 per quarter for gross receipts between $2,000 and $5,000 and so on, usually with some fixed upper limit

One of the equity problems is that, for example, retailers in different lines of business may have identical gross receipts, but different profit margins This is sometimes adjusted to a certain extent by classifying businesses as to type, so that those with small profit margins (taking the average for the industry) would have lower rates

Another equity problem is that where the brackets are wide, the firm at the lower end of the bracket may be bearing a proportionately greater burden than the firm at the upper end of the bracket For these reasons, it has been suggested that *net receipts* would be a better basis Fairfax, in Marin County, has used this method

To quote the League of California Cities report, "Since the worth to the licensee of the privilege of carrying on business in a city is the profit he can derive from the exercise of that privilege, the payment he should make ought to be geared as closely as possible to that profit License taxes measured by net income most satisfactorily achieve this objective Gross receipts license taxes with rates making allowance for varying relationships between gross receipts and gross profits or net income can approximate this objective so far as classes of business are concerned, although discrimination among individual firms in any class of business is not eliminated License taxes measured by the average number of employees are inferior to either of the above and flat-rate taxes are wholly without justification except in special cases" *

The City of Portland, Oregon, permits licensees in retail, wholesale, and service businesses, manufacturers, hotels, professional persons, and certain miscellaneous businesses to elect between gross receipts and net income Under the net income option the annual tax is $15 plus 2 percent of all net income, under the gross receipts option it is $15 plus $1 40 per $1,000 of gross receipts in excess of $10,700 In 1956, 5,942 were using the net option and 7 255 the gross option † Net profits of unincorporated business are used as a base in the municipal income taxes of cities in Pennsylvania, Ohio, Kentucky, and Missouri Corporate profits are also taxed, except in Pennsylvania One study concluded that there was no evidence in these states that business either migrated out of a city or failed to locate in a city because of the tax, at least at the low rates of around 1 percent or less on net profits which were typical The problem of segregating what portion of the income was attributable to sources within the taxing city was generally settled by use of the "Massachusetts formula" which uses a combination of the percentage which payrolls, book value of property, and gross receipts within the city bear to the total of each item

(3) Impact

Some businessmen may regard business licensing for revenue with disfavor If some jurisdictions within an economic area levy the tax and others do not, there may be unfavorable competitive effects, not so much perhaps with retail businesses which desire to locate near the concentration of customers, but perhaps a little more in the case of

* *Business License Taxes*, June, 1957, op cit p 27.
† *Ibid*

wholesaling or manufacturing concerns Nevertheless this is but one item in a host of deciding factors for business location

There appears to be a logical case for taking the position that since businesses demand and get many services from cities and counties they should be willing to contribute in proportion to the worth of the services of local government to them If the portion of the property tax on improvements is shifted by business to consumers, then it would not seem unfair to require another type of contribution from the owners of business

Since many counties today render approximately the same range of urban services to businesses in the unincorporated areas as do cities, perhaps counties should be given the same power as cities to levy license taxes for revenue Counties receive relatively small amounts of sales tax revenue compared with the cities, and if property taxes prove to be not indefinitely expandable, then this may be one legitimate source of future revenue. Also those cities still using flat-rate taxes will be able to increase their revenues by moving to income-based taxes

It seems probable that in order for a county business license ordinance to be legal it would have to be levied on a countywide basis In this case a business already paying a license tax within a city should be entitled to credit this amount against his county tax It would be desirable, of course, to achieve some uniformity within a given economic area.

A crude estimate of possible revenue might be obtained by relating retail, wholesale, and service receipts within cities levying license taxes for revenue, and the total receipts for the county as a whole

B. Local Sales and Use Tax in California

(1) History

When the State of California reduced its sales tax levy from 3 percent to 2½ percent in 1943 in order to ease tax burdens at a time when the state's fiscal position was very good as a result of substantial wartime revenue collections plus limited wartime expenditures, it was regarded by several cities as an opportunity too good to be missed.* San Bernardino levied the first municipal sales tax in 1945, taking unto itself the revenue foregone by the state (and more, since it levied a 1 percent tax). San Bernardino was followed by Santa Barbara, Colton, Redlands, and Los Angeles By January, 1956, 19 cities collected a locally administered sales tax at a rate of ½ percent; 176 cities collected 1 percent; and one city, Needles, collected 1½ percent † The logic was clear to these cities—costs had gone up rapidly, particularly with wartime shortages to be made up, and the property tax base was not keeping up with costs Most of the cities exempted sales for delivery outside the city There was, of course, competition from retailers outside the city limits who were able to sell at prices which did not include the tax. Another problem was the relatively high cost of administration and the fact that most cities could not afford an adequate audit program, and therefore did not collect a substantial amount of revenue to which they were technically entitled ‡

* Dixwell L Pierce, "California Has a Sales Tax Headache," *National Tax Journal*, June 1953
† Board of Equalization, *Annual Report*, 1956–1957
‡ Dixwell L Pierce, *op cit*

Meantime, the state had restored its 3 percent sales tax rate in 1949. A desire for uniformity, plus the costliness of the local taxes, led to the passage of the Bradley-Burns Uniform Sales and Use Tax Law at the legislative session in 1955. This law enabled counties to levy sales and use taxes, provided that they contracted with the state board for administration, and provided they used the state's tax base and limited the rate to 1 percent Each city within a county levying the tax could then also levy a state-administered tax of 1 percent or less which was credited against the county tax If a city did not levy a tax, and the county did, sellers within the city would be collecting revenue for the benefit of the county government. City government officials rapidly saw that they could have this revenue for the city, without increasing the tax paid. If they stayed outside the Bradley-Burns program, the tax they levied would not be credited against the county tax, and would therefore mean that retail sales within the city would carry higher sales taxes than in the rest of the surrounding area, to the probable detriment of business

Seven counties, including Los Angeles, came into the program on April 1, 1956, and by the end of 1957, 81 percent of all state-taxable transactions were subject to local sales and use taxes under the Bradley-Burns Act.

When a city chose to come within the program but enacted a tax of less than 1 percent, then part of the tax collected within city boundaries under a 1 percent countywide tax would go to the county. Therefore the local division of such revenue was subject to local negotiation. If the county's prospective share did not look adequate, it had bargaining power in that it could refuse to enter the program If this happened, cities could not take advantage of the superior collection system of the state because they could not qualify for the Bradley-Burns program unless their county were a member Arguments over this local division of revenue slowed down the adoption of the program somewhat, but by 1964 the 58 counties and 385 cities had adopted this type of local sales tax Some of the last counties to adopt were Fresno, San Mateo, Santa Barbara, Siskiyou, Plumas, and Alpine.

The distribution of the sales tax between the cities and counties is shown in Table XXXII

In 1961 the Legislature passed a law exempting prescription medicines from the sales tax. It was estimated that this saved purchasers of these medicines $8 million a year, and reduced state revenue by $6 million. Another change, apparently designed to stabilize city sales tax rates and possibly membership in the program, required that on and after October 1, 1961, the adoption, amendment or repeal of Bradley-Burns ordinances will require a two-thirds vote of the total membership of the legislative body This would mean four out of five votes in the case of a five-man board.

(2) Cost of Administration

As can be seen in Table XXXII, the cost of administration as a percentage of total yield of the tax has been steadily reduced since the beginning of the program and is a very low amount in comparison to many other tax programs Changes in techniques, equipment, and reporting intervals have been some of the contributing factors This points

TABLE XXXII

NET AMOUNT OF LOCAL SALES TAX DISTRIBUTED TO CITIES AND COUNTIES

(In millions of dollars)

Fiscal year ending	Net amount distributed			Charge for administration	
	Total	To cities	To counties*	Percent	Amount
1957	$124.5	$103.2	$21.3	1.65	$2.1
1958	161.9	132.4	29.5	1.72	2.8
1959	189.8	115.0	44.8	1.64	3.2
1960	215.1	162.7	52.4	1.40	3.9
1961	222.8	174.5	51.8	1.60	3.7
1962	240.6	186.9	53.8	1.57	3.8
1963	261.2	205.4	55.8	1.52	4.2
1964	282.2	222.9	59.2	1.53	4.4

* Includes City and County of San Francisco

† Includes $3.8 million advanced to cities and counties in the 1958–59 fiscal year that would normally have been distributed in the first quarter of 1959–60 to help became of the 1957–58 business recession

‡ Excludes amount discussed in previous footnote

Source State Board of Equalization

up the advantages of state administration of a uniform local tax, compared with many different local administration programs

(3) Base

The base of the local sales and use tax is, with minor exceptions identical with that for the state levy Broadly speaking, retail sales other than food for home consumption, services, and prescription drugs are taxed The tax is imposed upon the retailer, who collects the tax from the consumer The use tax is imposed upon the use of property after it is brought into this state from another state, and its purpose is to prevent avoidance of the sales tax by buying goods out of state

Other exemptions from the sales tax are gross receipts from sale or use of gas, electricity, and water, gold, goods sold for use in public works, ships of over 1,000 tons, motor vehicle fuel (which is taxed separately), animal life, feed, seeds, and fertilizer (destined to produce food), ice, newspapers and periodicals, and a number of other items Sales to the United States government are exempted

A special use tax exemption applies to out-of-state purchases by privately owned public utilities Although these firms pay the 3-percent state use tax, they are exempt from the 1-percent local use tax They are exempt since at the time of adoption of the Bradley-Burns Act, not all counties imposed the 1-percent levy and the utilities would have had to account for the ultimate jurisdiction in which each of its purchases would be used in order that the 1-percent tax could be properly distributed When buying small, cheap parts which may be used throughout an extensive transmission systems spread over several counties and many cities, the cost of accounting for the taxable versus tax free items would have been more than the tax liability The loss to the local governments has been estimated at $3 to $4 million annually

(4) Rates

As explained in the previous section on the history of the tax, the maximum local rate is 1 percent, this being in the first instance a county tax Cities may have lesser rates, up to a maximum of 1 percent, which means that all of the revenue being collected within the city limits goes to the city At less than 1 percent, some of this revenue goes to county government. For example, if the city rate is 0 80 percent, then 20 percent of the revenue collected in the city goes to the county The lowest city rate in 1962–63 was 0 60 percent in the City of Colusa, and the highest 1 percent All of the cities in each of nine counties were at this maximum rate, including the populous Los Angeles, Orange, and San Diego Counties, together with many individual cities See Appendix C, column 2, for the various rates

(5) Incidence and Burden

The legal intention was to collect the tax from the consumer The amount of the tax is stated separately from the purchase price, and retailers are prohibited from advertising that they have absorbed all or part of the tax by reducing the price of the product before tax Nevertheless, the incidence of this type of tax cannot be dismissed so simply Some of the factors which will influence the initial burden sustained at various points in the economy by various groups will be the competitive or noncompetitive structure of the industry, the character of supply and demand conditions, price policies in different firms and industries, and so on Resources may be transferred from taxed to nontaxed industries However, once the initial adjustments are made, an ongoing sales tax of general application will be passed on to consumers for the most part In a buoyant economy, consumption taxes may act as a favorable brake on inflationary tendencies, but generally rising incomes have been associated in the last few years with a declining proportion of income being spent on taxable goods, while a greater proportion was spent on services which are not taxed This of course has meant that sales taxes may grow less fast than incomes at high levels In a period of low economic activity, sales taxes will have deflationary effects, reducing consumer demand

The distinction may be made between the direct and the indirect burden of the tax The direct burden means the loss of purchasing power felt by the consumer when he pays the tax * The indirect, or unseen, burden will be the sales taxes paid by businessmen on property used in the productive process, costs which will be included in the base price at retail Other business taxes, such as license and property taxes, may be also included here to the extent to which they were not absorbed by the reduction of profits of business at an earlier stage

(6) Is the Revenue From the Local Sales Tax Equitably Distributed?

(a) *Between cities and counties* In 1962–63 the cities received 79 0 percent of the total amount returned to local jurisdictions while the counties got 14 5 percent The City and County of San Francisco received 6 44 percent Thus the cities are receiving a considerable

* William H Hickman "The Distribution of the Burden of California Sales and Other Excise Taxes," issued by the State Board of Equalization, December 1958 See page 9 for a discussion of this point

amount of relief from the necessity of using the property tax to finance growing costs Expressing the sales tax distributed to the cities as a property tax equivalent, the typical city in 1962–63 received a sufficient amount of sales tax revenue to save $0 97 on the property tax, whereas the median value for counties was about $0 20 * On a per capita basis cities collected an average of $16 88 per person, while counties collected only $3 21 per person

It can be seen that the counties benefit much less than the cities from the use of the local sales tax The larger urban counties in particular receive very limited relief For example Los Angeles County's property tax equivalent from sales tax revenues was $0 05; San Diego, $0 06; Alameda, $0 10, Contra Costa, $0 11; and Orange County, $0 03 When one considers the heavy costs borne by some counties as a result of urbanization, the question arises as to whether they should not receive a greater proportion of sales tax revenues These revenues might, for example, be apportioned according to population, as in the case of some motor vehicle taxes Or other compensating revenues may be allocated primarily for county use, if relief from the property tax is sought in this area as well as in cities

(b) *Among the different cities.* The range in per capita amounts of sales tax received by cities was from less than $0 005 in Bradbury to $10,073 per capita in Vernon, which is an industrial city with a population of 229 persons Amounts of over $100 per capita were likewise received in Emeryville, Commerce, Irwindale, and Industry †

Among cities the median value of per capita receipts was $15 in 1963, but there was a great deal of variation in the yields for the various cities This can be seen in the following frequency distribution·

Per capita sales tax receipts	*Number of cities*
Less than $5 00	24
$5 00– 9 99	92
10 00–14 99	80
15 00–19 99	79
20 00–24 99	49
25 00–29 99	25
30 00–39 99	19
40.00–99.99	7
100 00 and more	5

Source See Appendix C

Some of the lowest per capita receivers were purely residential areas such as Palos Verdes or Piedmont Large commercial or industrial centers got considerably more than the "bedroom" cities Some residential cities have had policies against encouraging certain types of industry to locate within their boundaries. Others have incorporated without adequate tax bases to begin with The question of equity would be very hard to decide in these cases

(7) Local Sales Tax in Other States

At present sales taxes are levied by local governments in 13 states. The first local sales tax was levied by New York City in 1934 followed by New Orleans in 1938 Now, 6 of the 15 largest cities in the United States impose a sales tax Table XXXIII indicates the number of local governments imposing a sales tax (by state).

* This excludes the City and County of San Francisco, which saved $1 14 on the property tax

† See Appendix C

TABLE XXXIII

LOCAL SALES TAX RATES, JANUARY 1, 1964 [1]

State	State tax rate (percent)[2]	Local tax rates[3]				
		½ percent	1 percent	2 percent	3 percent	4 percent
Alabama	4					
77 municipalities			[7]2	5		
18 counties		2	15	1		
Alaska						
32 municipalities			2	20	10	
4 school districts			2	2		
Arizona	3					
9 municipalities		3	6			
California	3					
385 municipalities			385			
58 counties[4]			58			
Colorado	2					
6 municipalities			5	1		
Illinois	3½					
1,170 (approx.) municipalities		1,170				
68 counties		68				
Louisiana[5]	2					
14 municipalities			14			
4 parishes			4			
1 school district			1			
Mississippi	3					
151 municipalities		39	112			
New Mexico	3					
23 municipalities			23			
New York:						
8 municipalities			[8]2	5		1
5 counties[9]			[8]1	3	1	
1 school district		1				
Tennessee	3					
2 counties			2			
Utah	3					
133 municipalities		133				
24 counties		24				
Virginia						
1 municipality (Bristol)[9]					1	

[1] This tabulation includes only those local sales taxes about which authoritative information is available. The following cities with 1960 populations of 50,000 or more impose a sales tax: Albuquerque, Baton Rouge, Denver, Huntsville, Jackson, Mobile, Montgomery, New Orleans, New York, Niagara Falls, Phoenix, Pueblo, Salt Lake City, Syracuse, Tucson, and all cities of 50,000 or over in California and Illinois. The District of Columbia, not included in this tabulation, levies a 3-percent sales tax.

[2] The rates shown are those applicable to sales of tangible personal property at retail. The state rate for Illinois includes a 1-percent additional tax, effective through June 30, 1965.

[3] Twenty of these cities are in 12 counties that also have local sales taxes. The legislation authorizing county sales taxes, however, takes account of any city sales taxes in the county. For example, in Marion County, where the general county rate is 2 percent, it is only 1 percent in cities that levy their own 1-percent sales taxes, so that the overall rate in those cities is no higher than the general county rate.

[4] Includes the City and County of San Francisco.

[5] Three of the 14 municipalities, namely, Baker, Baton Rouge, and Zachary, are located in East Baton Rouge Parish, which is one of the four parishes imposing a tax. The East Baton Rouge Parish tax does not apply to the three municipalities.

[6] Includes Watertown, the only sales tax city located in a county (Jefferson) that also has a local sales tax. The Jefferson County 2-percent tax is reduced to 1 percent in Watertown.

[7] Excludes Warren County's 2-percent tax, suspended during litigation. Although the tax was upheld by the Court of Appeals, it had not been activated by the end of 1963.

[8] Erie County: The county 1-percent rate is reduced to ¾ of 1 percent in Buffalo because of Buffalo's 2¼-percent consumers' utility tax.

[9] Norfolk has adopted a 2-percent sales tax, effective July 1, 1964.

Source. Advisory Commission on Intergovernmental Relations, "Tax Overlapping in the United States, 1964," Washington, D C., July 1964. p. 108

C. Local Income Tax

(1) History

Beginning in 1939 when Pennsylvania granted to its local jurisdictions the right to tax anything not being taxed by the state itself, there has been a growth in the use of the local income tax until, in 1964, 10 of the 43 largest cities were using it.* It is restricted to the States of Pennsylvania, Ohio, Kentucky, Missouri, Alabama, and Michigan, as shown in Table XXXIV although it has been widely considered by cities in a number of other states.† It has often been adopted in a situation of imminent fiscal crisis, where property taxes had become too burdensome, and where the cities lacked authority to levy local sales taxes

Pennsylvania's municipal income tax was at first ruled unconstitutional because of its exemption provisions, but a successful statute was passed in 1939, and in 1947 the state had given this authority to 3,600 local jurisdictions By 1964, local income taxes were being levied by approximately 44 cities, 350 boroughs, 1,265 school districts, and 145 townships, with each year bringing adoptions by about 200 new jurisdictions.

In Ohio, Toledo was the first to adopt such a tax in 1946, followed by Columbus, Springfield, Youngstown, Dayton, Warren, Canton, Cincinnati, and many smaller cities By 1961 it was being used by 42 cities and 13 villages

It was adopted by Louisville, Kentucky, and St Louis, Missouri, in 1948 Gadsden, Alabama, has a tax which was imposed as an occupational license tax, as were those in several Kentucky cities One county (Jefferson) in Kentucky levies this latter type of local income tax In both Kentucky and Missouri there are also state-level income taxes

The tax has been very productive of revenue where levied, despite the low rates customarily used For 7 of the 10 cities in Ohio over 50,000 population which used the tax in 1962, total revenue from the income tax exceeded all other tax revenues combined It has produced one-quarter or more of total general revenues in cities where adopted even at rates as low as one-half of 1 percent.† It is also very responsive to inflation

(2) Base

The base used varies somewhat, but it is usually a tax on gross earnings and net profits Personal exemptions are allowed in Warren, Ohio, where the first $1,200 is exempt Deductions for medical expenses, interest or taxes generally are not allowed Personal income in the form of dividends, interest, and rent is not usually taxed by local income tax laws

Because of the common exemption of unearned income, the tax has been sometimes criticized on the ground of equity, but there seems to be some feeling that receivers of significant amounts of unearned income could easily migrate out of the jurisdiction In some instances rent is

* Advisory Commission on Intergovernmental Relations, "Tax Overlapping in the United States," Washington D C , July 1964 p 134
† These include New York, Atlanta Baltimore, Boston, Chicago, Dallas, Fort Worth, Minneapolis, and San Francisco
‡ See Table XXXIV

TABLE XXXIV

MUNICIPAL INCOME TAX RATES, JANUARY 1, 1964

State and city	Rate (percent)	Income tax as percent of total tax revenue, 1962 (cities over 50,000 population)	State and city	Rate (percent)	Income tax as percent of total tax revenue, 1962 (cities over 50,000 population)
Alabama—Gadsden	2 0	42 2	Ohio—continued		
Kentucky			Cities of 50,000 population and over—continued		
Catlettsburg	1 0	XX	Lima	0 75	61 2
Covington	1 5	28 2	Springfield	1 0	64 1
Frankfort	1 0	XX	Toledo	1 0	54 1
Hopkinsville	1 0	XX	Warren	5	64 1
Lexington	1 5	51 2	Youngstown	1 0	54 8
Louisville	1 25	17 1	72 cities and villages (with less than 50,000 population)	Ranges from 0 5 to 1 percent	XX
Jefferson County[1]	1 25	XX			
Mayfield	67	XX			
Maysville	1 0	XX			
Newport	2 0	XX			
Owensboro	1 0	XX			
Paducah	1 0	XX	Pennsylvania		
Pikesville	1 0	XX	Cities of 50,000 population and over		
Princeton	1 0	XX	Allentown	1 0	28 4
Michigan			Altoona	1 0	21 3
Detroit	1 0		Bethlehem	1 0	24 6
Flint	1 0	-	Erie	1 0	20 7
Hamtramck	1 0	XX	Johnstown	1 0	17 2
Missouri			Lancaster	3 5	27 1
Kansas City	1	[2]	Philadelphia	1 6.25	10 4
St Louis	1 0	30 1	Pittsburgh	1 1 0	21 1
Ohio			Scranton	[5] 5	17 9
Cities of 50,000 population and over			Approximately 45 other cities, 350 boroughs, 145 townships and 1,265 school districts	Ranges from 0 25 to 1 0 percent	XX
Akron	1 0	-			
Canton	[3]	53 9			
Cincinnati	1 0	30 7			
Columbus	1 0	66 0			
Dayton	75	46 0			
Hamilton	8	49 0			

Note Excludes Washington, D C which has a graduated net income tax that is more closely akin to a state tax than to these municipal income taxes

[1] A taxpayer subject to the 1 25-percent tax imposed by the city of Louisville may credit this tax against the 1 25-percent tax levied by Jefferson County

[2] Tax went into effect after fiscal year 1962

[3] The Lancaster city tax is 0 5 percent The Lancaster township school tax is 1 percent

[4] The Pittsburgh city tax is 1 percent The Pittsburgh school district tax is 0 5 percent

[5] The Scranton school district rate is also 0 5 percent.

Source Advisory Commission on Intergovernmental Relations, "Tax Overlapping in the United States," Washington, D C, July 1964, p 135

taxed only if it arises from a business activity (e g , takes up 30 percent or more of the taxpayer's time †) Some cities exempt capital gains, while others tax them if the sale of assets is a business activity

There is variation in the treatment of residents and nonresidents on the one hand, and on the other, income earned inside and outside the jurisdiction In Pennsylvania (except for school districts) all income earned by residents may be taxed regardless of origin, and nonresidents may be taxed on the basis of income earned in the taxing jurisdiction (but credit must be allowed for taxes paid to the jurisdiction of domi-

† *Ibid*, p 21

cile). An exception is Philadelphia, which has *full* taxing power over income earned in the city by persons who reside elsewhere * School districts may tax only residents Detroit residents are required to pay 1 percent of taxable income whether earned in the city or not. Nonresidents are required to pay on the basis of income earned in the city Where nonresidents are required to pay, there is a tendency for cities to adopt the tax in a "cluster" around a major taxing center

(3) Rate

Tax rates are typically low and levied at a flat rate. They range from one-eighth of 1 percent to 2 percent, but are usually one-half of 1 percent or 1 percent. There are usually state restrictions on maximum rates, and it has been presumed that graduated rates are ruled out by constitutional requirements of uniformity in taxation

(4) Administration Cost

The percentage cost to yield was quite low, in 1959 below 5 percent in the larger cities, and was 2 percent in Louisville and St. Louis. The usual method of collection is by withholding the tax from wages and salaries in the case of individuals Net profits of both unincorporated and incorporated businesses are self-assessed, as are incomes of individuals who live outside the city, earn money in it, but who are not subject to withholding. It is sometimes difficult to check the reported income of professional people and small unincorporated businesses Where firms are required to have business licenses, this provides a means of checking whether all firms are filing reports. Good auditing is expensive There has been no apparent difficulty in collecting corporate income taxes.

(5) Compliance Cost

The main compliance problem comes in businesses which withhold taxes from the wages and salaries of employees where the jurisdictions of residence and employment are different. Employers may not have adequate knowledge of the ordinances in neighboring jurisdictions, the reporting dates may be different, and different kinds of information may be required by different taxing jurisdictions Where there are only one or two employees, the amount of the tax may seem insignificant compared with the cost of reporting it The chief compliance problems are due to lack of uniformity in local ordinances, and lack of centralized collection procedures.

Evasion is pretty much confined to areas where there is not employer withholding. Canadian municipalities found evasion was a difficult problem under a system of self-assessment. Sigafoos estimates that the evasion rate does not go above 10 percent of total liability, but nevertheless adequate enforcement is a definite local problem.

(6) Incidence and Burden

In the case of the gross income tax on wages and salaries, the incidence is on the worker. If there are no exemptions or deductions, the proportional nature of the tax will make it burdensome for low-income families A mitigating circumstance is the relatively small dollar

* Robert A Sigafoos, *The Municipal Income Tax*, 1955, p 27.

amounts involved, but there seems to be a good case for exemptions at the lower end of the scale.

In the case of the net profits tax on both unincorporated and incorporated business, the primary incidence is on the owners of the business, although there are circumstances in which a portion (perhaps up to one-third as Musgrave suggests) can be shifted to consumers in the form of higher prices. The effects may be somewhat uneven as between new and growing businesses and the older well-established ones, in the sense that there may be a shortage of capital for expansion where there has been insufficient time to build up retained earnings, a situation which will be accentuated by the necessity of paying a tax on profits. Another argument that is often made is that a tax on corporate profits by reducing earnings to owners makes equity investments less attractive than nonequity investments, such as municipal and corporate bonds, which might have a somewhat negative effect on economic growth.

Sometimes the argument is made that a payroll tax will create difficulties in attracting and holding a labor force Where the rates are low this position will probably not have much merit Similarly, the argument is made that this tax will induce businesses to migrate out of a taxing community, or decide not to locate there While there may be such an effect in marginal cases, it does not seem to have been a general effect In the opinion of Sigafoos, " . it is doubtful that firms will sacrifice the basic cost advantages of a central location to win a point over a relatively minor net profits tax "*

Another consideration is that if the local income tax replaces a property tax there may be less regression in the lower ranges than with an equivalent property tax Bronder has calculated for the city of Detroit that an income tax of one percent with a $600 exemption is less than the "equated" property tax until the $5,000 income is reached † After that, it is more. (The equated property tax is the tax that would have been necessary to raise the same amount of revenue as the new income tax, and for Detroit worked out to be $8 per $1,000 of assessed valuation.)

(7) Some Additional Problems

(a) Where a central city taxes the incomes of commuting workers, on the theory that they cause expenditures for the central city, it is sometimes argued that this is "taxation without representation " This may be true also of city sales taxes paid by suburban residents. In Pennsylvania there has been a tendency for the surrounding communities to enact similar taxes to keep the revenue "at home." A desire to get sales tax revenues has been a factor leading to incorporations in California, and this might be a result with a municipal income tax here Another possible outcome might be more of a desire on the part of the outlying areas to be annexed by the central city

If an industrial city with very few residents levied this tax (which would mean a tax on business profits as well) on nonresident employees, there would certainly be a tendency on the part of the surrounding communities to levy a similar tax in retaliation.

* Sigafoos, op. cit., p 130.
† Leonard D. Bronder, "Michigan's First Local Income Tax," *National Tax Journal*, December 1962, p 427.

(b) Could counties as well as (or rather than) cities be empowered to levy local income taxes? There would certainly be benefits in area-wide administration, collection and enforcement, and most of all in uniformity within an economic area It has been suggested that in the absence of a county-wide tax each unit could be allowed to levy a tax of up to one-half percent on incomes earned in the city or other local unit, and up to one-half percent on those residing in the unit, on the theory that this would eliminate tax gains from reciprocity and thus retard proliferation of the tax for retaliatory motives *

(c) Another recommendation is that the local income tax base be established by state law to eliminate confusing variations Adjusted gross income as defined in the federal or state tax is a possibility, with whatever exemptions are desired * The tax could then be a simple percentage of state tax liability

(d) How much could be raised in California? This depends upon which units of local government would be empowered to use this tax and on the base and rate selected Prior to the enactment of AB 661 in the 1963 session of the Legislature, some chartered cities in California appeared to have the right to levy such a tax This bill prohibits any city, whether chartered or not, from levying an income tax for two years If this law is not extended, it will perhaps be regarded as an invitation to enter this field by the chartered cities A Senate committee calculated that if all municipalities had a 1-percent tax in 1962–63, levied as a percentage of state tax liability, approximately $3 3 million could have been raised, or $33 million at a 10-percent rate † No calculation was made of the amount which could be raised if counties were empowered to levy the tax

(e) If there is a choice between assisting local governments by a statewide tax that would be used to provide either grants-in-aid or shared revenues, and authorizing local governments to levy their own taxes, how should the choice be made? One argument is that locally raised revenues lead to more careful spending than state grants Desire for home rule is another argument for the local tax On the other hand, the advantages of state-level administration are very considerable, as we have seen in the case of the local sales tax Moreover, the confusing variation, lack of uniform treatment of taxpayers, compliance burdens, and competitive characteristics of the local income tax are significant negative features

D. Fees and Charges for Service

Local governments charge for a great variety of direct services to individuals and groups, from recording births to fees for the use of a government-owned cemetery Noteworthy is the great increase in relative importance of this type of revenue, and this way of financing government services At the city level service charges were 7 percent of total revenues in fiscal 1953, but had increased to 9 05 percent by 1963 This represented over $108 4 million worth of revenue At the county

* Bronder, op cit, p 430
† "A Study of the Feasibility of Increasing State and Local Government Revenues from Selected Taxes," report of the Senate Fact Finding Committee on Revenue and Taxation, April 1963.

level, service charges increased from 4 percent to 7 percent over the same period, and also yielded over $120 million

What are these charges for? Some of them are adoption fees, swimming pool and golf course fees, charges for institutional care (such as in a county hospital, juvenile hall, boys' ranch, or foster home), library fees, court and legal service fees, estate fees, fees for recording or reproducing documents, filing fees for elections, engineering fees to subdividers, fees for sanitary inspection, fees for agricultural inspection, animal redemption fees, rezoning and variance fees, parking lot charges, parking meter receipts, charges for the use of an auditorium, airport fees, charges for street and curb repair, and sewer and refuse collection charges

Service charges are also important to special districts, where they totaled $261 6 million in 1962–63, having increased from 43 percent of total revenue in 1952–53 to 54 4 percent of total revenue in fiscal 1963 Even the school districts charged $102 million for cafeteria service (including the food), and some tuition fees (but these are met through taxes)

As population increases, these receipts grow Even increases in delinquency rates have the one redeeming feature of providing more court revenues More to the point, increased community desire for park and recreational services, and a growing variety of public enterprise services, leads to the possibility of expanding revenues through service charges

Two question that arise are Under what circumstances should charges for service be made? And what costs should the service charge cover? In the latter connection, should the service charge cover just the direct cost of the service, or should it also cover its share of general overhead, and should service charges be large enough to provide a margin for capital expansion? These questions are often seen sharply in a case like setting fees for a toll bridge

The answers to the first of these questions will not be the same in every case In some instances public policy will be to provide a service at the lowest possible direct cost to the user for various reasons For example, library service is of benefit to the whole community (even those who do not use the library), and it is thought desirable to promote its use by children and other citizens who may not be able to afford fees that would cover all costs Therefore, the cost of a library card is low, or it may be free Similarly, swimming pool charges in public parks are usually low to encourage recreational use by children On the other hand, golf course fees may be more directly proportional to actual cost of the service The amount of public subsidy in a given service will then vary according to public policy, and may be influenced also by the revenue needs and resources of the local government What one community can afford, another may not be able to, even though *public policy* might be the same in both cases

In general, special services to individuals or limited groups where the benefits are directly related to the charge made, where there are no measurable communitywide benefits, and where public policy does not indicate the desirability of subsidizing the activity in whole or in part, may be considered as areas in which service charges covering all or

most of the cost may be considered Few people would advocate charging directly for police or fire service. It is rather the type of activity that could have been undertaken by private enterprise, but which can be done more conveniently or cheaply at the government level, which is most suited to service charges Parking lots, golf courses, square dance lessons, swimming classes, boat launching facilities, and the like are some clear examples Even here there may be a definite desire to subsidize participation by children or by underprivileged groups, out of such motives as encouraging athletic achievement, sportsmanship, or helping to combat juvenile delinquency The public may be better off in the long run with an efficiently run city- or county-level service, for which there is a uniform charge, than with a system in which numerous small districts are formed to provide park services to a tiny area, or street lights to a few blocks formed into a special district.

The second question of financing capital expansion of public enterprise projects is a pressing problem in many cities and counties. Trying to finance capital development on a pay-as-you-go basis from service charges may mean doing a little at a time when it would be more economical to build ahead for future population growth. Funds for this kind of expansion may have to come from the sale of general obligation or revenue bonds Voting requirements present a substantial hurdle where an increase in property taxes will be needed.

E. Hotel and Motel Taxes

Up until 1963 only chartered cities had the authority to levy hotel and motel taxes Bakersfield, Fresno, Long Beach, and San Francisco had entered this field In most cases the tax was enacted with the understanding that a portion of the revenues would be devoted to attracting business by using the revenue to develop convention facilities The Cities of Needles and Carmel had also imposed similar taxes, but their features were different inasmuch as they were part of the business license ordinances of the particular cities At the 1963 Legislative Session AB 1491 was passed authorizing general law cities and counties to levy a tax "on the privilege of occupying a room or rooms in a hotel, inn, tourist home or house, motel or other lodging unless such occupancy is for any period of more than 30 days." Where a county levies the tax it is to apply only to the unincorporated areas of the county Thus the tax is meant to be imposed on transients, but not on residents of hotels. As a result of this legislation many California cities have adopted the hotel tax

(1) *Base*

The hotel tax is an excise tax based on the amount of the hotel bill up to a certain number of days, shown as a separate amount on the bill, with the legal incidence on the consumer of the occupancy service Business license taxes on hotels which are levied on the basis of gross receipts are akin to this, but various classifications of gross receipts and class of establishment may produce different results. A proposed ordinance for San Diego exempted from the tax persons paying $2 or less a day for accommodations, this being thought of as subsistence-income shelter.

(2) Rates

A drafting committee, composed of representatives from both the League of California Cities and the County Supervisors Association, has prepared a suggested uniform ordinance for cities and counties in which a 4 percent rate occurs, the same as for the retail sales tax.

(3) Revenue

The amount of revenue clearly depends largely upon whether the city or county which levies the tax is a tourist center or not. In 1963–64, San Francisco realized $1 271,247 from the tax according to the State Controller's report Estimated revenues for Long Beach were $160,000 in 1962, and for Fresno $155,000 for 1963.*

Estimates of yield may be made on the basis of average occupancy rate, average room rate, and number of rooms within a city or unincorporated area, although an allowance would have to be made for residential hotels, excluding guests who stay longer than the maximum number of days as specified in the ordinance The statewide average annual occupancy rate for first-class hotels and motels has been estimated to range from 71 percent to 78 percent The statewide revenue potential was estimated at $12 million if every city and county levied the tax, $9 million for cities and $3 million for counties †

(4) Incidence and Burden

The tax is meant to be paid by transient guests, who may use many public facilities and services, but who ordinarily may not pay their proportionate share of government costs. Where there is competition from hotels or motels in an adjacent nontaxing jurisdiction, the possibility exists that basic room charges may be lowered in the taxing jurisdiction to meet the competition, so that the incidence of the tax may be in part on the owners of the business Where all jurisdictions in an economic area impose the tax, this possibility is diminished, at least in the best season and in good times.

A citizens' committee in Berkeley, after rejecting the idea of a city hotel tax in 1962 because of possible unfavorable competition from surrounding areas and the relatively small amount of revenue estimate, suggested "that an effort be made through the League of California Cities for a transient room tax on a statewide basis, all revenue remaining in the community in which it is collected " A number of states do levy a sales tax on transient lodging. Twenty-seven states plus Washington, D.C., were listed in a publication of the United States Advisory Commission on Governmental Relations ‡ for 1961 Two other states were added to this number in 1962. The Berkeley committee felt that statewide administration would eliminate the competitive disadvantage that a single jurisdiction would have in levying the tax, and would also be less costly and more effective. Their second choice was an area-wide tax, arranged by negotiation with surrounding communities.

* Letter, November 6, 1963 from Assistant Legal Counsel, League of California Cities
† County Supervisors Association, mimeographed material accompanying suggested standard ordinance, November 1963.
‡ *Tax Overlapping in the United States in 1961*, p 116

TABLE XXXV

STATE COLLECTED, LOCALLY SHARED CIGARETTE TAXES, 1962

State	Tax revenue (thousands)	Distribution formula	Recipient local governments	Amount distributed (thousands)	Local use of funds
Alaska	$1,805	After allocation of part to state schools (a) a specified amount to each school unit, and (b) the remainder, one-half in proportion to average daily attendance and one-half in proportion to number of professional employees	Cities School districts	$294 881	School construction
Kansas	9,498	37½ percent to counties in proportion to population, and one-half of each county's share redistributed among cities in proportion to population	Cities Counties	1 795 1,795	General purposes
Louisiana	27,943	37½ percent in excess of $1 million (a) to cities at specified rates per capita, graduated according to population size of city, (b) any surplus remaining to parishes in which there are no incorporated municipalities, at a specified rate per capita, and (c) any additional surplus remaining is used to increase the per capita allocations to cities From the remaining 62½ percent, an additional 50 cents per capita to cities of over 100 thousand population	Cities and parishes	9,938	Do
Maryland	22,456	One-half to City of Baltimore and counties on basis of population	City Counties	3,605 7,649	Do
Minnesota	24,294	One-fourth to cities and counties in proportion to population	Cities Counties	3,887 1,746	Do
Nevada	4,253	5½ percent to county of origin and 28½ percent to cities and counties in proportion to population	Cities Counties	834 603	Do
New Mexico	7,043	One-eighth to city and county of origin	Cities Counties	758 66	Recreation
North Dakota	3,706	One-half mill per cigarette distributed in proportion to population	Cities	551	General purposes
Wyoming	1,737	All to city or county of origin	Cities Counties	1,538 126	Do
Total	102,825			36 066	

[1] Includes an amount from taxes on tobacco products other than cigarettes

SOURCE U S Bureau of the Census, *State Payments to Local Governments*, 1962 Census of Governments, Vol VI, No 2

TABLE XXXVI

LOCAL CIGARETTE TAX RATES, JANUARY 1, 1964 [1]

(per standard package of 20 cigarettes)

State	State rate (cents)	1 cent	2 cents	3 cents	4 cents	5 cents
Alabama	6					
99 municipalities[2]		11	83	4	1	
6 counties		2	2	2		
Colorado 33 municipalities		2	24	7		
Florida Municipalities[3]	8					
Missouri 38 municipalities	4	1	33	2	1	1
New Jersey 1 municipality (Atlantic City)	3		1			
New York 1 municipality (New York)	5				1	
Tennessee	7					
1 municipality (Memphis)		1				
1 county (Shelby County outside corporate limits of Memphis)		1				
Virginia 6 municipalities	3		5	1		

[1] A total of 18 counties and municipalities in 4 of the states listed (Alabama, Colorado, Florida, and New Jersey) levy taxes on other tobacco products as well, as do 1 city and 2 counties in Maryland. Over one-half of these are in Alabama.

[2] The rates shown apply only in the town or city. Rates in police jurisdictions are generally lower, usually one-half the city or town rate.

[3] The municipal 8 cents tax is allowed as a tax credit against the 8 cents state tax.

SOURCE: Advisory Commission on Intergovernmental Relations, "Tax Overlapping in the United States," Washington, D.C., July, 1964, p. 189.

F. Cigarette Tax

(a) In California

Although Section 30111 of the Revenue and Taxation Code provides that the state cigarette tax is in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes, charter cities apparently feel that the limitation does not apply to them. In August 1964, the City of Los Angeles imposed a cigarette tax at the rate of two cents per pack It was estimated by city officials that this tax would raise approximately $6,000,000 in the city each year

(b) Other Local Cigarette Taxes

A number of cities in eight other states also levy cigarette taxes ranging from one to five cents per pack as shown in Table XXXVI. Nine other states had state-collected locally shared cigarette taxes in 1962.

Summary

1. Local government needs have been outdistancing the main local sources of revenue, in particular the property tax base, and have also risen faster than state and federal assistance. Local expenditures have been hard pressed to keep up with rising current needs, so that frequently much-needed capital expenditures have had to be foregone or postponed indefinitely

2 Trends projected on either an overall basis or by main categories of expenditure indicate that this gap between local needs and available revenues will widen, making it urgent to plan for new sources of revenue in the years ahead. Alternatively, local governments could be relieved of some services they now perform, or, at least, economies should be sought by reorganization or otherwise.

3. Further exploitation of the property tax may be necessary, but is undesirable on grounds of equity, particularly in jurisdictions which have been forced to make unduly heavy use of this tax because of legal limitations on their power to use other types of revenue-raising devices. Furthermore, increases in assessed valuation cannot be expected to be sufficient to provide 10 percent additions to total revenues each year, so that substantial rate increases would be necessary if this tax were used to close the gap This would be a dismal solution for the already overburdened property taxpayer.

4 Some nonproperty taxes merit consideration. Local income taxes at the city or county level could be productive and equitable, particularly if levied uniformly within economic areas, if all income including dividends and interest is taxed and administered by the state, in a manner similar to the local sales tax under the Bradley-Burns Act.

5 An increase in local sales tax rates would be possible, though serious question may be raised as to whether local sales tax receipts are equitably distributed in terms of the needs of the local jurisdictions. If additional revenues could be apportioned on the basis of population or some other index of need, this would increase the attractiveness of this tax. The sales tax has also been disappointing in periods of rising personal incomes, whereas income-based taxes are more responsive

6 Better use could be made of business license taxes In particular, counties could be given the same power as cities to license for revenue, and cities could exploit their power more fully

7 Service charges can, and probably will be, used more extensively, but care should be taken not to violate broad public policy where charges cannot be definitely matched with direct benefits

8 Hotel and motel taxes provide a logical source of revenue for such things as convention facilities, but would be best levied on a uniform basis within a given economic area to avoid competition among local jurisdictions

9 Local governments should avoid use of a multitude of low-producing "nuisance" taxes, particularly if they provoke retaliation by neighboring jurisdictions

10 Needless variation in local taxes can be avoided by state specifications as to rates, bases, and so on, whenever power to levy a new tax is given to local governments

11 In general the device of the local tax supplement to a state tax of the same type has the merit of leaving the decision to impose the tax to local initiative, while making available the superior enforcement resources of the state, and easing taxpayer compliance

12 The State of California could provide a central information service to all of its local governments, particularly with regard to tax experience in other parts of the state and the nation At the present time much useful information is scattered, uncollected, or unavailable

APPENDIX A-1

1960 CENSUS DATA ON FAMILY INCOMES IN CALIFORNIA COUNTIES *

County	Number of families 1960	Median family income† 1959	Percent families under $3,000 1959	Percent families over $10,000 1959	Aggregate income in 1959 of the population in 1960 ($ million)
Alameda	232,031	$6,766	13 6	21 2	$2,119
Alpine	195	‡	‡	‡	‡
Amador	2,532	5,636	18 8	12 5	18
Butte	22,156	5,408	23 2	11 5	150
Calaveras	2,752	5,524	20 3	11 6	20
Colusa	3,078	5,604	18 6	13 7	24
Contra Costa	104,972	7,327	10 2	25 0	942
Del Norte	4 419	5,377	13 4	14 7	35
El Dorado	8 073	6,003	14 3	19 2	67
Fresno	90,315	5,624	21 5	14 8	659
Glenn	4,303	5,290	23 6	10 9	30
Humboldt	26,647	6,382	13 6	16 8	215
Imperial	15,253	5,507	21 0	15 4	117
Inyo	3,110	5,837	19 6	9 8	22
Kern	72,585	5,933	18 9	15 8	546
Kings	11,974	4,957	25 4	11 8	77
Lake	4,185	4 438	31 7	9 8	26
Lassen	3,577	5,561	14 5	12 4	26
Los Angeles	1,663,503	7,046	12 6	24 6	15,240
Madera	9,986	4,596	29 8	11 1	63
Marin	37,265	8,110	8 8	33 4	414
Mariposa	1,398	4 704	29 0	7 3	10
Mendocino	12,694	5 804	17 6	13 6	91
Merced	20 011	4,895	26 4	11 8	143
Modoc	3,188	5,704	20 1	15 0	1b
Mono	613	6,321	9 6	19 4	6
Monterey	43,582	5,770	17 0	15 8	394
Napa	15,840	6,624	14 8	16 7	128
Nevada	5 922	5 419	22 6	12 1	40
Orange	178,265	7 219	11 0	24 2	1,596
Placer	14,423	6,069	16 4	14 7	108
Plumas	3,101	5 354	14 1	13 0	23
Riverside	78,594	5,993	20 6	15 4	592
Sacramento	120,917	7 190	10 3	23 4	1,134
San Benito	3,730	5,538	20 2	13 1	37
San Bernardino	126,650	5,908	17 1	15 0	937
San Diego	253,867	6,545	15 1	20 1	2 262
San Francisco	182,027	6,717	13 5	22 6	2 006
San Joaquin	60 985	5,884	18 8	14 9	464
San Luis Obispo	20,549	5 669	21 2	13 4	151
San Mateo	117,457	8,103	7 2	32 4	1,268
Santa Barbara	41,890	6 523	12 8	23 2	404
Santa Clara	158,302	7 417	10 2	26 2	1,497
Santa Cruz	23,231	5,325	23 9	14 5	170
Shasta	15,709	5 089	17 0	14 4	116
Sierra	645	5,803	16 1	11 6	4
Siskiyou	8,641	5 538	16 8	11 7	62
Solano	33,234	6 140	15 1	15 1	258
Sonoma	38,581	5,725	21 9	14 3	278
Stanislaus	40,478	5 250	24 5	11 7	267
Sutter	8,544	5,970	18 5	15 1	63
Tehama	6,740	5,589	20 5	10 4	45
Trinity	2,582	6,210	13 3	15 0	20
Tulare	41 475	4 815	27 0	11 7	271
Tuolumne	3 927	5,602	17 5	11 4	29
Ventura	46,917	6,466	14 5	18 7	396
Yolo	10 182	6,340	14 0	16 3	120
Yuba	4,335	5 021	21 2	11 3	36
State of California	3,991,500	$6 726	14 1	21 8	$36 269
United States	45 128,393	5,660	21 4	15 1	331,665

*Income before deduction of personal income taxes, social security union dues, etc
†Includes public assistance, pension unemployment insurance
‡Base less than 200 families

Source U S Bureau of the Census, Census of 1960

APPENDIX A-2

1960 CENSUS DATA ON FAMILY INCOMES IN CALIFORNIA CITIES

(25,000 or more inhabitants in 1960)

City	Population 1960	Number of families 1960	Median family income 1959	Percent families under $3,000 1959	Percent families over $10,000 1959	Aggregate income in 1959 of the population in 1960 ($ million)
Alameda	63,855	14,950	$6,188	18 4	19 3	$142
Alhambra	54,807	15,072	7 185	11 4	25 0	144
Anaheim	104,184	26,461	7,625	8 4	25 0	235
Arcadia	41,005	11,200	6,826	8 2	46 9	150
Bakersfield	56,848	14,334	6 541	16 7	20 1	124
Baldwin Park	33,951	8,021	6,196	15 3	12 5	59
Bellflower	45,909	12,206	6,834	11 3	18 2	98
Berkeley	111,268	26,701	6,576	14 4	24 7	202
Beverly Hills	30,817	8,544	11 977	9 2	56 1	233
Buena Park	40,401	11,134	7,510	6 3	22 9	92
Burbank	90,155	25,802	7,757	8 4	29 5	249
Chula Vista	42,034	11,264	6,959	11 6	22 1	93
Compton	71,812	17,436	6,256	13 2	14 5	128
Concord	36,208	8,847	7,823	8 1	19 1	72
Costa Mesa	37,550	9,803	6,781	14 0	20 8	78
Culver City	32,163	8,790	7,862	7 5	30 0	85
Daly City	44,791	12,193	8 000	5 8	27 9	112
Downey	84,505	21,440	8,265	6 2	33 4	230
El Cajon	37,018	9,539	7,021	11 4	21 1	77
El Cerrito	25,437	7,155	8,155	8 9	31 9	71
Eureka	28,137	7,448	6,606	14 8	20 4	66
Fremont	43,790	10,392	7,141	8 1	19 9	85
Fresno	133,929	34,026	6,109	18 0	15 8	264
Fullerton	50,180	14,255	7,994	7 5	32 1	142
Gardena	35,943	9,415	7,741	7 4	27 9	88
Garden Grove	84,238	20,557	7,490	7 7	23 2	172
Glendale	119,463	31,590	7,563	11 2	29 2	362
Hawthorne	33,035	8,729	7,045	8 0	25 3	78
Hayward	72,700	17,911	7,204	7 8	18 8	145
Huntington Park	29,920	8,324	6,285	14 3	16 3	79
Inglewood	63,390	18 890	7,764	9 4	29 9	190
La Habra	25 138	6,497	7,023	7 0	27 7	67
Lakewood	67,126	17,121	7 900	5 0	21 6	141
La Mesa	30,441	8,311	7,907	8 3	30 5	80
Long Beach	344,168	90,928	6,570	16 5	20 8	946
Los Angeles	2,479,015	656,522	6 896	14 4	25 1	6,505
Lynwood	31,614	8,178	7,192	9 6	22 5	77
Manhattan Beach	33,934	8,651	8,289	6 3	35 1	95
Menlo Park	26,957	6,674	8,191	9 4	37 0	84
Modesto	36,585	9 807	6,357	16 0	19 6	83
Monrovia	27,079	7,433	6,830	17 0	21 3	63
Montebello	32,097	8,397	7,351	8 5	28 9	79
Monterey Park	37,821	10,591	7,650	8 1	27 6	97
Mountain View	30,889	8 159	7,595	10 1	25 4	74
National City	32,771	8,519	5 574	20 7	11 6	55
Newport Beach	26,594	7,852	8,571	13 0	41 2	113
Norwalk	88,739	19,914	7,015	5 0	15 8	153
Oakland	367,548	97,193	6,203	17 3	19 7	868
Ontario	46,617	12,239	6,405	15 3	16 0	90
Orange	26,444	6,907	6,787	12 4	19 2	57
Oxnard	40,265	9,009	6,471	16 4	18 9	73
Palo Alto	52,287	13 217	9,132	7 2	43 0	168
Paramount	27,249	7,070	6 230	13 5	13 4	50
Pasadena	116,407	30,200	6,922	15 2	28 5	352
Pico Rivera	49,150	12,166	7,069	7 1	17 7	94
Pomona	67,157	17,384	6,585	14 1	17 3	139
Redlands	26,329	6,721	6,140	15 4	22 3	59
Redondo Beach	46,986	12,037	6,880	10 6	19 5	101
Redwood City	46,290	12,450	7,749	8 3	29 1	116
Richmond	71,854	18,295	6,851	12 0	19 6	151
Riverside	84 332	21 310	6 807	13 5	22 1	187
Sacramento	191,667	49 413	6,943	11 9	23 8	473
Salinas	28,957	7,080	7,035	10 5	23 1	67
San Bernardino	91,922	23 743	6 125	15 9	17 7	190
San Bruno	29,005	7 822	7,963	6 2	27 3	69
San Buena Ventura	26,114	7,902	7,389	10 4	25 9	78
San Diego	573,224	138,637	6 614	14 4	20 9	1,319
San Francisco	740,316	182,027	6,717	13 5	22 6	2,005
San Jose	204,196	50,813	6,949	11 5	20 8	450
San Leandro	65,962	18,059	7 330	7 7	21 9	153
San Mateo	69,870	18,933	8,236	7 8	34 3	201

APPENDIX A-2—Continued

1960 CENSUS DATA ON FAMILY INCOMES IN CALIFORNIA CITIES—Continued

(25,000 or more inhabitants in 1960)

City	Population 1960	Number of families 1960	Median family income 1959	Percent families under $3,000 1959	Percent families over $10,000 1959	Aggregate income in 1959 of the population in 1960 ($ million)
Santa Ana	100,350	25,944	$6,304	15 3	16 9	$209
Santa Barbara	58,768	15,551	6,477	15 4	21 1	146
Santa Clara	58,380	13,813	7,472	7 2	21 9	118
Santa Cruz	25,596	7,236	5,292	26 8	15 0	53
Santa Monica	83,249	22,334	6,845	15 6	25 4	242
Santa Rosa	31,027	8,123	6,542	17 0	19 7	73
South Gate	53,831	16,248	6,892	11 4	20 3	137
South San Francisco	39,418	10,189	7,578	5 7	23 2	88
Stockton	86,321	20,543	6,059	18 2	17 1	169
Sunnyvale	52,898	13,296	7,937	6 3	28 6	121
Torrance	100,991	25,267	8,050	5 5	29 3	232
Vallejo	60,877	15,725	6,606	13 5	17 1	129
West Covina	50,645	12,698	8,580	5 0	34 3	123
Westminster	25,750	6,223	6,587	9 6	14 1	45
Whittier	33,663	9,400	7,740	12 4	32 6	100

INCOME IN CALIFORNIA UNINCORPORATED URBAN PLACES

City	Population 1960	Number of families 1960	Median family income 1959	Percent families under $3,000 1959	Percent families over $10,000 1959	Aggregate income in 1959 of the population in 1960 ($ million)
Altadena	40,568	11,257	$8,191	9 3	35 3	$121
Arden-Arcade	73,352	19,023	8,696	5 3	36 8	204
Bell Gardens	28,467	6,886	5,567	17 1	9 2	45
Carson	38,039	8,835	6,613	9 5	13 6	64
Castro Valley	37,120	9,819	7,989	7 8	27 5	89
East Los Angeles	104,270	24,709	5,434	19 4	10 5	160
Florence-Graham	38,164	9,096	4,904	25 1	6 1	54
Lancaster	26,012	6,561	8,123	9 4	29 7	62
Lennox	31,224	8,617	6,522	13 6	16 1	72
South San Gabriel	26,213	6,994	6,076	16 7	13 0	50
Temple City	31,838	9,322	7,782	9 1	28 5	83
West Hollywood	28,870	9,132	7,151	15 6	27 9	116

Source (County and City Data Book 1962, *Statistical Abstract Supplement* U S Dept of Commerce Bureau of the Census)

APPENDIX B-1

TAX COLLECTIONS OF THE 51 LARGEST CITIES: 1962

(Dollar amounts in thousands)

City	Tax collections			Nonproperty as a percent of total taxes
	Total	Property	Nonproperty	
	CITIES HAVING MORE THAN 1,000,000 INHABITANTS IN 1960			
New York	$1,711,085	$1,085,000	$626,085	36 6
Chicago	295 375	155,500	100,875	39 3
Los Angeles	171,036	99,600	71,436	41 8
Philadelphia	202,427	93,950	108,477	53 6
Detroit	125,510	122,500	3,010	2 4
Total	$2,486,433	$1,556,600	$909,883	36 9
	CITIES HAVING 500,000 TO 1,000,000 INHABITANTS IN 1960			
Baltimore	$121,568	$108,500	$13,068	10 7
Houston	55,317	48,650	6,667	12 1
Cleveland	50,837	48,450	2,387	4 7
Washington, D C	182,960	67,750	115,200	63 0
St Louis	71,417	28,950	42,467	59 5
San Francisco	113,183	92,150	21,033	18 6
Milwaukee	50,399	48,550	1,849	3 7
Boston	149,382	146,500	2,882	1 9
Dallas	44,120	38,150	5,970	13 5
New Orleans	32,419	15,650	16,769	51 7
Pittsburgh	44,805	30,250	14,555	32 5
San Antonio	17,799	16,650	1,149	6 5
San Diego	27,096	16,950	10,146	37 4
Seattle	29,988	16,650	13,348	44 5
Buffalo	52,330	49,350	3,980	7 5
Cincinnati	39,754	20,750	19,004	47 8
Honolulu	33,721	23,350	10,371	31 2
Total	$1,118,125	$817,250	$300,875	26 9
	CITIES HAVING 250,000 TO 500,000 INHABITANTS IN 1960			
Memphis	$24,451	$17,150	$7,301	29 9
Denver	36,223	21,750	14,473	40 0
Atlanta	23 100	14,550	8,550	24 0
Minneapolis	35,621	32,850	2,771	7 8
Indianapolis	26,632	26,350	282	1 1
Kansas City, Mo	30,305	15,150	15,155	50 0
Columbus	19,900	5,155	14,745	74 1
Phoenix	16,103	10,050	6,053	37 6
Newark	73,276	64,350	9,126	12 3
Louisville	23,820	10,250	12,570	55 1
Portland, Ore	21,550	17,650	3,900	18 1
Oakland	27,419	18,550	8,869	32 3
Fort Worth	16,072	14,650	1,422	8 8
Long Beach	15,975	9,305	6,670	41 8
Birmingham	11,176	5 995	5 181	46 4
Oklahoma City	7,492	5,745	1,747	23 3
Rochester	34,109	32,850	1,259	3 7
Toledo	15,998	6,395	9,701	60 8
St Paul	37,705	34,550	3,155	8 4
Norfolk	25,184	15,850	9,334	37 1
Omaha	14 885	11,550	3,335	22 4
Miami	25,536	17,780	7,756	30 5
Akron	10,274	9,515	759	7 4
El Paso	14,947	13,150	1,797	12 0
Jersey City	48,524	44,650	3,874	8 0
Tampa	15,034	8,185	6,849	45 6
Dayton	17,186	8,715	8,471	49 3
Tulsa	5,960	4,745	1,215	20 4
Wichita	9,776	8,305	1,471	15 0
Total	$683,401	$505,580	$177,821	26 0
Total, 51 Cities	$4,268,009	$2,879,430	$1,388,579	32 5

Source: U S Bureau of the Census, *Compendium of City Government Finances in 1962*, 1963

APPENDIX B-2

LOCAL PROPERTY AND NONPROPERTY TAX COLLECTIONS, BY STATE, 1962

(Dollar amounts in millions)

State	Tax collections			Nonproperty as a percent of total
	Total	Property	Nonproperty	
Alabama	$132 3	$73 8	$58 5	44 2
Alaska	15 4	11 4	4 0	26 0
Arizona	144 5	133 0	11 5	8 0
Arkansas	80 2	74 2	6 0	7 5
California	2,502 0	2,467 6	534 2	11 9
Colorado	248 6	227 1	21 5	8 6
Connecticut	360 2	357 3	2 9	8
Delaware	24 9	23 4	1 5	6 0
District of Columbia	183 0	67 7	115 2	63 0
Florida	511 6	427 4	84 2	16 5
Georgia	219 5	194 9	24 6	11 2
Hawaii	41 5	27 8	13 7	33 0
Idaho	62 1	60 6	1 5	2 3
Illinois	1,460 7	1,296 5	164 2	11 2
Indiana	327 0	324 6	2 4	5
Iowa	362 6	357 8	4 8	1 3
Kansas	288 3	279 9	8 4	2 0
Kentucky	151 0	122 5	31 5	20 5
Louisiana	169 0	131 6	37 4	22 1
Maine	114 0	113 1	9	8
Maryland	310 0	283 4	26 6	8 6
Massachusetts	854 2	843 2	11 0	1 3
Michigan	891 7	881 5	10 2	1 1
Minnesota	463 6	450 7	12 9	2 8
Mississippi	112 1	90 3	21 8	19 4
Missouri	416 1	338 3	77 8	18 7
Montana	89 8	84 7	5 1	5 7
Nebraska	171 7	158 7	13 0	7 5
Nevada	38 9	29 1	9 8	25 4
New Hampshire	77 2	76 5	7	9
New Jersey	1,060 3	964 4	95 9	9 0
New Mexico	49 3	37 0	12 3	24 9
New York	3,079 1	2,379 0	709 1	23 0
North Carolina	200 5	193 4	7 1	3 5
North Dakota	73 4	70 9	2 5	3 4
Ohio	1,101 0	997 9	103 1	9 4
Oklahoma	148 3	141 3	7 0	4 7
Oregon	202 9	196 0	6 9	3 4
Pennsylvania	1,101 7	839 2	262 5	23 8
Rhode Island	91 4	92 8	1 6	1 8
South Carolina	88 1	81 7	6 4	7 3
South Dakota	92 1	86 3	5 8	6 3
Tennessee	197 9	175 7	22 2	11 2
Texas	865 1	804 5	60 6	7 0
Utah	89 1	78 5	10 6	11 9
Vermont	40 0	39 1	9	2 3
Virginia	263 6	208 9	54 7	20 7
Washington	237 6	199 6	38 0	16 0
West Virginia	93 8	83 2	10 6	11 3
Wisconsin	519 6	510 9	8 9	1 7
Wyoming	37 8	35 7	2 1	5 6
Total	$20,962 5	$18,415 8	$2,546 4	12 1

Source U S Bureau of the Census, *Governmental Finances in 1962*, October 1963.

APPENDIX C

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan. 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Alameda County	1 00	1,512,994	965,250	$1 57	$1,553,938	$ 10
Alameda*	95	405 365	63,855	7 29	66,505	70
Albany*	95	198,617	16,500	12 04	20,466	97
Berkeley*	95	1 071,136	111,268	14 93	132,533	91
Emeryville	95	353,284	2 686	135 25	53,388	63
Fremont	95	477,582	57,000	8 29	81,973	58
Hayward	95	1,303,955	78,700	17 33	103,404	1 26
Livermore	95	183,747	14,200	9 57	23,999	77
Newark	95	128 446	14,000	8 62	27,238	47
Oakland	95	7,323,250	367,599	19 93	661,934	1 11
Piedmont*	95	6,895	11,117	62	27 958	02
Pleasanton	95	51,818	4,203	12 33	5,071	1 02
San Leandro	95	1,933 556	65,962	29 31	147,035	1 32
Union City	95	77,235	6,618	11 67	17,151	45
Total		15,747,027	965,250	16 31		
Alpine County	1 00	3,546	500	7 09	2,355	15
Amador County	1 00	31 846	10,400	3 06	44,562	07
Amador*	1 00	727	202	3 60	169	43
Ione*	1 00	12 554	1,541	8 13	2,599	49
Jackson	1 00	53,726	1 883	28 92	2,265	2 34
Plymouth*	1 00	3,642	489	7 45	641	57
Sutter Creek	1 00	13,950	1 161	12 02	1,298	1 07
Total		116,425	10 400	11 19		
Butte County	1 00	690 483	90,550	7 63	175,404	39
Biggs	1 00	5,614	831	6 76	968	58
Chico*	85	420,445	15 024	27 98	28,082	1 50
Gridley	85	79,150	3,343	23 68	3,453	2 29
Oroville*	85	217,345	6,925	31 39	25,653	82
Total		1,413,037	90,550	15 61		
Calaveras County	1 00	80,088	11,000	7 28	33,571	24
Angels	95	18,400	1,121	16 41	1,682	1 16
Total		98,488	11,000	8 95		
Colusa County	1 00	119,165	12,550	9 50	53,905	22
Colusa*	60	68,453	3,518	19 46	7,356	93
Williams*	80	25,309	1,370	18 47	2 245	1 13
Total		212,927	12 550	16 97		
Contra Costa County	1 00	1,094,387	458,000	2 39	975,783	11
Antioch	975	251,696	18 050	13 28	23,251	1 08
Brentwood	975	45,364	2,195	21 20	2,238	2 07
Concord*	975	510,856	52,625	11 51	54,511	1 12
El Cerrito	975	393,978	25 437	14 31	45,296	81
Hercules*	975	14,976	510	43 31	5,064	30
Martinez	975	160,425	10,250	15 85	19,520	82
Pinole*	975	75,858	7 075	6 07	12 934	28
Pittsburg*	975	218,100	19,800	11 02	24,052	91
Pleasant Hill	975	216,579	26,328	8 23	20,618	1 04
Richmond*	975	1,288,780	76,300	16 89	201,186	64
San Pablo	975	179,227	21,650	8 28	18,379	98
Walnut Creek	975	719,558	10,200	70 48	32,503	2 21
Total		5,200,370	458,000	11 35		
Del Norte County	1 00	145 126	18,250	7 95	29 178	50
Crescent City*	1 00	83,461	2,958	28 22	12,705	66
Total		228,587	18,250	12 53		

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
El Dorado County	1 00	340,391	34 200	$9 95	$106,311	$0 32
Placerville	1 00	178,487	4,800	37 18	8,201	2 18
Total		518,878	34,200	15 17		
Fresno County	1 00	1,711,614	392,800	4 36	840,579	20
Clovis	94	80,120	7,884	10 16	7,911	1 01
Coalinga*	94	90,607	5,965	15 19	7,021	1 29
Firebaugh	94	65,830	2,627	25 06	1,997	3 30
Fowler	94	38,391	1,892	20 29	2,248	1 71
Fresno	91	3,082,528	147,300	20 94	196,551	1 57
Huron	94	17,354	1,259	13 88	1,137	1 53
Kerman	94	48,723	1,970	24 73	1,916	2 54
Kingsburg	94	42,198	3,093	13 74	4,347	98
Mendota	91	24 187	3,096	7 84	1,402	1 73
Orange Cove	94	16,963	2,885	5 85	1,639	1 03
Parlier	94	16,071	1,366	11 77	900	1 79
Reedley	94	118,349	6,687	17 70	7,002	1 69
Sanger	94	117,714	8,533	13 80	8,233	1 43
San Joaquin	91	17,186	879	19 55	849	1 83
Selma	94	109,566	6,970	15 72	7,258	1 51
Total		5,597,701	147,200	38 03		
Glenn County	1 00	118,021	18,500	6 38	58,555	20
Orland*	70	47,502	2,534	18 75	5,542	86
Willows*	70	72,625	4,163	17 45	6,542	1 11
Total		238,148	18,500	12 87		
Humboldt County	1 00	538,761	107,500	5 01	184,238	29
Arcata	85	134,603	5,253	25 62	7,845	1 72
Blue Lake	85	4,261	1,244	3 45	933	46
Eureka*	85	626,328	28,137	22 28	38,910	1 61
Ferndale	85	17,865	1,371	13 32	1,403	1 30
Fortuna	85	80,930	3,523	22 97	5,084	1 60
Trinidad*	85	1,891	289	6 54	503	38
Total		1,405,539	107,500	13 07		
Imperial County	1 00	268 414	79,750	3 37	134,201	20
Brawley*	90	194,876	13,762	14 16	19,683	99
Calexico*	95	182,544	7,992	22 84	12,780	1 43
Calipatria*	90	18,391	2,548	7 22	4,032	45
El Centro	90	351,445	18 940	19 16	20,391	1 72
Holtville*	90	34,570	3,080	11 22	6,158	56
Imperial*	90	27,863	2,658	10 48	5,656	49
Westmorland	90	7,482	1,404	5 33	500	1 50
Total		1,085,645	79,750	13 61		
Inyo County	1 00	101,604	12,100	8 42	43,556	23
Bishop	1 00	113,965	2,875	39 64	5,335	2 14
Total		215,869	12,100	17 84		
Kern County	1 00	1,739,110	309,850	5 61	766,835	23
Arvin	1 00	43,382	5,440	7 97	2,653	1 63
Bakersfield	967	1,998,300	62,300	32 08	90,277	2 21
Delano*	994	197,494	11,988	16 47	16,315	1 21
Maricopa*	1 00	3,501	648	5 40	1,089	32
McFarland	1 00	23,884	3,686	6 48	2,212	1 08
Shafter*	99	89,639	4,653	19 35	7,106	1 36
Taft*	95	176,156	3,823	46 09	7,123	2 47
Tehachapi*	1 00	31,928	3,167	10 08	3,963	81
Wasco	95	86,802	7,198	12 06	5,912	1 47
Total		4,390,176	309,850	14 17		

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan. 1, 1964	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Kings County	1 00	318,014	58,850	$5 40	$140,299	$0 23
Corcoran*	88	88,804	5,066	17 47	8,295	1 07
Hanford*	85	294,979	11,650	25 23	34,609	85
Lemoore	88	53,732	3,900	16 79	5,116	1 05
Total		754,529	58,850	12 82		
Lake County	1 00	142,681	15,100	9 47	43,589	33
Lakeport	75	40,076	2,403	17 40	3,434	1 17
Total		182,057	15,100	12 12		
Lassen County	1 00	71,477	13,900	5 14	24,655	29
Susanville	75	91,711	5,598	16 38	5,639	1 63
Total		163,188	13,900	11 74		
Los Angeles County	1 00	$6,906,307	5,501,600	1 00	13,021,946	05
Alhambra	1 00	1,068,358	54,807	19 49	113,576	94
Arcadia	1 00	674,193	43,100	15 64	193,408	01
Artesia	1 00	96,343	11,050	8 71	12,023	80
Avalon	1 00	45,485	1,536	28 31	5,460	80
Azusa	1 00	357,572	21,900	16 34	39,910	90
Baldwin Park	1 00	209,113	36,050	5 80	37,381	56
Bell	1 00	320,571	19,450	16 48	23,081	1 34
Bellflower	1 00	760,911	45,909	16 57	61,933	1 24
Bell Gardens	1 00	206,569	27,650	7 47	18,813	1 10
Beverly Hills	1 00	1,870,972	30 817	60 71	239,503	78
Bradbury	1 00	3	838		2,675	
Burbank	1 00	1,701,263	92,900	19 47	253,281	68
Claremont	1 00	$8,753	15,550	5 19	22,822	36
Commerce	1 00	2,910 488	9,555	304 60	249,562	1 17
Compton	1 00	1,337,648	73,900	18 14	98,447	1 36
Covina	1 00	895,854	23,749	37 92	50,696	1 51
Cudahy	1 00	78,198	11,202	7 00	10,292	76
Culver City	1 00	1,257,091	32,163	39 09	107,135	1 17
Dairy Valley	1 00	86,172	3,508	24 56	21,992	39
Downey	1 00	1,525,709	90,500	16 90	160,060	36
Duarte	1 00	84,962	13,962	6 02	15,873	53
El Monte	1 00	1,185,583	32,908	35 93	66,655	1 78
El Segundo	1 00	556,211	14,219	39 12	147,028	38
Gardena	1 00	598,150	30,200	14 88	61,598	97
Glendale	1 00	2,553,600	122,100	20 75	245,052	1 05
Glendora	1 00	290,841	24,150	8 32	34,939	57
Hawthorne	1 00	734,037	35,057	20 96	96,887	76
Hermosa Beach	1 00	313,049	16,115	19 43	27,740	1 13
Hidden Hills	1 00	486	1,054	05	5,356	
Huntington Park	1 00	1,053 260	29,920	35 20	69,020	1 54
Industry	1 00	621,191	778	798 83	43,906	1 42
Inglewood	1 00	1,610,971	79,108	20 36	151,945	1 06
Irwindale	1 00	479,110	1 518	315 62	19 089	2 51
Lakewood	1 00	1,164,278	67,336	17 06	83,156	1 39
La Mirada	1 00	206 179	22,444	9 19	37,104	56
La Puente	1 00	275,347	26,500	10 39	26,828	1 03
La Verne	1 00	27,724	6,925	4 25	9,613	29
Lawndale	1 00	186,529	23,700	7 88	18,942	99
Long Beach	1 00	5,190,954	344,168	14 82	709,056	72
Los Angeles	1 00	47,408,674	2,584,749	18 38	5,296,171	90
Lynwood	1 00	409,926	31,614	12 97	52,735	78
Manhattan Beach	1 00	200,529	13 513	7 55	50,219	52
Maywood	1 00	169,042	14 688	11 50	15,653	1 08
Monrovia	1 00	565,657	27,091	20 88	57,853	98
Montebello	1 00	594 791	36 550	16 27	84,155	71
Monterey Park	1 00	371,350	41,000	8 86	70,027	53
Norwalk	1 00	694,899	88,739	7 82	80,124	87
Palmdale§	1 00	*51,961	10,479	5 10	9,797	56
Palos Verdes Estates	1 00	26 100	10,450	2 51	33,558	08
Paramount	1 00	369,164	27,249	13 55	45,129	82
Pasadena*	1 00	3,134 945	119,600	26 63	384,726	83
Pico Rivera	1 00	491,982	49 150	9 79	76 781	63
Pomona	1 00	1,426,674	71,900	20 01	124,782	1 15
Redondo Beach	1 00	870,832	50,100	17 38	113,631	77

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan. 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Los Angeles County—Continued						
Rolling Hills	1 00	398	1,554	$ 54	$8,028	$0 01
Rolling Hills Estates	1 00	67,050	4,220	15 89	12,762	53
Rosemead	1 00	197,845	15,512	12 75	19,527	1 01
San Dimas	1 00	49,898	7,128	5 74	11,066	37
San Fernando	1 00	522,809	15,939	32 49	27,791	1 88
San Gabriel	1 00	437,854	22,579	19 39	45,984	97
San Marino	1 00	115,195	14,658	8 41	52,738	22
Santa Fe Springs	1 00	987,576	16,343	56 57	75,513	79
Santa Monica	1 00	1,978,196	85,900	23 03	211,974	93
Sierra Madre	1 00	54,695	10,250	5 34	16,449	33
Signal Hill	1 00	308,060	4,627	66 58	28,543	1 08
South El Monte	1 00	325,926	4,865	73 13	21,366	1 67
South Gate	1 00	1,250,570	53,851	23 23	127,947	98
South Pasadena	1 00	199,872	19,706	9 64	37 718	50
Temple City	1 00	199,690	37,758	5 29	36,486	55
Torrance	1 00	1 767,762	114,300	15 13	250 699	70
Vernon	1 00	2,306,896	229	10,073 99	257,623	90
Walnut	1 00	7,257	931	7 77	3,313	22
West Covina	1 00	941,179	56,000	16 81	86,678	1 09
Whittier	1 00	1,415,135	78,720	17 98	124,402	1 14
Total		#109,063,358	6,501,000	16 77		
Madera County	1 00	201 303	41,500	4 85	110 904	18
Chowchilla	85	63,951	4,525	14 14	4,602	1 39
Madera	85	207,250	14,430	14 36	14,262	1 45
Total		472,504	41,500	11 39		
Marin County	1 00	293,587	189 250	1 73	264,928	10
Belvedere	1 00	9,328	2 148	4 58	7,680	13
Corte Madera	1 00	140,815	6 400	21 88	12 772	1 10
Fairfax	1 00	49 993	8,813	8 80	8,756	57
Larkspur	1 00	49,743	6,575	7 56	12,394	40
Mill Valley	1 00	164,180	11,000	14 93	20,444	80
Novato	1 00	112,991	20,300	5 57	18,492	61
Ross	1 00	2 739	2 551	1 47	7,097	05
San Anselmo	1 00	90 717	12,300	7 38	18 739	48
San Rafael	1 00	889,985	24,000	37 08	65,579	1 36
Sausalito	1 00	137,370	5,311	25 77	14,414	95
Total		1,941,148	169,250	11 47		
Mariposa County	1 00	91 154	5,500	16 58	15,936	57
Mendocino County	1 00	210,008	50,550	4 33	64 227	33
Fort Bragg	95	79,121	4,423	17 85	7,755	1 02
Point Arena	85	6,289	596	10 55	610	1 03
Ukiah	85	214 859	9,900	21 70	13,992	1 54
Willits	85	66,008	3,410	19 08	5,234	1 24
Total		584,405	50,550	11 56		
Merced County	1 00	312 787	96,750	3 23	172 200	18
Atwater*	95	64 427	7,350	8 78	17,885	26
Dos Palos	85	55,286	2,373	23 29	2,509	2 13
Gustine*	95	24,973	2,300	10 86	5 355	47
Livingston*	95	16 922	2 450	6 90	4,173	38
Los Banos*	85	148,402	6,190	24 03	9,478	1 57
Merced*	85	426,179	20,892	20 30	61,604	09
Total		1,047,746	96,750	10 83		
Modoc County	1 00	14,434	8,000	5 55	26,815	17
Alturas	75	55,988	2,819	19 86	3,395	1 65
Total		100,422	8,000	12 55		
Mono County	1 00	55,412	2,550	21 73	26,318	.21

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan 1 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent†
1	2	3	4	5	6	7
Monterey County	1 00	358,835	206,550	$1 74	$404,342	$0 09
Carmel	1 00	179,859	4,580	39 27	18,440	98
Del Rey Oaks	1 00	1,368	1,891	75	2,423	06
Gonzales	1 00	24,253	2,138	11 34	2,355	1 03
Greenfield	1 00	16,240	1,690	9 67	1,662	98
King City*	1 00	81,159	2,937	27 63	5,894	1 38
Monterey	1 00	582,528	22,618	25 76	38,774	1 50
Pacific Grove	1 00	105,960	12,850	8 24	15,922	56
Salinas	1 00	930,916	31,200	30 03	71,048	1 32
Sand City	1 00	7,863	520	15 12	742	1 06
Seaside	1 00	201,572	19,453	10 57	19,053	1 07
Soledad	1 00	32,405	2,837	11 42	2,725	1 19
Total		2,531,893	266,550	12 26		
Napa County	1 00	330,272	71,300	4 63	99,785	33
Calistoga	855	22,283	1,514	14 72	3,101	72
Napa*	855	408,388	22,917	17 74	40,313	1 01
St Helena	855	47,517	2,722	17 46	5,725	83
Total		806,554	71,300	11 31		
Nevada County	1 00	187,495	22,200	8 45	46 202	41
Grass Valley	85	74,336	4 876	15 25	6,727	1 11
Nevada City	85	33 236	2 353	14 12	2,924	1 14
Total		295,067	22 200	13 29		
Orange County	1 00	404,448	925,450	53	1 634 068	03
Anaheim	1 00	2 662,820	129,800	21 51	232,040	1 14
Brea	1 00	144,076	9,880	14 67	16,842	86
Buena Park	1 00	878,704	52 400	16 77	66 681	1 32
Costa Mesa	1 00	687 341	50 700	13 56	83,464	82
Cypress	1 00	29 826	6,350	4 70	11,068	27
Dairyland	1 00	6,179	622	9 93	2,773	22
Fountain Valley	1 00	6,627	2,068	3 20	4,600	14
Fullerton	1 00	951,893	64,100	14 85	128 314	74
Garden Grove	1 00	1 301 487	100,300	13 01	117,195	1 11
Huntington Beach	1 00	239,561	34,143	6 64	105,378	21
Laguna Beach	1 00	261,223	10,000	26 19	35,412	74
La Habra	1 00	395 868	31 900	9 59	42 712	72
Los Alamitos	1 00	34,851	4,312	8 04	6 053	57
Newport Beach	1 00	664 376	31,400	21 16	111 610	47
Orange	1 00	420,788	38,467	11 53	67 639	66
Placentia	1 00	28,667	6,975	4 11	7,721	37
San Clemente	1 00	116,494	10 500	11 09	22,079	53
San Juan Capistrano	1 00	26,046	1 848	11 06	4,446	59
Santa Ana	1 00	2,891,946	120 700	23 88	194,233	1 48
Seal Beach	1 00	53,147	10,050	5 26	18,556	29
Stanton	1 00	213,491	12 050	16 49	18 478	1 16
Tustin	1 00	110 478	3 325	33 23	5,842	1 89
Westminster	1 00	235,944	35,200	6 70	33,756	70
Total		12,744,613	925,450	13 77		
Placer County	1 00	320,681	63 000	5 09	140 370	23
Auburn	90	154,718	5,596	27 70	11,284	1 37
Colfax	85	30 122	921	21 85	1,592	1 45
Lincoln	85	28 531	3,197	9 02	4 225	68
Rocklin	85	8,977	1 495	6 00	1,817	49
Roseville	85	245,905	14,550	16 55	20,482	1 20
Total		778,134	63,000	12 37		
Plumas County	1 00	123,328	11 550	10 68	75,562	16
Portola	95	16,534	1,874	8 82	1,953	85
Total		139,862	11,550	12 11		
Riverside County	1 00	1,366,614	359,650	3 32	691,257	18
Banning	90	120,878	10,800	11 19	15,254	79
Beaumont	90	50,351	4 432	11 36	6,907	76
Blythe	90	130,868	6,023	21 73	8,379	1 56

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Riverside County—Continued						
Cabazon	90	2,837	498	$5 80	$987	$0 29
Coachella	90	46,394	5 580	8 85	3,606	1 37
Corona	90	221,919	13,396	16 64	29,366	76
Elsinore	90	30,537	2 432	12 55	4,313	71
Hemet	90	154,000	5,416	28 60	9,378	1 65
Indio	90	208,167	11,000	27 11	16,136	1 68
Palm Springs	95	539 313	16,400	32 88	80,599	67
Perris	90	31,712	2,992	10 60	2,772	1 14
Riverside	90	1,802 313	94,955	16 87	168,784	95
San Jacinto	90	24,887	2,559	9 73	3,076	81
Total		4,523,611	350,650	12 58		
Sacramento County	1 00	4,731,583	575,400	7 53	915,038	47
Folsom	85	32,316	5,425	9 64	7,295	72
Galt	85	20,451	1 968	10 05	2,324	88
Isleton*	85	15,023	1,039	12 53	1,600	81
North Sacramento	85	309 965	13,219	23 45	22,492	1 35
Sacramento*	85	3,739,965	222,600	16 80	472,152	79
Total		8,467,303	575,400	14 72		
San Benito County	1 00	63 527	16 250	3 91	48,719	13
Hollister	80	101,063	6,528	15 46	10 063	1 00
San Juan Bautista	1 00	9,982	1,046	9 54	1,206	83
Total		174,572	16,250	10 74		
San Bernardino County	1 00	2,057,062	572,050	3 60	978,873	.21
Barstow	925	209,679	13,050	16 07	14,605	1 44
Chino	925	113,774	11,750	9 68	14,254	80
Colton	925	225,043	19,450	11 62	19,709	1 14
Fontana	925	264 213	15,000	17 61	19,515	1 35
Montclair	925	254,028	16,400	13 66	18,102	1 24
Needles	1 00	52,887	4,990	11 54	4,860	1 09
Ontario	925	662,816	50,122	13 22	61,401	1 08
Redlands	925	339 932	28,350	11 99	40,007	83
Rialto	925	168,657	20,050	8 41	25,694	66
San Bernardino	925	2,173,929	92,954	23 54	151 425	1 54
Upland	925	149,034	18,250	8 22	27,639	54
Victorville§	925	*73 849	8,259	8 94	10,572	70
Total		6,717,880	572,050	11 74		
San Diego County	1 00	1,041,789	1,146,950	91	1,727,607	06
Carlsbad	1 00	53,638	10,150	5 28	32,229	17
Chula Vista	1 00	509,795	46,900	10 87	80,606	64
Coronado*	1 00	171,362	18,030	9 18	31,871	53
Del Mar	1 00	46 779	3 124	14 97	8,967	52
El Cajon	1 00	603 534	37,636	16 04	62,403	97
Escondido	1 00	470,133	21,021	21 74	32,334	1 45
Imperial Beach	1 00	65,691	18 500	3 55	15 153	43
La Mesa	1 00	563,901	31,020	18 15	55,027	1 02
National City	1 00	576,880	32,973	17 49	41,597	1 38
Oceanside	1 00	493,968	28,900	16 32	41,936	1 12
San Diego	1 00	8,162,405	616,500	13 24	946,150	86
San Marcos	1 00					
Vista	1 00					
Total		12,674,959	1,146,950	11 05		
San Francisco County	1 00	17,521,336	749,100	23 38	1,530,624	1 14
San Joaquin County	1 00	837,939	263,300	3 17	466,574	18
Escalon	95	48,509	1,811	26 79	2,977	1 63
Lodi	95	387,871	24,350	15 93	36,559	1 06
Manteca	95	130,677	9,350	13 97	11,243	1 16
Ripon	95	31,044	1,900	16 28	3,466	90
Stockton	95	1,972,513	89,500	22 04	140,493	1 40
Tracy	95	154,491	11,289	13 69	16,366	94
Total		3,558,941	263,300	13 52		

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan. 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
San Luis Obispo County	1 00	354,648	92,100	3 85	192,673	18
Arroyo Grande	00	73,195	6,427	11 67	5,606	1 31
Grover City	1 00	35,001	5,675	6 17	5,491	64
Paso Robles*	90	128,720	6,627	20 78	14,144	98
Pismo Beach	1 00	33,166	1,774	18 81	3,547	94
San Luis Obispo*	90	164,557	23,350	20 34	36,208	1 26
Total		1,089,775	92,100	11 83		
San Mateo County	1 00	1,189,173	498,900	2 39	934,723	13
Atherton	95	4,388	7,774	56	30,070	01
Belmont	95	126,103	13,400	6 85	24,897	51
Brisbane	95	96,770	4,476	21 62	2,974	3 25
Burlingame*	95	717,149	24,036	29 84	61,405	1 11
Colma	95	37,425	500	74 86	1,446	2 59
Daly City*	95	528,896	52,800	10 29	60,911	38
Half Moon Bay	95	29,018	1,957	14 83	4,184	69
Hillsborough	95	5,309	7,554	70	34,714	02
Menlo Park	95	300,083	27,203	11 03	57,941	52
Millbrae	95	183,328	18,875	11 55	31,751	58
Pacifica	95	109,902	34,150	4 73	22,191	49
Redwood City*	95	865,655	50,000	17 31	177,616	49
San Bruno	95	281,749	31,850	8 94	14,861	.63
San Carlos*	95	190,279	22,800	21 06	51,855	.93
San Mateo*	95	1,360,576	78,400	17 30	265,555	48
South San Francisco	95	800,576	38,413	21 68	92,781	92
Woodside	95	21,677	4,133	5 25	16,061	13
Total		7,109,651	498,900	14 26		
Santa Barbara County	1 00	808,418	218,650	2 78	421,953	14
Guadalupe	98	28,943	2,614	11 07	2,412	1 20
Lompoc	98	298,369	20,050	14 88	21,114	1 41
Santa Barbara*	98	1,553,122	64,300	23 74	160,864	95
Santa Maria	98	790,273	27,736	28 49	42,363	1 84
Total		3,257,127	218,650	14 90		
Santa Clara County	1 00	1,699,481	785,850	2 16	4,538,657	.11
Alviso	91	10,510	1,171	8 95	2,871	.37
Campbell	91	213,207	14,450	14 75	24,777	86
Cupertino	91	145,224	5,950	24 41	15,302	95
Gilroy	91	144,896	7,800	18 58	12,446	1 16
Los Altos	91	217,411	21,700	10 02	60,396	42
Los Altos Hills	91	5,474	3,472	1 58	15,557	04
Los Gatos*	91	312,641	11,750	26 61	30,458	1 03
Milpitas	91	71,240	10,050	7 09	29,449	24
Monte Sereno	91	603	1,806	33	5,481	02
Morgan Hill	91	53,075	3,252	17 99	5,474	1 07
Mountain View	91	795,796	36,000	22 11	70,946	1 12
Palo Alto*	91	1,485,363	54,420	28 39	196,157	76
San Jose	91	4,797,599	258,100	18 59	534,464	90
Santa Clara	91	951,999	78,700	12 16	124,978	76
Saratoga	91	53,266	16,700	3 19	36,336	14
Sunnyvale	91	796,200	66,100	12 05	140,449	57
Total		11,799,403	785,850	14 96		
Santa Cruz County	1 00	442,238	92,950	4 76	191,599	23
Capitola	00	12,856	2,550	5 04	5,049	25
Santa Cruz	90	535,906	27,250	19 66	53,796	1 00
Watsonville*	90	293,388	13,305	23 45	22,535	1 32
Total		1,289,289	92,950	13 87		
Shasta County	1 00	462,712	68,200	6 78	187,463	25
Anderson	90	45,841	4,725	9 70	4,905	93
Redding*	85	543,880	14,585	37 29	42,174	1 29
Total		1,052,433	68,200	15 43		

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Sierra County	1 00	11,994	2,400	5 00	7,055	17
Loyalton	80	8,988	936	9 60	460	1 95
Total		20,982	2,400	8 74		
Siskiyou County	1 00	118,761	34 850	3 51	71,498	17
Dorris	1 00	5,319	973	5 47	1,457	37
Dunsmuir	90	29,081	2,873	10 12	3,125	93
Etna	1 00	4,182	596	7 02	522	80
Fort Jones	1 00	10,277	433	21 28	462	2 09
Montague*	1 00	6,440	782	8 24	1,565	41
Mt Shasta	90	41,156	2,272	18 11	2,494	1 65
Tulelake	90	20,259	950	21 36	1,107	1 83
Weed	90	40,451	4,686	8 63	2,460	1 64
Yreka*	85	115,248	4,807	23 98	6,451	1 79
Total		391,394	33,850	11 56		
Solano County	1 00	217,375	148,000	1 47	193,580	13
Benicia*	1 00	31,038	6,070	5 12	10,308	30
Dixon	90	67,032	3,350	20 02	4,431	1 51
Fairfield	90	208,644	18,050	11 56	19,846	1 05
Rio Vista	90	66,605	2,616	25 46	4,302	1 30
Suisun	90	24,541	2,470	9 94	1,562	1 54
Vacaville	90	123,523	11,750	10 51	13,037	95
Vallejo	90	714,315	60,964	11 72	67,199	1 06
Total		1,483,113	148,000	10 02		
Sonoma County	1 00	929,103	161,550	5 75	280,854	33
Cloverdale*	875	37,011	2,818	13 00	5,731	65
Healdsburg*	875	32,250	4,822	17 06	7,489	1 10
Petaluma	875	223,105	14,200	15 71	21,989	1 01
Rohnert Park§	875	9,990	3,113	3 18		
Santa Rosa*	875	718,446	33,800	22 00	75,786	98
Sebastopol	875	89,141	2,796	30 31	6,051	142
Sonoma	875	54,750	3,029	18 08	5,732	96
Total		2,165,996	161,550	13 41		
Stanislaus County	1 00	665,422	166,150	4 00	257,045	26
Ceres	1 00	34,284	4,484	7 20	3,502	92
Modesto	925	1,091,801	41,050	26 60	65,024	1 68
Newman	925	42,966	2,148	20 00	2,879	1 49
Oakdale	925	90,700	4,986	18 19	4,951	1 83
Patterson*	925	50,135	2,429	20 64	4,909	1 02
Riverbank	1 00	26,350	2,788	9 42	3,671	72
Turlock	925	218,642	9,134	23 94	13,299	1 64
Total		2,218 279	166,150	13 35		
Sutter County	1 00	237,887	34,550	6 59	103,870	22
Live Oak	85	16,507	2,276	8 57	2,057	93
Yuba City*	70	147,250	14,300	11 16	28,053	52
Total		394,344	34,550	11 41		
Tehama County	1 00	100,044	27,400	3 65	71,112	.14
Corning	87	52,934	3,006	17 58	4,585	1 15
Red Bluff	87	164 247	7,500	21 90	12,459	1 32
Tehama	87	350	281	1 34	293	12
Total		317,475	27,400	11 59		
Trinity County	1 00	58,456	9,450	6 19	14,443	40
Tulare County	1 00	613,469	177,550	3 46	343,060	18
Dinuba	95	112,941	6,278	17 98	8,066	1 39
Exeter*	95	53,520	4,264	12 55	8,437	63
Farmersville	95	17,499	3 042	5 75	1,523	1 15
Lindsay	95	83,080	5,397	15 39	7,915	1 05

LOCAL SALES TAX RATE, AMOUNT OF SALES TAX REVENUE DISTRIBUTED IN THE 1962–63 FISCAL YEAR, POPULATION, SALES TAX PER CAPITA, ASSESSED VALUATION ON THE 1962 ROLL, AND SALES TAX AS A PROPERTY TAX RATE EQUIVALENT, BY CITY AND COUNTY—Continued

County and city	Tax rate (%)	Revenue distributed (in dollars)	Population Jan. 1, 1963	Sales tax per capita	Assessed valuation on 1962 roll† (in thousands)	Sales tax as property tax rate equivalent‡
1	2	3	4	5	6	7
Tulare County—Continued						
Porterville*	95	267,537	9 011	$29 69	$21 893	$1 22
Tulare*	95	261,443	14 157	18 01	24,641	1 07
Visalia*	95	476 815	17 000	28 05	36,497	1 54
Woodlake	95	24,409	2 633	9 31	1,970	1 24
Total		1,911,896	177 550	10 77		
Tuolumne County	1 00	101,219	15,250	6 64	45,140	22
Sonora*	88	97,961	2,968	33 01	5,830	1 68
Total		199,180	15,250			
Ventura County	1 00	968,913	243,700	3 98	538 419	18
Fillmore	967	93,024	4,808	13 11	4,866	1 30
Ojai	967	99,806	4,495	20 20	8 795	1 04
Oxnard	967	789,454	40,800	15 85	74 057	1 07
Port Hueneme	967	49,270	12,450	3 96	7,804	62
San Buenaventura	967	855,953	33,400	25 63	53,224	1 61
Santa Paula	967	173,404	13,370	11 06	17,714	98
Total		2 990,824	243 700	12 27		
Yolo County	1 00	697,177	74 600	9 34	151 652	46
Davis*	80	79,143	10,600	7 46	27,782	29
Winters	80	24 765	2,078	11 44	2,095	1 18
Woodland*	80	220,322	14,022	15 70	30 783	72
Total		1,020,505	74,600	13 68		
Yuba County	1 00	211,779	40 900	5 18	68,885	31
Marysville*	703	408 761	9 553	42 79	32,623	1 25
Wheatland	1 00	6,088	849	7 17	911	67
Total		626 628	40 900	15 32		
Total distributed to cities		$205 434,596	12,171,577	$16 88	$23,844,356	$0 86
Total distributed to counties		$55 786,334	17 301 000	$3 21	$33,326,914	$0 17
Grand total		$261,220,930	17,301,000	$15 02	$33,326,914	$0 78

* This city assessed common property and collected its own property tax in 1962 County assessed common property and collected taxes for cities not so designated

† Values as equalized for all local taxation except for the cities asterisked which are equalized for city taxation Most of the latter group have been equalized for city taxation at ratios greater than that used by the county The aggregate assessed valuation for all asterisked cities was 1 27 times the aggregate assessed valuation of the same properties as equalized for county taxation

‡ Per $100 od assessed valuation

§ Palmdale contracted for state collection on October 1, 1962, distributions shown in column 3 are based on collections for two quarters, Hidden Hills contracted for state collection on July 1, 1962, distributions shown in column 3 are based on collections for three quarters

This figure excludes $595,317 that was collected in the second quarter of 1960 and impounded pending decision on litigation brought by the City of Commerce This amount including interest was distributed in the 1962–63 fiscal year

§ Victorville contracted for state collection on October 1, 1962, distributions shown in column 3 are based on collections for two quarters

§Rolnert Park contracted for state collection on October 1 1962, distribution shown in column 3 are based on collections for two quarters

Source State Board of Equalization, *Annual Report*, 1962-63

APPENDIX D-1

The Counties' View of Their Own Revenue System, statement by Wm. R. MacDougall, general counsel and manager, County Supervisors Association of California, to the Assembly Committee on Revenue and Taxation, Fresno, California, January 29, 1964.

Mr Chairman and Gentlemen of the Committee

While California counties are always willing to cooperate in legislative interim committee studies, it is a rare thing when the counties are actually delighted by such a study Your investigation of California revenue and taxation problems is that rare thing We are excited over its possibilities—and welcome joyously your official look into our 58 county purses Since we are taking your important studies this seriously, we have examined all the fiscal policies declared by the County Supervisors Association of California since World War II This examination was conducted by our tax committee and its findings were gone over at great length by the association's entire board of directors Thus, we are able to lay before you today a comprehensive collection of the beliefs of California counties respecting their finances

We find that we have 40 policies currently in effect, all of which bear on the broad subject of your study It is our intention here today to place these policies officially into your record

Fortunately, you have provided for us a framework of classification for those policies and we have used that in classifying them Our discussion, then, will be within the framework of the 10 principal questions which have been determined by your committee to be the guideposts for your large-scale investigation

I will wish to comment briefly on each question and upon those county policies which bear upon it You will note that each of our policies is set forth in this statement under the question upon which it bears

Your first question inquires what will the local government be in the years ahead and how will these needs be met?

Even though we are one of your "best customers," we cannot essay to answer this question with any degree of certainty We do know that county government revenue needs in the years ahead will positively be greater than they are now We would suggest to your analysts that they project county needs into the future on a basis which will include all three of the following factors

(1) Normal charted growth based on past experience with consideration of factors such as population increase which influence county costs

(2) Growth based on additional services being undertaken by county government—some being local in nature on request of the county residents—and some being state in nature, by virtue of new duties imposed upon counties by the Legislature

(3) Growth based on whatever inflation is to be experienced in the dollar

We feel that all three of these factors will combine to produce revenue needs even beyond the heavy demands of today

Meeting these needs will be a mutual problem upon whose solution we must all work together We do not look for any radical departure

from the traditional methods of meeting these needs It is our feeling that the increased revenues will be provided in part by additional local tax levies (hopefully not in the property tax field) and partly by state aid for state programs administered by the counties and partly by shared revenues collected centrally by the state

This you will recognize as the pattern which has already evolved in California It has worked reasonably well through some very rough times

You next ask if local government expenditures can be reduced in any way The obvious answer is, of course, "Yes, by reducing services" At first blush, this might seem to be an impertinent answer, but I assure you that it is not California county expenditures are the composite product of local demands for services and state law requirements of services To achieve any substantial reduction, specific services now being provided by county government would have to be transferred to another level of government or discontinued entirely I can say flatly, and be almost sure that I am right, that most California county boards of supervisors would willingly discontinue any special county government service at any time the public asked for it There is just not support for such action and there is constant demand both for increased service and for new types of services Likewise, we will immediately discontinue any of the things mandated upon us by the state the moment the Legislature changes the law making such programs mandatory upon us

County government, particularly, is in the field of services which are not optional We do not deal in the "frills of government" The needy must be fed, the ill must be hospitalized and the bad must be incarcerated These are the services and programs which account for most of county government expenditures

In smaller, less spectacular ways, we are constantly at work in California counties endeavoring to reduce expenditures through greater efficiency We are happy to report that we now have central administrative offices in over 40 counties This is typical of the modern administrative and organization devices we use to increase operations efficiency

Two of our standing policies bear on this question Expenditures are tending to be reduced

> "by continually worked on modernization of county budgets and fiscal procedures,
>
> "by continually urging reduction in the multiple number of special funds in counties"

The tremendous load now being carried by the property tax is already before this committee in all its awfulness We will not burden your record with further statistical proof of the weight of this load

The property tax has, of course, not reached a *legal* limit, but we in county government do think that for all practical purposes it has reached a *working* limit

Were it not for the continuous growth of California with its direct effect on property values, the load of the property tax would be proving itself close to unbearable right now What gives us some sleepless nights in county government is the thought that we have arrived at this situation in times of prosperity and economic growth There is not one bit

of reserve left in the property tax base to cope with the many problems which would arrive during a period of economic adversity In fact, we would then see a sharp rise in property tax delinquency based on the present property tax load

Your questions as to whether an absolute ceiling on the property tax should be imposed by the Legislature, of course receives an answer of an emphatic "*No!*" from California county government

> "CSAC opposes limitations of assessments or tax on county property tax base or rates
> "CSAC opposes an in lieu tax on motor boats which levy would tax motor boats in the same manner as automobiles "

As far as counties are concerned, there is no legal ceiling of the property tax at present Counties have regarded their home-rule powers here as a matter of sacred trust Our record speaks for itself Counties have been reluctant at all times to increase their tax rates and California history, even in these postwar growth years, has been a story of parsimony and frugality in county budgeting We will continue this philosophy

In addition, any arbitrary ceiling on the county tax rate would render us powerless to execute the vast programs you have assigned to county government to do for you We must administer the welfare programs We must provide hospitals for the needy sick We must preserve law and order We must provide a court system We must guard the public health. We must provide roads to feed and to supplement the great state highway system We must do these and dozens of other things, not of our own choosing, but because they are assigned to us by law.

This committee is, of course, searching for new revenue sources to supplement and to replace partially the property tax We are happy to join in that search with you but we have no magic answers to offer at the beginning of 1964. We know that you will consider every possible alternative to the property tax

We particularly request your consideration of the income tax as a supplement or alternative to part of the existing property tax Such a tax as levied by and for the benefit of local governments should, nevertheless, be collected by the state. Taxpayers must not have the burden of additional records and returns

You asked if the present tax relationships between levels of government are adequate. We believe they are reasonably adequate California has gone through some trying times since 1945 and we have done this with the fiscal fiascos which have characterized the experience of other states and their local governments.

We do have one firm principle which we do emphasize at every possible opportunity

> "The property tax field should not be entered by the state "

We welcome your investigation into the question of whether the state should pay local government an amount equivalent to that removed from the tax rolls by exemption We have long felt that exemptions which are voted on a statewide basis should be financed on a statewide basis.

While the property tax burden is now close to its absolute maximum, there continues to exist in the state-favored groups who are just as able as anyone else to pay their share of the current tax burden but are excused by special law from doing so.

The sentiment behind all of these exemptions is kindly and in the nature of providing an indirect subsidy The trouble is that the extent of this is never really understood since it is a silent payment through excuse from taxation borne by everybody else

Specifically, our policies include the following·

"CSAC endorses legislation where state is to reimburse local jurisdictions for tax losses due to veterans exemption."

"CSAC supports in-lieu tax measures for state beaches and parks."

"CSAC opposes legislation which increases veterans exemption."

"CSAC endorses legislation providing that only California veterans who were residents at time of entry into the service are eligible for veterans exemption but amend to include all veterans eligible and entitled to exemption on operative date of this constitional amendment"

"CSAC supports specification of information to be incorporated in veterans property tax exemption affidavit, also rebuttal information as to nonresidents and careful administration of the program"

"CSAC supports measures for taxing publicly owned utilities"

You ask if the great proliferation of the units of government is putting too much pressure on the property tax.

We think that it is The existence of several thousand special districts in addition to the cities, the counties and the schools, has strained the property tax much, particularly when one considers that every one of these governmental units uses the property tax as a revenue base. We welcome the new legislation now becoming operative where there is a local agency formation commission in each county which can exercise control of the creation of new units of government and control of growth of existing units A partial solution to this problem is thus now in the hands of every county and its cities on a home rule basis We are pleading with them to use this new power wisely and well.

You ask which functions now performed by cities and counties could be transferred to another level for more efficient administration

We have no specific recommendations to make here We feel that the great progress we have made in the last 10 years in city-county cooperation is providing an answer to this question We have documented over 3,000 instances of consolidation of functions between cities and counties. We could hardly have a better record! Progress here is continuing —it merits your endorsement and it needs your stimulation However, we do not need legislation making such transfers mandatory

For example, we have achieved almost complete consolidation of the public health function with the passage of time and the growth of understanding being the principal factors By July, there will probably

be only four independent city health departments operating in the entire state

We are making like progress in the field of assessment of property and collection of property taxes Cities maintaining duplicate services here are merely indulging in a political luxury which their taxpayers tolerate largely because they do not realize it exists The vast majority of cities have already moved to use county services here This is the kind of progress which should be encouraged and which will produce more efficient administration It will provide the additional dividend of the major benefits of regional government without the need of creating any new third level of local government

We have several policies bearing on your question as to whether or not the property tax is an equitable tax at present You will see that the general tenor of county philosophy is that the property tax is an equitable tax save to the extent that it has become inequitable through surgery upon it caused by exemptions from it

> "CSAC urges State Administration and Legislature to give immediate attention to each of the partnership programs meriting financial costs sharing adjustments and until such adjustments are made, not to embark on new governmental programs or expand existing programs in fields of health, welfare, corrections, et al "
>
> "CSAC opposes any legislation that would give taxing power to any appointive state agency without a prior vote of the people in the areas involved "
>
> "CSAC should meet by insistent and vigorous county effort any renewed efforts to revive the rejected multi-million-dollar tax shift from state-assessed property to common property owners "
>
> "CSAC opposes state in-lieu taxes on boats and other property not now assessed at the state level This does not apply as opposition to CSAC long-standing policy of supporting in-lieu payments on state beaches and parks "

Generally, you ask if new exemptions to the property tax base should be allowed The county answer to this question will be no news to this committee We have been appearing before you and your predecessors for over 50 years, urging that the property tax base be retained intact We firmly feel that any present difficulty with the property tax comes from the general heavy burden of the tax itself and not from the fact that it applies to any identifiable small group of people with special problems The nature of the property tax, its amount and its manner of collection all combine to make it an unpopular and onerous tax It is only natural for any identifiable group with problems to suggest that the answer to their problem is an exemption which will shift the burden to the remaining taxpayers

I submit for the record the following array of county policies on this subject

> "Property tax must be preserved without further inroads on its base "
>
> "CSAC opposes legislative moves which call for shrinking of the county tax base "

"CSAC opposes any cut into county tax base by further liberalization of property tax exemptions"

"CSAC opposes legislation which would exempt all personal property from taxation"

"CSAC opposes legislation which provides that personal property consisting of only household goods and personal effects of every householder, is exempt from personal taxation with the understanding that a more uniform approach be sought in assessing household goods and personal effects, bearing in mind that any method substituted for present practices should continue to produce comparable revenues"

"CSAC takes no action on proposal to allow tax exemption for bomb shelters"

"CSAC opposes legislation which provides for tax exemption for noncompetitive raw materials imported into California"

"CSAC opposes legislation in Congress in re tax exemption or evasion by barley or other producers participating in the Commodity Credit Corporation stabilization program"

"CSAC opposes legislation which exempts from taxation possessory interests of private owners using publicly owned land"

"CSAC opposes freezing assessments in any class of property"

You asked if the emphasis on the property tax should be shifted to land values

We believe that it should not

"CSAC opposes the single tax on land, as an unworkable tax theory in modern times"

You asked if there should be a standard ratio of assessment, presumably one fixed in percentage points by statute

"CSAC opposes a fixed standard ratio of assessed value to market value established by law"

You inquire if a better system of tax appeals is needed By this, we assume you mean appeals from assessed valuation determined by county assessors

We feel that the present system of annual sessions of county boards of equalization works well There would seem to be no need for additional machinery

The volume problem which was critical in Los Angeles County is being solved by the new tax appeals boards being created by that county There is no need for such boards in the other counties where the normal volume of appeals before the county board of equalization each July is easily handled Our policies

"Procedures of county boards of equalization should be evaluated and instructional institutes held in each of the regional associations of CSAC"

"CSAC does not oppose creation of tax appeals boards in counties with over 400,000 population if sought by boards of supervisors in such counties"

Like you, we are deeply interested in the improvement of assessment practices Our policies in this field speak for themselves They demonstrate positively that this is one of the prime fields of interest of California county government.

"CSAC endorses legislation which changes tax lien date from first Monday in March to December 31 and moving tax calendar ahead almost two months."

"CSAC approves in principle legislation which would provide for the assessment of business inventories on the arithmetic average of the assessed value of such property. It opposes any optional feature wherein taxpayer may elect to choose either the present method of taxation or the average inventory method "

"CSAC pledges continuing cooperation to State Association of County Assessors in general field of improving property tax administration "

"All boards of supervisors are urged to furnish the county assessor with adequate space, staff, maps, equipment and reasonable travel expenses."

"CSAC endorses provision of adequate staff for the Division of Assessment Standards in the State Board of Equalization to aid and assist assessors."

"CSAC endorses visual education and the preparation of locally applicable films, filmstrips or slides to be used in furthering public education on assessment practices and the local tax base "

"CSAC recommends legislation which would require documents transferring title to have affixed thereto, internal revenue stamps, prior to the recording of such documents "

"CSAC recommends a uniform practice in county government, whenever such is practicable and feasible, whereby the county tax collector in each county shall itemize and clearly show by dollar figures on each tax bill the amount of taxes for county, cities, schools districts."

"CSAC does not oppose permissive measures providing for furnishing of duplicate tax bills to lending agencies upon request "

"CSAC opposes proposals to mail notices of delinquent taxes."

"CSAC opposes any proposal offering special tax discounts for early tax payments "

We share your interest in equalization of the property tax both intercounty and intracounty We are grateful for the leadership of the State Board of Equalization over the years in giving California effective intercounty equalization and in assisting us in providing the certainty of intracounty equalization Intracounty equalization is properly a local problem. It is easily policed locally The provision of proper funds and staff for the assessor, the continuing direct interest of the public in their property taxes and the increasing knowledge of the public about the peculiar features of the property tax will all combine to make ridiculous even the suggestion that there is not intracounty equalization throughout the state We pledge ourselves to continuous educational projects here in cooperation with the County Assessors Association.

You ask how inequities of taxable resources between government units at the same level can be reduced

This is one of the most difficult and continuous problems which we have We feel that there is no simple and no complete answer. The partial solution at which we seem to have arrived may have to suffice for some time to come It, of course, consists of the use of several types of taxation and several types of tax base in financing the programs which are the most expensive For instance, our huge $800,000,000 a year social welfare program in California is financed in partnership by the county, state and federal governments with all three contributing from their treasuries, which, in turn, are fed by different tax bases. Even so, the burden carried by the property tax here is notoriously heavy and 1963 welfare legislation further compounded existing inequities among counties As a result, we still have such situations as the mountain Counties of Mono and Inyo sitting side by side with the welfare property tax rate of one being 10 times that in the other Similar disparities exist in metropolitan areas with the welfare tax rate differences between the neighboring Counties of San Bernardino and Orange being on a three-to-one ratio

We will continue to work with the Legislature in chipping away at these problems as best we can We will pray that this particular committee will come up with the grand solution!

You ask if cities should be required to give up assessing functions which duplicate those of the counties

We very definitely feel that time itself will provide opportunity to eliminate the remaining duplicating assessing functions Recent studies in the few large cities still maintaining their own assessing office indicate that the proponents of maintaining the expensive duplicate office are running out of reasons for justification Time and an informed public will provide the answer in the best home rule tradition of California local government

Again, I would like to thank this committee for the monumental effort you are taking to study, to appraise, to revise and to improve the revenue and tax system of California Just the county portion of this is so vast it takes our breath away as we contemplate it Yet we realize that it is only a small part of the huge task you have undertaken

We dream that the results of your work will be the provision of methods by which California counties can continue to serve the State of California in providing both state and local services at the "home level" and can finance these services from a dependable revenue system which produces no inequities in its operation We pledge our best efforts in working with you toward this goal

APPENDIX D-2

MUNICIPAL REVENUE PROBLEMS

Statement by Richard Carpenter, executive director and general counsel, League of California Cities, to the Assembly Committee on Revenue and Taxation, Fresno, California, January 30, 1964.

Before endeavoring to answer some of the questions raised by your committee, I would like to make it clear that I will not attempt at this time to make a factual and statistical presentation, but will with your permission either make such a presentation at a later date or furnish you in writing the results of the research and recommendations made by the league's Committee on Revenue and Taxation This league committee, which recently was appointed, will review in depth the long range revenue problems confronting cities in California, make recommendations to the league board of directors and to your committee and the committee of the Senate considering these same problems I have attached to this paper a list of the members of the league committee which we believe to be broadly representative of municipal government throughout California You will note that the committee's tax consultant is Professor Malcolm M Davisson of the Department of Economics, University of California Professor Davisson has served as the league's tax consultant at different times over a long period of years and on a variety of municipal tax problems. We hope that your committee will feel free to call upon the league and its member cities for any factual and statistical information which will enable you to fairly judge the revenue needs of cities in relation to all other levels of government in this state

The principle of local self-government is an indispensable element of the American concept of democratic government We believe that it should be strengthened at every opportunity, but the principle of local self-government can become an empty phrase if it refers to a government financially incapable of meeting the essential needs of the people The task we face in the cities and in the league, and we sincerely hope in your committee, is to determine whether there is a politically, economically and administratively feasible way to devise a municipal revenue system, with most taxes levied locally, which will support an adequate and responsible city government The system must be equitable among municipal taxpayers as well as among the beneficiaries of the services provided with such revenues It must be flexible enough to anticipate the needs of cities in the years ahead

During the course of your hearings and, in fact, during the course of almost any committee hearings considering the problems of government in this state, California's past, present and anticipated growth is the starting point Ninety percent of the state's growth since 1950 has been in metropolitan areas Of the expected growth of some 6½ to 7 million people during the 1960's, the great proportion will be concentrated in these same urban areas The nine bay area counties alone will increase by 1¼ million people between 1960 and 1970 and in the Los Angeles area during the same period there will be an

estimated increase of 2½ million persons This brief reference to growth suggests that the revenue and expenditure programs of local government within those areas is not likely to change very much during the foreseeable future This further suggests, in keeping with experience to date, that there will be tremendous need for expanding existing facilities and providing new services I am not alone in assuming that revenues and expenditures will increase rather than level off or diminish in the years ahead Leslie Carbert, tax analyst of the Pacific Gas and Electric Company, in his paper on "The Limits and Possibilities of Local Tax Resources in the 1960's" stated in 1962 that "We must very soon begin the search for new sources of revenue" Professor Davisson in his monograph "Financing Local Governments in the San Francisco Bay Area" states "All available evidence suggests that the revenue requirements of existing local governments will continue to increase as growth, urbanization and rising living standards bring demand for more and better public services" The massive 1959 report on "California Local Finance" by the Associated Colleges, Claremont, comes to the same conclusion Hale Champion, State Director of Finance, in his remarks at a conference in Sacramento earlier this week said

> "The rate of growth of the public sector of our economy is going to be even greater than the rate of population growth However disturbing this may be to those who regard government as already a monstrous ogre, our history and our needs both point to this conclusion Indeed, they permit no other, no matter how upset some may be at the prospect
>
> "Who is going to make the initial major financial commitments to clean skies and clean streams? Who is going to provide the money for adequate beaches and parks and wilderness and recreational areas? Who is going to pay the costs of great new public health programs, particularly in the area of mental health? Where will the money come from to stimulate the rebuilding of our cities? Above all, who will finance the cost of conserving and developing, through education, our greatest California resource—the people of this state?
>
> "The answer is obvious The very size and cost of the programs needed—and the lack of reasonable profit incentive in most of them—will continue to force government to be the prime mover —and to pay many of the bills"

An examination of the services provided by cities, the increasing cost of such services and public facilities and the conservative forecast of continuing growth seem to make it clear that these assumptions of need for more revenue as a result of greater expenditures made by representatives of business, universities and government are valid

While most of us live in cities and take many municipal services for granted, I would like to digress for a moment to briefly mention some of them in order to anticipate the natural suggestion so frequently made about reducing expenditures The great majority of cities have centralized administration, use modern management techniques, have adopted sound budget and fiscal controls, utilize centralized purchasing and personnel systems and have elected legislative

bodies vitally interested in cutting out every dollar of waste While I am sure that expenditures can and will continue to be made more and more efficiently, I am also equally sure that no great reduction in municipal expenditures will occur unless services are either curtailed or eliminated and it is primarily for this reason I would like to mention some of the services performed by cities The list is fairly long and includes planning and zoning, streets, sidewalks and bridges, sewerage and drainage systems; urban renewal and redevelopment; recreation, parks and playgrounds; landscaping, tree planting and beautification; police and fire protection; traffic control, building inspection; public health; civil defense and protection against disasters, animal control; water supply and distribution, refuse and garbage collection and disposal; small craft harbors; hospitals; off-street parking facilities; street lighting; transportation, airports; libraries; museums, cultural facilities and the management and housekeeping functions necessary to the provision of these services Not all of these services are provided by all cities A few not listed are provided by several large cities The point I wish to emphasize is that any significant reduction in municipal expenditures will be at the expense of one or more of these services We also should keep in mind that our increasing urban society and phenomenal growth have thrust many new problems upon cities. New services are expected of municipal government with respect to the problems of youth and the aging, human relations, urban renewal, recreation and industrial development. There will be others in the cities of the future

Professor John A Vieg of Pomona College and Claremont Graduate School, one of the authors of "California Local Finance" has stated·

> "When due allowance is made for inflation and the immense increase in our urban population, the cost of city government in California has hardly increased at all during the past 20 years What is more is that such small increases as have occurred have in most cases been counterbalanced by extensions or improvements in services."

In the report itself the comment is made that "This pattern has emerged in too many separate studies to be mistaken." It appears, therefore, that we cannot reasonably anticipate a reduction in municipal expenditures even though we can continue to expect continued improvement in municipal administration leading to savings in operating costs

It has been stated that it costs about $13,500 per family to provide local public works facilities These additional capital expenditures for the 15 million additional people who will be added to our population during the next 16 years have been estimated at somewhere between $55 and $60 billion It is for this reason that we anticipate that local expenditures will increase at a more rapid rate than either federal or state expenditures during the period between now and 1980. In 1945 the Legislature made available to cities and counties $10 million on a matching basis to provide plans for public works facilities. At a special session in 1946, the Legislature appropriated $90 million, also on a matching basis, for use by cities and counties to construct sewage

treatment facilities The foresight on the part of the Legislature in making those surplus funds available made it possible for cities and counties to meet one of their most pressing problems during the forties and fifties It is difficult to believe now that a population decrease was predicted by most people following World War II. We now know what happened to our population and these well-planned state and locally financed facilities have in many cases become inadequate Public insistence on the elimination and prevention of contamination, pollution and nuisance will require enormous outlays for new and expanded sanitation facilities during the next few years The federal aid program for sewage treatment facilities falls far short of meeting our needs and there are many who feel that this is a state and local responsibility rather than an obligation of the federal government The Legislature demonstrated similar foresight with respect to city streets Both in 1947 and again in 1963 additional revenues were made available to assist in correcting the deficiencies on the city street and county road systems These are just two of the many facilities required to meet the problems of growth in California's cities—two of the many services listed above Cities are no different basically in terms of community needs than are schools School needs now and in the future are well known to the Members of the Legislature Accurate estimates can be made of the number of school children who will enter our school system year after year so that you may anticipate the amount which will be needed to construct new facilities, hire new teachers and pay for operating costs We believe that it is reasonable to assume that these same people will require and demand services and facilities provided by municipal government

All public facilities should be provided at the lowest possible cost to taxpayers Because of the two-thirds vote requirement contained in the Constitution of California municipal public works facilities often cost more than similar projects constructed by the state The interest rate is higher on lease-purchase than on general obligation bonds. We are aware of the fact that the supervisors association recently has reversed its position and now opposes any reduction in the two-thirds vote requirement and that some city officials believe that this limit should be retained. The league board of directors and most city officials, however, are of the opinion that the two-thirds vote requirement is simply costing municipal taxpayers more money to finance public works facilities than would a majority or 60-percent vote provision.

We hope that during the course of your hearing you will consider this vote limit and a related problem. Most tax limitations produce at some time or another unexpected and costly results Your committee has been interested in elimination of the wasteful duplication of assessing and tax collecting on the part of some cities Under present statutory law a city cannot incur an indebtedness for a public improvement which exceeds 15 percent of the assessed value of all property within the city Crescent City adopted an ordinance turning over the assessing and collecting function to the county but must now rescind that action because a bond issue would exceed the statutory limitation if the county assessment rolls were used This arbitrary and artificial limitation will cost the taxpayers of Crescent City an additional $7,000 annually until the law is changed

We are inclined to agree with those who state that the property tax has reached its limit However, revenue derived from property taxes will continue to be a substantial source of municipal revenue for years to come While many assessors have done an outstanding job in improving assessment practices, there are still inequities and these become more acute as the rate increases There is room for considerably more improvement in the administration of our property tax laws The legislature can be most helpful in this field One of the greatest difficulties confronting those responsible for property tax administration and those agencies dependent upon property tax revenue as a major source of support is the long and rather arbitrary list of property tax exemptions Every exemption makes the tax more difficult to administer while at the same time reducing the tax base While your committee did an outstanding job during the last session to halt tax exemptions and even to reverse the trend in connection with sales and use tax exemptions, we believe that it is now time to reexamine all the property tax exemptions contained in the constitution and statutes of California We understand that you expect to review the welfare exemption at the next meeting of your committee We do not believe that it was ever the intention of the legislature to exempt from property taxes the so-called life-care homes occupied by senior citizens having substantial means These homes tend to cluster in certain areas of the state, they require all of the services of local government and they are only in a legal sense charitable institutions Tax exemption simply shifts tax burdens, it does not reduce the need for revenue Los Angeles, Santa Barbara, Claremont and others are confronted with the same problem posed by this "welfare exemption" San Diego has a particularly acute problem with respect to the welfare exemption and San Diego also is facing all of the problems of growth As Mayor Frank Curran indicated in his report of January 13, 1964,

> "More than 628,000 persons now live inside the city boundaries about double the population of 1950 Our more than 300 square miles of land area is three times as large as the 1950 figure But these vast increases have not brought a proportionate increase in tax revenues On the contrary, these increases have imposed additional and critical stresses upon our ability to provide a level of municipal service which San Diegans demand and receive
>
> Concurrent with increased demands on our facilities, we have been subjected to the spiral of rising costs of providing these services, just the same as has private business and industry"

Cities have all of the higher costs confronting business and industry and in addition have costs which must be met because the service is provided by government rather than by private industry Costs frequently increase at a faster rate than appears warranted by the growth in population An example of higher municipal costs which often increase at a more rapid rate than the increase in population, is the cost of land A 1,500-foot airport runway which was sufficient 10 years ago must now be 5,000 feet long even though population has only doubled The need for park and recreation sites in the next six years is one-third of all the park and recreation acreage cities have acquired since 1850

Cities have developed in part a tax base which is sensitive to economic conditions A large percentage of the city budget is now financed from the sales tax and gross receipts business license revenues These same cities have been careful in most instances not to commit all of the revenue from these sources to operating expenses for fear that an economic recession would seriously impair their ability to maintain facilities on a normal operating basis Nevertheless these revenues have become a vital part of the financial program of most cities and no change should be made in the tax structure in this regard unless there would be a willingness to increase the sales tax rate in cities for the purpose of meeting long-range capital outlay needs.

The members of your committee already are well aware of problems created by attempts to narrow the sales and use tax base Actually existing exemptions should be carefully reviewed for the purpose of broadening this tax base to meet revenue needs A substantial increase in revenue can be realized by the elimination of the utility local use tax exemption, by subjecting utility sales generally to sales and use taxes and by including "services" generally rather than limiting sales and use taxes to tangible personal property We recognize that in the structure and administration of municipal business license taxes, cities are in a position to help themselves While this is not a major source of revenue within cities, it is nevertheless one that, if used, should be based on gross receipts so that all doing business within the city are treated alike We have published a report on business license taxes which recommends a complete review of existing ordinances

At the last session of the Legislature cities and counties were authorized to impose a hotel-motel occupancy tax on transients Prior to the enactment of this measure several charter cities had adopted local ordinances imposing a hotel room tax Here in Fresno the tax produces about $1 10 per capita, is easily administered and applies to about 75 hotels and motels It is an excellent example of the manner in which the Legislature can help cities and counties help themselves The same thing could be done with respect to property transfer taxes and others

The most important question raised by your committee cannot be answered except in general terms We do not know what the precise revenue needs in the years ahead will be or how these needs will be met We think that it is almost obvious that there will be increasing revenue needs and we hope to be able to tell you at a later date what they will be in terms of dollars and how we believe the dollars need to be raised.

We do not believe that property tax limitations serve any useful purpose Absolute limits have a way of being avoided and political limitations seem to be more effective than statutory limitations As already stated, tax and indebtedness limitations have retarded functional consolidation

Several tax experts have suggested that new revenue sources might include a percentage increase in income taxes to be shared with local government The Legislature has imposed a two-year moratorium on local income taxes even though the tax is in effect in many eastern cities and provides the only effective means of getting revenue for central cities from persons who come in from surrounding areas to earn their living We do not recommend this tax at this time, but neither do we believe in tying the hands of responsible local officials without

knowing more about their future revenue needs. The present sales and use tax relationship between the state and counties and cities is a highly satisfactory one, at least from the standpoint of administration, and this device of a local levy with state administration suggests the possibility of additional similar levies. The state should continue to collect taxes such as the sales and use tax where it is administratively feasible to do so and the political responsibility for levying the tax rests with local legislative bodies. The state cannot constitutionally levy a tax for a function clearly defined as a local responsibility.

We do not believe that the state should make payments in lieu of taxes except under extraordinary circumstances where a large portion of the property tax base is removed from local rolls by state action However, we do believe that tax exemptions should be carefully reviewed and eliminated wherever possible

We do not believe that the great proliferation of units of government is a major cause of the pressure on the property tax and we have presented to other committees of the Legislature many hundreds of examples of formal and informal intergovernmental contracts and arrangements which avoid actual duplication even though two or more governmental agencies capable of furnishing identical services exist within the same area. The Assembly Committee on Municipal and County Government is now undertaking the development of uniform procedures for the consolidation, dissolution and exclusion of special purpose districts The local agency formation commissions are authorized to review all new formations.

During the last 20 years many functions performed by cities or counties have been transferred to another level of government. I have already commented on the transfer of the sales and use tax administration from the local level to the state and on the transfer of the tax assessing and collecting function from cities to counties Counties now administer most public health services for cities and there are literally thousands of formal and informal arrangements by which one agency provides for another. The ultimate test here will be whether the agency to which the function is to be transferred is capable of and is actually administering the function more efficiently. If it is the transfer generally will be made voluntarily

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ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

Sources of Revenue Not Now Used by California

A Major Tax Study

Part 7

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CALIFORNIA LEGISLATURE

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DECEMBER 1964

PUBLISHER'S NOTE

This booklet contains reports on four tax levies not now used by California. The merits of each are discussed in light of California's changing economy and the need for equitably distributing the financial burden of government. The suggestions for change are those of the authors, committee recommendations will be made in due course.

ABOUT THE AUTHORS

The reports on the Real Estate Transfer Tax and the Stock Transfer Tax were prepared by Mrs Wilma Mayers, a lecturer in economics at Sacramento State College Mrs Mayers graduated at the head of her class when she received her A B in economics from the University of British Columbia From 1944 to 1947 she was a teaching assistant in economics and statistics at the University of California in Berkeley and at that same time she was on the staff of the University's Bureau of Business and Economic Research In 1949 she became a lecturer in economics at U C L A, leaving in 1950 when she began work for the State Board of Equalization on property and sales taxes

Mrs Mayers has been active in civic affairs in Sacramento and was president of the League of Women Voters in 1958–59 She is now a candidate for the Ph D at the University of California, Berkeley

Marvin Lee wrote "Taxation of Petroleum-Producing Properties in California" for the committee Dr Lee is an Associate Professor of Economics at San Jose State College He is a graduate of the University of California at Berkeley and received his Ph.D from the University of North Carolina in 1960, before his employment as a tax consultant for the North Carolina and South Carolina A F L-C I O He was later on the southern regional staff of the Amalgamated Clothing Workers of America at their New York headquarters He has done tax research for the Department of Tax Research at Raleigh, North Carolina, where he prepared reports for the legislature on many sectors of the state's economy He was a consultant on Economic Development and Prospects to the Joint Committee for Study of the Tax Structure in North Carolina Among his publications is "Tax Incentives and the Industrialization of the Southeast" which appeared in the *Proceedings,* National Tax Journal in September, 1961

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SOURCES OF REVENUE NOT NOW USED BY CALIFORNIA

DECEMBER 1964

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by

WILMA MAYERS
Professor of Economics
Sacramento State College

THE STOCK TRANSFER TAX

A stock transfer tax is one of a family of documentary taxes levied on the issue, recording or transfer of various documents such as bonds, stocks, mortgages, or deeds to real property. Normally the tax is paid by affixing stamps to the document in question, but different types of institutional arrangements now prevail in cases where the volume of business makes the use of stamps impractical.

PRESENT SITUATION

Most stock transfers which take place on securities exchanges are now subject to both a federal and a New York state tax, since approximately 85 percent of the total dollar volume of such business is transacted on the New York Stock Exchange Only 2 percent of exchange business takes place on the Pacific Coast Stock Exchange There is also a large and growing volume of business which is conducted in the over-the-counter market rather than on the exchange A Securities and Exchange Commission study in 1961 indicated that this market on a national basis was 75 percent as great as the organized exchange market in terms of the number of shares transfered and 35 percent as large in terms of dollars.

Alabama, Florida, South Carolina, and Texas also levy a tax on the sale or transfer of stock Pennsylvania repealed its tax in 1957. In Texas, where the tax is on stock transfers only, the comptroller reports that the tax presents many administrative problems considering the small amount of revenue it produces [1] In Alabama, Florida, and South Carolina the tax is applied not only to stock transfers, but also to other types of documents

TABLE I

Transfers in United States and Selected States

		Issues and transfers of bonds, capital stock, foreign insurance policies, and deeds of conveyance		
	Total (in thousands)	*Sales by postmasters (in thousands)*	*Sales by district directors (in thousands)*	*Playing cards and silver bullion transfers (in thousands)*
United States	$149,069	$45,687	$94,685	$8,698
California	17,703	10,713	6,955	35
New York	55,199	1,824	53,094	280
Illinois	11,019	1,496	8,283	1,240
Ohio	9,616	1,556	2,614	5,446

Source: Annual Report of U S Commissioner of Internal Revenue, 1963

The yield of the different state taxes is quite varied, for several reasons:

(1) The base differs from state to state—from the broadest base of a tax on the issue and transfer of practically all documents, including

[1] Letter to Mrs Wilma G Mayers from Robert S Calvert, Comptroller of Public Accounts, State of Texas, March 13, 1964.

bonds, debentures, stock, mortgages, deeds and conveyances of real property (as in Florida), to the narrowest base of stock transfer only (as in New York). Some stock transfer taxes are based on the number of shares rather than the value (See Table II)

(2) The rates vary from a high of 25 cents per $100 in Alabama (for no-par-value stock for which an actual value is not shown) to a low of 3.3 cents per $100 in Texas.

(3) There is a great difference in the size of the financial communities in the different states and the consequent number and value of stock transactions.

TABLE II

Federal and State Stock Transfer Tax Rates

State	*Rate on stock transfers*
Alabama	25 cents per $100 or fraction of par value. If no par value, stock is valued at $100 a share, unless actual value is shown
Florida	15 cents per $100 of face value, or fraction thereof, for par value stock; 15 cents per $100 of actual value for no par stock.
South Carolina	10 cents per share for no par value shares; if over $100 actual value, 10 cents plus 1 cent per $10 above $100; if under $100 actual value, 1 cent per $10 or fraction (For sale or transfer of capital stock, 4 cents per $100 or fraction of face value; if no face value, 4 cents per share)
Texas	3 3 cents per $100 of face value or fraction thereof or 3 3 cents for each share where shares are issued without designated monetary value
New York	Selling price. Less than $5 — 1 cent per share $5, but less than $10 — 2 cents per share $10, but less than $20 — 3 cents per share $20 or more — 4 cents per share Transfer tax on other than by sale — 2 cents per share
Federal Tax	4 cents on each $100 or major fraction of actual value (maximum 8 cents a share, minimum 4 cents)

Source Letters from directors of revenue of the states listed

THE FEDERAL STOCK TRANSFER TAX

The federal government imposed a tax on stock transfers during both the Civil War and the Spanish-American War, but repealed it after each war. It was imposed in 1914, repealed in 1916, imposed again in 1917, and has been in effect ever since

The federal tax is imposed on each sale or transfer within the territorial jurisdiction of the United States of shares, or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation This includes transfer by gift, transfer to a legatee, transfer from a partnership on its termination, and transfer to or by trustees.

The rate of tax is 4 cents on each $100 or major fraction thereof of the *actual* value of the certificates or shares, or of the rights to receive them (See Table II) In no case can the tax be more than 8 cents on each share, or less than 4 cents on the sale or transfer, regardless of the actual value (A major fraction is defined as an amount in excess of $50 but less than $100)

For example:

The tax on 100 shares at $50 a share would be $2 00
The tax on 200 shares at $70 a share would be $5 60
The tax on 100 shares at $20 a share would be $0.80
The tax on 100 shares at $200 a share would be $8 00
The tax on 100 shares at $300 a share would be $8 00
The tax on 100 shares at $1 a share would be 4 cents
The tax on 1 share at $40 a share would be 4 cents

The minimum means that on any transaction involving less than $50 the tax will be 4 cents The law provides for an exemption from the stock transfer tax for odd-lot purchases by the public on a national securities exchange This is accomplished by exempting the sale by an odd-lot dealer of an odd lot of stock to a broker for one of his customers. (On the New York Exchange, an odd lot would be 1 to 99 shares where the unit is 100 shares For a few shares traded in 10 unit lots, an odd lot would be 1 to 9 shares) But when a public customer sells an odd lot, the sale is subject to the federal stock transfer tax.

"Actual value" of stock for the purposes of the stock transfer tax is "the selling price where the stock is sold in an arm's-length transaction."[2] In the case of a gift or bequest, "actual value" is the mean between the high and low selling prices on the day the gift or bequest is made In the same way the tax on the transfer of stock rights is based on the actual value of those rights. In the event of a merger of two corporations, a stock transfer tax is imposed on the merged corporation in return for stock in the new corporation In the case of a consolidation of two corporations, both groups of stockholders will be issued new stock, so the stock transfer tax will be more than in the preceding case

TABLE III

Yield of Stock Transfer Taxes and of Other Nonseparable Documentary Taxes in 1962 and 1963 in Alabama, Florida, New York, South Carolina, and Texas.*

State	*1962*	*1963*
Alabama (securities, including bonds)	$97,000	$134,000
Florida (all documents, issue and transfer, about ⅓ probably real property transfer tax)	12,918,000	13,161,000
New York (stock transfer only)	78,895,000	65,878,000
South Carolina (all documents, issue and transfer)	1,431,000	1,657,000
Texas (stock transfer only)	302,000	284,000

* Current statistics on the federal stamp taxes on documents are not sufficiently detailed to show the yield of the stock transfer portion separately from the portion on bonds, deeds of conveyance, or foreign insurance policies, nor the portion on the original issue of stock (Their accounting procedures do not make possible a separate breakdown)

Source. Compendium of State Finances, U S Dept of Commerce, Bureau of the Census

THE NEW YORK STOCK TRANSFER TAX

New York State taxes the sale or transfer of stock (and rights to stock), but does not tax the issue of stock Neither does it tax the transfer of bonds. The only other New York documentary stamp tax is a mortgage recording tax. Deeds of conveyance are not taxed although New York City has a realty transfer tax.

[2] U S Excise Tax Guide 1963, p 255

The state tax is applied according to the selling price of the stock, regardless of par value[3] Exemptions from the tax include the following.

(1) Sales or transfers by odd-lot dealers (odd lot is less than the normal trading unit, usually 100 shares)

(2) Agreements evidencing deposits of certificates as collateral security

(3) Mere loans or returns of stock

(4) Transfers where neither the sale or evidence thereof, nor delivery, nor act necessary to effect such transfer occurs in New York.

The law permits stock exchange members to pay their taxes in cash, through affiliated clearing corporations, or to designated banks, rather than by the use of documentary stamps Over-the-counter dealers may also elect to pay their taxes in cash, direct to the State Tax Commission, and over 80 percent of the tax is now collected without the use of stamps

If the transfer of stock on the books of record takes place within the state, the transaction is taxable regardless of the place of sale Domestic corporations must transfer their stock within New York State unless permission has been obtained to keep their books outside the state[4]

As shown in Table IV, $3.962,677 of the total collected in 1963 is allocated to over-the-counter dealers, but it is not clear to what extent they are also included in the collections from the sale of stamps, which accounted for $6,044.134 Most of the total (over $56 million) came from collections from stock exchange clearing associations

Violation of the provisions of the stock transfer tax law lead to penalties and misdemeanor charges, carrying punishment of imprisonment or fines. (See page 13 of N.Y. Stock Transfer Tax Law and Regulations)

TABLE IV

New York Stock Transfer Tax Collections, by Source, Fiscal Years 1954–1963

Fiscal Year Ended March 31	Source					Gross Collections	Refunds	Net Collections
	Stock Clearing Corporation	American Clearing Corporation	National Stock Exchange Clearing Association	Over-the-Counter Dealers	Sales of Stamps			
1954	$18 699 202	$356 988	----------	$1 170,821	$2,895,271	$23,002,282	$8,040	$23,084,243
1955	34,213 980	729,937	----------	2,007,774	3,979,343	40,931,534	8,395	40,923,139
1956	35,862,396	1,917,686	----------	2 387,258	4,332,960	41,801,458	22,240	41,779,097
1957	30,844,321	891,893	----------	2,287,503	4,546,106	38,617,673	26,929	38,590,097
1958	31,495,110	841,284	----------	2,048,416	4,102,284	38,487,093	51,449	38,435,644
1959	46,042,035	1,236,777	----------	2,860,022	4,577,592	54,716,426	30,396	54,686,030
1960	47,316,555	1,287,037	----------	3,451,226	5,596,887	57,652,315	36,181	57,616,134
1961	53 318,993	1 253,124	----------	4,202,102	6,040,362	64,904,501	58,121	64,846,380
1962	63,107,238	1,641,671	----------	6,505,805	7,677,954	79,932,668	38,109	78,894,559
1963	55,055,352	938,124	12,422	3,962,677	6,044,134	66,012,709	134,544	65,878,165

SOURCE New York State Tax Commission, *Annual Report*, 1963.

[3] See Table II

[4] Letter to Mrs Wilma G Mayers from Joseph H Murphy, Commissioner of Taxation and Finance, State of New York, February 20, 1964

TABLE V

New York Stock Transfer Tax Collections, by Selling Price, Per Share, Fiscal Years 1962 and 1963

Selling price per share	Tax rate	1962		1963	
		Amount of tax	Percent	Amount of tax	Percent
Less than $5 00	$0 01	$5,366,994	6 7	$3,679,902	5 6
5 00 to 9 99	02	7,271,130	9 2	6,023,152	9 0
10 00 to 19 99	03	15,364,598	19 5	12,323,622	19 0
20 00 and over	04	50,991,837	64 6	43,751,489	66 4
Total		$78,894,559	100 0	$65,878,165	100 0

SOURCE New York State Tax Commission, *Annual Report*, 1963.

THE FLORIDA DOCUMENTARY STAMP TAX

Florida's tax is on a variety of documents, including the issue of certificates of stock, transfer of stock, all bonds, debentures, certificates of indebtedness, notes, assignment of wages, mortgages, and deeds and conveyances of interests in land

Collections from all Florida documentary taxes in fiscal 1963 were approximately $13 million The 50-percent increase in rates passed by the 1963 session of the Legislature (as reflected in the rates shown below) was expected to increase collections The income from all of these taxes as of February 1964 was estimated to be about $2 million a month.[5]

TABLE VI

Florida Documentary Tax Rates

Bonds, debentures, certificates of indebtedness	15¢ per $100 of face value
Original issues in State of Florida	15¢ per $100 or fraction thereof of face value
Sales agreements	15¢ per $100 or fraction thereof of face value
Shares of no par value	15¢ per $100 or fraction thereof of actual value
Notes, wage assignments	15¢ per $100 or fraction thereof of face value
Certain mortgages	15¢ per $100 of face value
Conveyances of realty	30¢ per $100 of the consideration
Notes and obligations in connection with sales made under retail charge account services	10¢ per $100 or fraction thereof of face value
Share of no face value	15¢ per $100 or fraction thereof of actual value

Florida also has a separate "intangibles tax" which includes a tax of $2 per $1,000 on obligations secured by mortgages on Florida real estate This "one time" intangible tax is paid only at the time of the mortgage recording Revenue in 1962 from this source was $5,465,000, compared with $12,918,000 from the other documentary stamp taxes.

[5] Letter to Mrs Wilma G Mayers from M C O'Berry, Chief, Documentary Stamp Tax Department, Comptroller's Office, Florida.

STRUCTURE OF THE CALIFORNIA SECURITIES MARKET

According to estimates in the 1962 Census of Shareowners published by the New York Stock Exchange, there were more than 2 million individual shareowners in California, or approximately 12 percent of the national total. In 1961, California shareowners received $1,187,000,000 in dividends from their stock.

As of December 31, 1963, the California Corporation Commissioner listed 949 licensed brokerage firms, of which 469 were members of the National Association of Security Dealers, 86 members of a stock exchange, and 394 were nonmembers.

Since the California securities market is part of a broader national securities market, the total number or value of shares bought and sold by Californians is not known. The value of the 53 million shares transferred on the Pacific Coast Stock Exchange in San Francisco and Los Angeles in 1963 was $1,542,443,000 but the precise size of the over-the-counter market in California is not known. In the National Association of Security Dealers District No. 2, which covers California, Nevada, and Hawaii, the estimated value of sales by registered broker-dealers in 1961 was $3,226,830,000 or 9.2 percent of the national total.[6] This may be compared with 1961 sales on the Pacific Coast Stock Exchange of $1,279,816,000.

Officials of the Pacific Coast Stock Exchange have regularly pointed out the importance of the saving of New York stock transfer tax as an inducement to security dealers to use the Pacific Coast exchange rather than the New York exchange. The question then arises, if California had such a state stock transfer tax would it have an injurious effect upon the local exchange, its members, or the general public? To fairly evaluate this question and its significance for public policy it is necessary to understand the role of the regional exchange both for the California economy and for the national economy.

STRUCTURE OF THE NATIONAL SECURITIES MARKET

An important source of funds for both private and government investment is the sale of securities to the public. These include federal, state and local bonds, corporate bonds, and corporate preferred and common stock. The existence and smooth functioning of a market mechanism permitting easy buying and selling of securities has made the provision of capital for both public and private purposes more attractive to investors, because of the normal assurance of liquidity given by a well-organized market. The most important sections of this market are the national exchanges (including the New York Stock Exchange and the much smaller American Exchange which is also located in New York), the over-the-counter market, and the 14 regional exchanges, of which 4—Midwest, Pacific Coast, Philadelphia-Baltimore-Washington, and Boston—accounted for 92 percent of the dollar volume of regional exchanges in 1962.[7]

A Securities and Exchange Commission study published in 1963 estimates that in 1961 the relative sales volume of all securities sold

[6] Securities and Exchange Commission, Report of Special Study of Securities Market, 1963, p. 737.
[7] *Ibid.*, p. 928.

on exchanges was 2 0 billion shares, worth $63 8 billion In the over-the-counter market 2 5 billion shares were sold, worth $38 9 billion. Eliminating sales from one dealer to another in the over-the-counter market, its stock transactions in 1961 amounted to 75 percent of exchange transactions in terms of shares, and 35 percent in terms of dollars [8]

Within the category of exchange transactions, in 1962 the New York exchange accounted for 71 32 percent of share volume, 86 32 percent of value; the American accounted for 20.12 percent of share volume, 6 81 percent of value; the registered regional exchanges 8 49 percent of share volume, 6 83 percent of value The Pacific Coast exchange by itself accounted for 2 95 percent of share volume and 2 0 percent of value of all shares sold on exchanges The domination of the New York exchange is apparent. This relative position of the regional exchanges has been characteristic of the period since the 1929 stock market crash, prior to which in the decade of the twenties the regional exchanges had enjoyed a temporary boom, partly because securities listed on regional exchanges at that time were exempt from registration requirements under many state laws.

THE PACIFIC COAST STOCK EXCHANGE

The San Francisco branch of the exchange was founded on September 18, 1882, the Los Angeles branch 15 years later, and the two were merged into the Pacific Coast Stock Exchange on January 2, 1957 Commenting on this event in its 1957 report, the chairman said · "It is the responsibility of a financial community of the size and importance of the Pacific Coast to provide a growing and successful securities exchange to serve industries and public investors in the West." At the end of 1957 there were 95 member organizations, including 29 member corporations Today there are about 130 members

The Pacific Coast exchange is one of seven major regional exchanges operating in addition to the principal exchanges in New York. The other regional exchanges are Philadelphia-Baltimore-Washington, Midwest, Boston, Cincinnati, Detroit, and Pittsburgh All of the regional exchanges together transacted $3.75 billion worth of business in 1962, or only 6 9 percent of the total dollar volume transacted on all exchanges during that year. Nevertheless they have been the subject of considerable interest in congressional hearings, and in the deliberations of the Securities and Exchange Commission because of their past relationship and potential influence on the national securities market. The feeling was expressed that impairment of the activity of regional exchanges would increase the concentration in New York City of control over the nation's capital funds.

Early growth of regional exchanges was associated with their function of providing for initial flotation of securities in developing regions. In the absence of modern communication facilities they provided a central place for bargaining in both new and outstanding securities.

[8] *Ibid.*, p. 714.

TABLE VII

Transactions on the Pacific Coast Stock Exchange: 1957–1963

	Volume no. of shares	*Value in thousands*
1957	35,262,939	$651,250
1958	41,826,930	811,393
1959	47,762,824	1,007,642
1960	44,853,085	833,356
1961	73,198,461	1,279,816
1962	50,565,911	1,097,208
1963	53,136,243	1,542,443

Source Annual Reports of the Pacific Coast Stock Exchange 1957–1963

When the Securities and Exchange Act was passed in 1934, securities listed on registered exchanges were required to be registered with the Securities and Exchange Commission, which meant disclosure of extensive data, limitations on "insider" trading, and other regulations In the wake of the crash, states withdrew from exchanges the privilege of distributing new issues (which had been a main source of regional exchange business). As a result companies which had new issues or a reluctance to disclose business details or to submit to SEC regulations, turned to the over-the-counter market Companies which could meet the SEC reporting standards could seek the greater publicity and prestige of a listing on the New York exchanges. Meantime, the technological development of the open-end teletype system allowed over-the-counter dealers to make immediate contact with each other all over the country, and thus destroyed the unique advantage of face-to-face dealing on a regional exchange

Accordingly, one of the main historical uses of the regional exchange, which was to provide a market for local or regional issues of companies which were not developed to a point where they would be ready for national listing, has failed to become their dominant function Indeed, in terms of percentage of business, regional listings have become of minor significance

On the Pacific Coast exchange, for example, 93 percent of the (dollar volume of) stocks admitted for trading were also traded on the New York or American exchanges [9] The SEC study shows that the dollar volume of trading in regional-only stocks on the Pacific Coast exchange was 11 4 percent of total volume in 1961, compared to 22 6 percent in 1948 [10]

The major activity on regional exchanges is trading in securities already traded on another exchange, that is, multiple-trading This includes trading in both listed and unlisted stocks. Fearing for the future of regional exchanges if unlisted trading were not allowed to continue, the SEC in 1936 recommended that the practice be legalized They took the position that it was in the public interest to promote competition in the securities market by encouraging and bolstering regional exchange operation [11]

Another factor contributing to the overriding importance of multiple trading in dually-listed stocks on the regional exchanges has been

[9] Letter to Mrs Wilma G Mayers from James L McPharl, Vice President, Pacific Coast Stock Exchange, February 18, 1964

[10] SEC study, *op cit*, p 1078.

[11] *Ibid*, pp 918–924

the public or "nonmember" commission schedule of the New York Stock Exchange, under which a nonmember broker must pay a member broker the same commission that his customer would pay if the customer were to place the order directly with the New York exchange member. Since competition normally prevents charging the customer more than the rate charged by the New York member, the nonmember broker gives up his entire commission-income on the sale to the New York member, besides incurring overhead and other costs. Yet he may take the loss in order not to lose the customer. Nonmember orders account for a substantial amount of the New York Stock Exchange's business, but the rules of the New York exchange forbid any rebate or discount on commission charges to nonmembers. As a result, several methods have emerged whereby the nonmember is rewarded for bringing in the business. The one that concerns us here is the technique whereby the New York member places business on a regional exchange with a nonmember who is a member of that regional exchange, even when the New York member is also himself a member of the same regional exchange (dual member), or where the dual member could have made the transaction on the New York Stock Exchange where the issue is listed. This reciprocal commission business, usually carried out under arrangements with 3-to-1 or 2-to-1 ratios in favor of the New York member firm, is facilitated by the multiple-trading of nationally listed stocks on the regional exchanges.[12] The SEC study comments that "in general, however, Pacific Coast trading in dually traded stocks actually appears to drop off sharply when the primary exchanges suspend operations for the day."[13]

From the public point of view, the existence of firm commitments as to an agreed upon ratio may, of course, lead to the placing of business according to the ratio rather than in the best market for the customer. The regional exchanges have also become dependent on reciprocal commission business, and dependent on the maintenance by the New York exchange of its single commission structure. It also follows that sole members of regional exchanges in many cases rely heavily on this type of business.

The question now is what would the effect of a state stock transfer tax be on this structure and the individuals involved? In response to an SEC questionnaire asking dual members to rank their reasons for executing orders on the regional stock exchanges, 14 dual members mentioned saving the New York tax among the three highest-ranking reasons. One firm put it first, 3 firms second, and 10 firms third. On the other hand, the first-ranking reason for 14 firms was "better price available on regional exchange" (8 firms had this reason ranked second, and 2 ranked it third). "Trade after New York Stock Exchange closes" was ranked first by 8 firms, second by 10, and third by 9. "Retain larger percentage of gross commissions" was ranked first by 8, second by 3, and third by 2. "Reciprocal arrangement with another member of the regional exchange" was ranked first by 4, second by 1, and third by 3 firms. "Orders originated in the vicinity of the exchange" was ranked first by 4, second by 4, and third by 2.[14]

[12] SEC study, *op. cit.*, p. 302.
[13] *Ibid.*, p. 939, Part 2.
[14] *Ibid.*, p. 1086.

Other reasons receiving fewer votes were "reduce market impact on NYSE" (which could occur in the case of a large block bought or sold), and "reduce time involved in transfering securities"

TABLE VIII

Reasons Dual Members Execute Orders on the Regional Stock Exchanges

Rank	Orders originated in vicinity of the exchange	Reduce market impact on NYSE	Better price available on regional exchange	Instruction by customer to "give up"	Reciprocal arrangement with another member of the regional exchange	Retain larger percentage of stock commission	Save New York state transfer tax	Reports of execution are received more quickly	Reduce time involved in transfer of security	Trade after NYSE closes	Other
BOSTON STOCK EXCHANGE											
1	0	--	1	--	1	5	7	--	--	--	5
2	3	1	1	1	--	2	8	4	--	--	4
3	2	1	--	--	--	--	8	3	1	--	--
MIDWEST STOCK EXCHANGE											
1	5	4	18	--	5	12	12	1	1	--	34
2	3	10	7	--	5	18	23	4	1	--	17
3	3	8	5	3	1	7	20	14	4	--	3
PACIFIC COAST STOCK EXCHANGE											
1	4	1	14	1	4	8	1	2	--	8	1
2	4	3	8	1	1	3	3	2	1	10	3
3	2	2	2	1	3	2	10	5	1	9	1
PHILADELPHIA-BALTIMORE-WASHINGTON STOCK EXCHANGE											
1	2	1	2	3	7	21	4	1	--	--	4
2	4	7	1	--	3	2	13	3	2	--	1
3	4	5	--	1	1	2	--	3	2	--	4

SOURCE *Report of Special Study of the Securities Markets*, Securities and Exchange Commission, July 17, 1963, 88th Congress, First Session, House Document No 95, Part 2

HOW IMPORTANT IS THE PACIFIC COAST STOCK EXCHANGE IN CALIFORNIA'S ECONOMY?

According to James Walter, writing in *The Role of Regional Security Exchanges*, in 1957, "the truly significant function of regional exchanges is one of providing good markets for regional issues" He concedes that an alternative function exists, that of facilitating the entry of regional brokerage firms into the market for nationally listed securities, but he feels that this problem of entry could be handled without the existence of regional exchanges It is clear that the cost of a seat on the New York Stock Exchange may be prohibitive for many local firms (around $200,000), whereas the cost of a seat on the Pacific Coast Stock Exchange has been around $15,000. A nonmember firm trading on the New York exchange must pay full commission rates,

therefore, this business does not pay. One possible solution would be a change in the commission rate structure to permit nonmember firms a discount from the public rate

Regional issues tend to be selected on the regional exchanges, according to Walter, with correspondingly greater emphasis on multiple-traded issues, that is, issues which are listed on the New York exchange but admitted to trading on the Pacific exchange, either by multiple listing, or by being admitted to unlisted trading privileges. In 1959, out of 550 stocks on the list at Pacific, just 76 had a market only on the Pacific Coast Stock Exchange, i.e. were regional-only stocks. And according to a letter of February 1964 from the vice president, approximately 93 percent of the stocks admitted to trading on the PCSE are also also traded on the New York or American Stock Exchanges. This indicates a further attrition of the volume of regional business Because of a limited volume of orders to buy and sell for regional issues, the spread between buying and selling prices is likely to be wider than on the New York exchanges This makes for a thinner and less satisfactory market with greater potential for price instability. Some large single transactions may be too important for a competitive market in their influence on price

This may in turn further weaken the regional exchange market by causing regional firms to de-list and change to the over-the-counter market. All securities are now initially issued in the over-the-counter market Corporations trading in the over-the-counter market are not generally required to report to the Securities and Exchange Commission, except in connection with new issues. The absence of disclosure requirements permits dealers to charge different prices to different customers, and permits variable prices among brokerage firms. The extra opportunities for profit may cause dealers to oppose the listing of issues they have handled on the exchange, where commissions are published. Only bid and offered quotations are published for over-the-counter stocks, and these may not correspond to prices at which transactions are actually made. Also, the size of over-the-counter transactions is kept secret, and "potentially embarrassing details, such as insider transactions, need not be divulged." [15] In the face of this secrecy and flexibility in the over-the-counter markets, exchanges have a more difficult time attracting and holding regional listings Listing, of course, is in the investor's interest in that he has the disclosure protections of the SEC, as well as the standards required by the exchange itself.

The Pacific Coast exchange does attempt to attract some business that would perhaps be conducted over-the-counter by offering discounts on commission charges to nonmember firms which originate business on the exchange. The question then arises whether anything else may be done to facilitate regional security handling on the exchanges. Some may question the need for this, yet it seems clear that relatively new, growing industries that are not yet national in scope may be the source of vital economic development to California and the nation

[15] Walter, *The Role of Regional Security Exchanges*, p 146

TABLE IX

Net Number of Stocks on Exchanges

June 30	*New York*	*American*	*Exclusively on other exchanges*	*Total stocks on exchanges*
1940	1,242	1,079	1,289	3,610
1945	1,293	895	951	3,139
1950	1,484	779	775	3,038
1955	1,543	815	686	3,044
1960	1,532	931	555	3,018
1961	1,546	977	519	3,042
1962	1,565	1,033	493	3,091

Source Securities and Exchange Commission, *Annual Report*, 1962, p 46

TABLE X

Share Values on Exchanges, in Percentages

December 31	*New York*	*American*	*Exclusively on other exchanges*
1948	$81.81	$14 53	$3 66
1950	84 50	12 52	2 98
1952	85.77	12 02	2 21
1954	86.81	11 34	1 85
1956	86.30	12 20	1 50
1958	88.49	10.14	1 37
1960	91.56	7.22	1.22

Source Securities and Exchange Commission, *Annual Report*, 1962, p 46

From the tables above it can be seen that the share volume on the regional exchanges of exclusively listed stocks has declined over the years while the percentage of dollar volume in exclusively listed stocks has remained fairly constant.

THE OVER-THE-COUNTER MARKET

Originally, the phrase "over-the-counter" described transactions which actually took place over the counters of banking houses. Now it refers to any securities transactions not effected on a stock exchange. On the other hand the securities exchanges are auction markets in which the member-brokers act primarily as agents for buyers and sellers, although they may also buy for their own account. The New York Stock Exchange accounts for 85 percent of this business. Over-the-counter markets include the marketing of new issues as well as transactions in outstanding securities off the exchanges. Thus they include the underwriting function, and the buying and selling of securities by firms as dealers, with the assumption of inventory positions. The underwriting of corporate, federal, state, municipal and other local securities takes place in the over-the-counter market. It is also the trading place for securities which lack national market ability or do not fit into the requirements of the exchange markets. Large blocks of stocks or bonds which cannot be easily absorbed by exchange transactions are traded over-the-counter. Bank, insurance company and mutual funds are usually over-the-counter transactions. In 1953 it was estimated that over-the-counter markets accounted for almost all government, municipal and corporate bond transactions, about one-half of preferred stock and one-third of common stock transactions by value.[16]

[16] U S Congress, Senate, Banking and Currency Committee, Hearings, 1955, *Stock Market Study*, p 349

According to the Securities and Exchange Annual Report for 1962, there were 4,165 stocks with 300 holders or more, of about 3,840 domestic companies, quoted only in the over-the-counter market The aggregate market value of these stocks on December 31, 1961 was $105 8 billion This compares with an aggregate market value of exchange traded stocks on the same date of $426 billion

The $105 8 billion in over-the-counter stocks included

$26 2 billion for bank stocks
$22 1 billion for insurance stocks
$57 5 billion for industrial, utility and other miscellaneous stocks
Stocks issued by registered investment funds (e g. mutual funds) were not included in this compilation

According to the SEC report, substantial percentages of over-the-counter stocks are often held by officers and directors of companies, or other controlling persons; e g $8 7 billion of Western Electric Company was 99 82 percent owned by A T & T

In addition to the $105 8 billion worth of over-the-counter stocks mentioned above, there were more than 1,000 actively quoted stocks of companies so small as not to require continuous reporting to the commission It might be noted that some of the previous group also do not report (2,177 stocks worth more than $64 billion)

The total number of stocks listed in the daily service of the National Quotation Bureau was over 8,000 in 1962 as compared with 3,000 on the organized exchanges.

INCIDENCE AND BURDEN OF THE STOCK TRANSFER TAX

The legal incidence of the tax may be illustrated by the New York State stock transfer tax law and regulations. To quote·

> "Subdivision 3 of section 270 of the Tax Law imposes liability for the tax upon the person or persons making or effectuating the sale or transfer, including the person or persons to whom the sale or transfer is made Thus, both transferor and transferee are liable, and if a transfer is made on the books of the corporation, it is also liable"
>
> "As between themselves, the parties may agree which of them shall bear this liability and payment of the tax by either discharges the liability of both However, if the party who has agreed to pay the tax fails to do so, the other party is not exonerated from liability by such agreement and in such case payment may be enforced against either party."
>
> "The fact that either the transferor or the transferee may not be subject to the tax does not exempt the transaction For example, a transfer by or to the United States or any of its agencies, a foreign government, the State of New York or any of its political subdivisions is subject to the tax"[17]

Assuming that in practice the seller does in fact pay the tax, the question then arises as to whether the seller can pass on any part of this to the buyer in the form of a higher price for the stock than

[17] State of New York, Department of Taxation and Finance, *Stock Transfer Tax Law and Regulations*, July 1, 1960 (as amended 1963)

would otherwise prevail Presumably a prudent investor will attempt to recover all of his costs in selling his shares, but this will be more possible in a rising market than in a falling market. Moreover, it is not apparent that historical cost, either including or excluding tax costs, is a strongly felt force in the shaping of a particular market price. Future expectations as to the value of the stock may frequently be dominant in establishing the price If we knew how much selling was done for the purpose of profit taking we would have a more exact answer to this problem Some sales are involuntary, as in the case of the disposition of an estate in the form of securities, and some sales are undertaken for the purpose of establishing a tax loss In addition, the strength of the buying versus the selling side of the market clearly varies from stock to stock and from one time to another Therefore, the question of incidence might best be confined to a discussion of what economic groups own and transfer stock.

A Securities and Exchange Commission report indicates that at the end of 1961, individuals owned more than three-fourths of all common and preferred stock outstanding Of the institutions which owned the remaining one-fourth, the largest holders were personal trust funds, noninsured private pension funds, and open-end investment companies (See Table XI) If personal trust funds are removed from the list as

TABLE XI

Estimated Ownership of U.S. Corporate and Foreign Securities by Class of Investor (1954 and 1961)
(in billions of dollars)

	Common and preferred stock		*Bonds and notes*	
	1954	*1961*	*1965*	*1961*
Total outstanding	$256 4	$546 2	$73 0	$107 0
Institutional investors	47 3	120 8	55 3	87 3
Life insurance companies	8 3	6 3	35 3	50 6
Nonlife insurance companies	[1] 4 6	9 3	1 2	1 6
Noninsured private pension funds	4 1	21 0	7 1	15 0
Open-end investment companies	5 4	21 9	4	1 5
Other investment companies [2]	3 2	7 3	1	2
State and local trust funds	2	7	2 2	9 0
Commercial banks	.1	2	2 0	8
Mutual savings banks	6	9	2 9	3 7
Fraternal orders	.1	.1	1 2	1 5
Common trust funds	9	2 2	3	8
Other personal trust funds	2 4 8	5 0 9	2 6	2 6
Other investors	209 3	425 4	17 8	19 9
Foreigners	5 3	11 9	2	6
Domestic individuals [3]	[4] 204 0	413 5	17 6	19 3

[1] Excludes holdings of stock in affiliated companies
[2] Including closed-end and face-amount certificate companies
[3] Includes nonprofit organizations such as educational endowment funds and religious and charitable institutions
[4] Including investment company shares of approximately $9 billion in 1954, and $29 9 billion in 1961

Source *Report of Special Study of Securities Markets of the Securities and Exchange Commission, Part 2,* p 970, July 17, 1963

Note Estimated market values at end of year Includes foreign issues outstanding in the United States Intercompany holdings of nonfinancial corporations are excluded Figures may not add to totals because of rounding

being closer to individuals than to institutions, then the institutional share drops to about 15 percent

Of all the stock owned by individuals, about one-half was owned by those with incomes of $25,000 or over, and three-quarters was owned by individuals with incomes of $10,000 or over.[18]

Only 1 percent of all taxpayers fell in the first group in 1960, and only 10 percent in the second group Therefore, the great bulk of individual buyers and sellers of stock were well-to-do or wealthy.

It has been estimated in an October 1962 survey of the New York Stock Exchange that in 1962 individuals bought about $40 to $50 billion worth of stock, and sold an amount about $1 6 billion greater than they bought Mutual funds bought about $4 billion worth and sold about $3 billion Insurance companies bought about $0 4 billion and sold about $0 3 billion. Noninsured private pension funds bought $2 billion net, and other institutions bought around $1 billion net

The SEC estimated that in 1961 the total value of securities sold on all exchanges was $63 8 billion, and over-the-counter $38 9 billion Although these figures are for a year earlier than those in the preceding paragraph, it can be roughly stated that around three-quarters of all sales of stock on exchanges are by individuals, and a somewhat smaller fraction in the over-the-counter market We may then conclude that most of the stock transfer tax is paid by this relatively well-off group of individuals

Institutional sellers will be more able to recover their costs in charges for service to their individual customers Some of this burden is doubtless borne by individuals in lower income groups, but distribution is not certain

Brokers dealing on their own account are one clearly definable economic class which would definitely feel the impact of a new stock transfer tax

POSSIBLE EFFECTS OF A STOCK TRANSFER TAX IN CALIFORNIA

If a stock transfer tax were to be levied on all stock transactions in California, would it lead to a decline in the volume of transactions taking place in this state, either on the Pacific Coast Stock Exchange or over-the-counter? Although usually not the overriding reason for trading on the Pacific Coast Exchange rather than on a national exchange, this potential tax saving may have weight in marginal cases. Commissions charged by brokers vary according to a standard schedule of prices and the number of shares bought. The average commission is in the neighborhood of 2 percent, whereas in a typical case the New York State stock transfer tax may be in the neighborhood of one-tenth of 1 percent. In the usual case, then, the tax will be a very small part of the selling cost.

Example A: For example on a transaction in which 100 shares at $50 a share are sold (total $5,000), the Pacific Coast Stock Exchange commission would be $39, plus one-tenth of 1 percent of the money involved. This comes to $44, or less than 1 percent. The federal stock

[18] Cited in Daniel Seligmen and T A Wise, "New Forces in the Stock Market," *Fortune*, February, 1964, pp 92 ff

transfer tax at 4¢ per $100 would be $2, or one twenty-fifth of 1 percent, and a state transfer tax at the New York rate of 4¢ a share would be $4, or two twenty-fifths of 1 percent All of the charges together would total $50, or a total of 1 percent of the selling price.

Example B: If 100 shares of a stock priced at $200 a share were sold, the commission would be $59, the federal tax $8 and the New York basic state tax $4. This totals $71 on a $20,000 transaction, or less than ½ of 1 percent.

This consideration would seem to argue against the tax having a large negative impact on the volume of transactions taking place in California When balanced against the list of other motivations for trading on this regional exchange discussed above, the tax saving was of first importance to only 1 firm interviewed, of secondary importance to 3, and third in importance to 10. The number of member firms on the Pacific Coast Stock Exchange at the time of this questionnaire was 106, of which 83 were sole members, and 23 were dual members (that is, members of Pacific and also of the New York or American exchanges, or both). Seventeen were members of both American and New York, two of American.

The reaction of nonmember firms who get special discounts on commission charges for originating business on the Pacific exchange should also be considered They would still stand to gain from the reduction in commission charges, so would presumably still be motivated to place orders on Pacific rather than elsewhere. What effect would the tax have on the actions of the brokerage firms which were not members of any exchange? There were 863 of these firms at the end of 1963, whereas only 86 were members of an exchange. Four hundred twenty firms received preferential treatment on the Pacific exchange, leaving 443 who did not There is great diversity in the size and activity of firms which do over-the-counter business. They range in size from the sole proprietor selling mutual funds or a single underwritten issue to large firms with networks of branch offices. In 1961 sales by any one broker-dealer ranged from $50,000 to $2 billion.[19] However, some of the firms doing the largest amounts of over-the-counter business were New York Stock Exchange members. Of 67 broker-dealers doing more than $100 million worth of business in 1961, 43 were NYSE members. Perhaps it would be safe to conclude that most of the nonexchange members in California are relatively small, in terms of their share of total over-the-counter business and that the impact of the tax would not be such as to cause them to shift a significant volume of business out-of-state.

ESTIMATE OF POSSIBLE COLLECTIONS IN CALIFORNIA

Assuming that the levying of the tax will not have a significant effect on the volume of business on the Pacific Coast Stock Exchange we can estimate how much revenue would have been raised in the calendar year 1963 with a stock transfer tax at the New York state rate and structure Taking the last price at which each stock sold during the year (on the assumption that this may provide a better estimate of potential revenue than the high, low or even the median for the year),

[19] SEC Report *op cit*, p 548

figuring the amount per share that would have been levied in New York, and the share volume, we have calculated the tax. The total tax that would have been collected on this basis in 1963 was $1,598,000. This represents the portion that could have been collected as a result of organized exchange transactions.

In order to estimate the amount collectible in the over-the-counter market, we take note of the fact that over-the-counter sales in 1961 constituted 35 percent of the value of all exchange transactions. Furthermore, the over-the-counter sector seems to be growing relatively faster than the exchange sector.[20] The tax would then have raised approximately one-third as much as on the exchange, if we can apply the national ratios to the California security market. This would produce an estimate of $500,000.

Thus the total from both exchange and over-the-counter transactions would have been in the neighborhood of $2 million in 1963, with New York rates.

If the tax had been levied on the federal basis of 4¢ per $100 of value of transactions, then on an assumed total volume of $2–2.5 billion on both exchange and over-the-counter markets together, the tax collected would have been between $800,000 and $1,000,000

These estimates may be too low, since in 1961 the National Association of Security Dealers estimated that all sales by registered broker-dealers totaled $3 3 billion for California, Hawaii, and Nevada 1961 sales on the Pacific Coast Stock Exchange were $1 28 billion The remaining $2 billion cannot be allocated among the three states, but it would seem logical to guess on the basis of incomes and population that more than $1 billion could be allocated to California This would make total sales in 1961 about $2.3 billion Since exchange sales were up about 20–25 percent in 1963 over 1961, it would perhaps be fair to estimate that total sales in California in 1963 were between $2.8–$3 0 billion This would raise the current estimate for the tax about one-third Thus the state tax on the New York basis would have yielded about $3 million Transfers other than by sales may then be added.

The federal tax estimate could then be raised to $1 5 million plus, for 1963. Elsewhere it is noted that total stamp taxes collected by the federal government in California in 1962–63 were $17.7 million [21] The real estate transfer tax was probably in the neighborhood of $12 million so that the tax on stock and bond issue and transfer, and on foreign insurance policies made up the balance. Is it logical to assume that only $1 5 million of this was stock transfer tax? This would leave $4 million for the tax on issue of new stock and bonds and bond transfer, and the tax on foreign insurance companies Perhaps $2 million for federal stock transfer tax collections in California in 1963 would be a better estimate.

[20] Over-the-counter is probably a larger share of total in California than nationally, because New York has most of exchange business As of the end of 1963, according to the 1963 Annual Report of the Pacific Coast Stock Exchange, "the volume of over-the-counter clearing through the clearing department approximated 50 percent of the listed items being cleared" p 3

[21] Federal collections were separately reported in 1952 when the stock transfer tax brought in $2.2 6 million out of $77 6 million, or about 29 percent Since New York dominates, this is probably too high a percentage for California If we take 10–15 percent as more realistic, then we can conclude that the federal stock transfer tax in California in 1963 was $1 7 million to $2 6 million (Friend, Hoffman and Winn *The Over-The-Counter Securities Market*, 1958, p. 459)

ARGUMENTS FOR AND AGAINST A STOCK TRANSFER TAX

A.—FOR

(1) Revenue. Depending on the rates, California could realize $1 5 to $2 5 million at the federal tax rate, $3 million plus at the New York state tax rate, and more at the higher rates prevailing in Florida, Alabama, or South Carolina

(2) Although this tax is levied on the transfer of stock, it may plug a loophole in the property tax, in that it reaches a form of intangible property which ordinarily escapes the property tax The capital gains tax may reach this area indirectly, but capital gains are taxed more lightly than other forms of income Moreover, on other types of property both property taxes and capital gains taxes are paid

(3) This tax could assist in dampening the fluctuations of the stock market by discouraging heavy trading when stock prices are rising or falling rapidly.

(4) The implementation of this tax at a light rate would yield information about a field of activity where little is known, and which may require state regulation in the future.

B.—AGAINST

(1) The tax might have a possible negative effect on the volume of business on the Pacific Coast Stock Exchange, to the possible detriment of future growth of this institution, a volume which the SEC feels worth sustaining to prevent undue concentration of capital markets in New York Another aspect of this point is the possible loss of income to Pacific members, who would then pay less state income tax. However, the saving in out-of-state stock transfer tax has not been shown to be more than a secondary reason for trading on the Pacific Exchange.

(2) This tax might have a high administrative cost Both Pennsylvania, which repealed its stock transfer tax, and Texas have mentioned the administrative difficulties. To quote Robert S Calvert, the Comptroller of Public Accounts in Texas·

> "There are approximately 15,000 foreign corporations doing business in Texas and there are some 55,000 domestic corporations. This causes a tremendous audit problem In addition, the tax is not levied against the corporation, but is levied against the individual transferors, therefore, it is sometimes necessary to file claims against a large number of individuals for the tax due on the transfers of stock of a single corporation. The law does provide for certain penalties against the responsible officials of the corporation for recording the transfer on the records of the corporation without the stamps having been affixed, however, these penalties are in the nature of a misdemeanor and are not effective except on conviction " [22]

On the other hand, New York reports no particular difficulties Eighty percent of their tax is now collected without the use of

[22] Letter to Mrs. Wilma G Mayers, dated March 13, 1964.

stamps by direct payment of cash to the State Tax Commission or its designated bank.

(3) This tax may be regarded as a "nuisance" type tax by tax administrators and the business community.

(4) A stock transfer tax, not accompanied by a bond transfer tax, might discourage the use of equity capital. It may be argued that equity or "venture" capital is needed to promote the growth of new industry and employment, and that the tax might, therefore, be detrimental to future economic growth in California.

THE REAL ESTATE TRANSFER TAX

by

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THE REAL ESTATE TRANSFER TAX

THE NATURE OF THE REAL ESTATE TRANSFER TAX

A real estate transfer tax is a tax on the transfer of real property and is analagous to a "sales tax" on property. This tax yielded $20 million to the state of Pennsylvania in 1963, and could yield four or five times this amount in the state of California It also has interest as a potential source of revenue to local governments, and might be particularly attractive as a means of raising money for schools, since rising school costs are often associated with an influx of new residents and a concurrent increase in real estate transactions. If levied on a countywide basis, as in the state of Washington, the proceeds could be apportioned on the basis of average daily attendance, thus achieving a measure of intra-county equalization

The three main variations of real estate transfer taxes are

(1) A sales or transfer tax on the total value of the property transferred.

(2) A recording tax on the amount of the mortgage secured by real property.

(3) A sales or transfer tax on the value of the equity transferred

A real estate tax in the first form is like a sales or excise tax on the sale of real property such as land and structures Technically it may be levied on the transaction itself, or on the instrument by means of which the transfer is legally carried out This latter method enables the taxing authority to include transfers of real property other than by sale, as for example in corporate merger.

The second variant is a tax on the recording of a mortgage which represents a real estate loan in connection with the sale of real estate This tax is levied on the debt itself, or the debt document to be recorded, and is based on the dollar value of the debt secured by the mortgage This value will differ from the *total* value of the property transferred, as in the case of a house sale where some fraction of the total sale value is lent by the mortgaging agency However, supplemental mortgages creating additional debt on the same piece of property may also be taxed.

The third variant is the tax levied on the value of the property transferred, *minus* the mortgage debt at the time of sale It thus becomes a tax on the net value of the property transferred, or the owner's equity The federal tax is of this type

Sometimes one or more of these taxes will be included as part of a broad documentary tax law, which may cover the transfer of stocks, bonds, mortgages, deeds of conveyance, and similar instruments

Eleven states and the District of Columbia use the first type of tax, on the total value of property transferred The states are Alabama, Florida, Maryland, Massachusetts, Minnesota, Pennsylvania, South

Carolina, Tennessee, Virginia, Washington, and West Virginia Eight states use the mortgage recording tax: Alabama, Kansas, New York, Minnesota, Oklahoma, South Carolina, Tennessee, and Virginia It can be seen that there is some overlapping between these two groups.[1] In addition, local governments in five states (Maryland, New York, Pennsylvania, Virginia, and Washington) levy some form of real estate transfer tax.

USE OF REAL ESTATE TRANSFER TAXES BY THE STATES

States listed in Table I make use of the tax on the total value of property being transferred, usually as represented by the consideration shown in the deed Typically, deeds involving the state or the United States are exempt, as are transfers between close members of a family where there is no consideration other than love and affection

TABLE I

States With Real Estate Transfer Tax on Total Value of Property Transferred, With Rate

Alabama	50 cents for each $500 of property conveyed (exclusive of assumed mortgages)
District of Columbia	one-half of 1 percent of the consideration paid for each deed
Florida	30 cents per $100 of the consideration shown in deeds and conveyances of interests in realty
Indiana	2 percent of the selling price (exclusive of assumed mortgages) Applicable only to corporations subject to the gross income tax.
Maryland	55 cents per $500 of actual consideration paid, on instruments conveying title to property (seven specified counties and Baltimore City are authorized to supplement the state tax)
Massachusetts	$1 on first $500, 55 cents for each additional $500 or fractional part, on any deed or instrument involving sale of realty (called an excise tax) (exclusive of assumed mortgages)
Minnesota	$1 10 on first $1,000 plus 55 cents for each additional $500 or fractional part thereof (exclusive of assumed mortgages)
Pennsylvania	1 percent of the value of the property represented in the document transferring realty (local governments can levy an additional 1 percent)
South Carolina	$1 for each $500 of property conveyed (exclusive of assumed mortgages)
Tennessee	$1 50 per $1,000 on the consideration which shall not be less than the value of the property
Virginia	15 cents per $100 of the consideration of the deed, or the actual value of the property conveyed (cities and counties levy at one-third of state rate)
Washington	50 cents per $500 (39 counties have also adopted maximum permissible rates of 1 percent on real estate sales)
West Virginia	$1 10 for each $500 of actual consideration

Source *Tax Overlapping in the United States 1964*, Advisory Commission on Intergovernmental Relations, (Washington U S Government Printing Office), July 1964, p 216

Other states make use of mortgage recording taxes levied on the debt secured by the mortgage as shown in Table II These taxes are often said to be in lieu of any ad valorem tax on the intangible prop-

[1] Tennessee, for example, taxes both real estate transfers and mortgages, but apparently intends the mortgage tax to be levied on the holders or owners of indebtedness

erty represented by the mortgage, which, although a debt to someone, is for someone else a claim to wealth.[2] Generally this type of intangible property is not subject to the property tax, partly because of the difficulty inherent in assessing the value of such property and in administering the tax fairly, and partly because of the objection that this would constitute double taxation—first a tax on the property itself and second a tax on the claim to the property. Of course there are numerous examples of double, triple, or quadruple taxation on the same entity in other areas of taxation. Sometimes the states having taxes on mortgage debt have taxes on other types of debt as well, such as bonds and debentures.

TABLE II

States Imposing Mortgage Recording Taxes

Alabama	15 cents for each $100 of indebtedness
Kansas	25 cents per $100, on all real estate mortgages
Maryland	55 cents per $500 (Baltimore City and 7 specified counties are authorized to supplement the state tax)
Minnesota	15 cents per $100 of principal debt secured
New York	50 cents per $100 of principal debt secured
Oklahoma	2–10 cents per $100 depending on length of mortgage
Tennessee	10 cents per $100 of amount secured
Virginia	15 cents per $100 of amount secured (counties and cities levy a tax of ⅓ the state tax—5 cents per $100)

Source: *Tax Overlapping in the United States 1964*, Advisory Commission on Intergovernmental Relations (Washington: U.S. Government Printing Office), July 1964, p. 216.

In 1963 the real estate transfer tax produced millions of dollars for the states in which it is used. As shown in Table III, the tax yielded $19.5 million in Pennsylvania for state government and produced a substantial sum in Florida.

TABLE III

Yield of Real Property Transfer Taxes in Other States

State	*1963 (in thousands)*
Alabama (total documentary stamp taxes)	$1,448
District of Columbia	1,700
Florida (total documentary stamp taxes)	18,718
Maryland (property transfer and mortgages)	56
Massachusetts (real property transfer)	1,494
Minnesota (property transfer and mortgages)	1,206
Pennsylvania (state realty transfer)	19,523
South Carolina (total documentary tax)	1,657
Tennessee (mortgage and real estate transfer tax)	1,830
Virginia (property transfer and mortgage tax)	4,840
Washington (state tax on transfer of real estate)	1,077
West Virginia (realty transfer)	487

Source: *Compendium of State Government Finances*, U.S. Dept. of Commerce, Bureau of the Census.

[2] It may be questioned, however, whether mortgage recording taxes will be borne by the owners of the mortgage-claims-to-wealth if passed on to the borrower, then this tax is not so much a tax on intangible property, but rather a tax on borrowing.

THE PENNSYLVANIA REALTY TRANSFER TAX

(Reference: "The Realty Transfer Tax Act." 1951, Dec 27, P.L. 1742, as amended to date)

The Pennsylvania tax was selected as an example of the more detailed structure of a state tax of the first and more important type, from the point of view of yield.

Base: The tax is levied on transactions in which real property is transferred and effectuated by documents which are to be recorded Real property is any "lands, tenements or hereditaments"[3] or any interest therein which shall be sold, granted, or otherwise conveyed. The tax is levied according to the value of the property conveyed, which is defind as "the amount of the actual consideration therefor, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances thereon and ground rents" where these also encumber or are charged against other lands, tenements or hereditaments There is a provision that where there is a small or nominal consideration the property shall be valued at the actual monetary worth, which shall not be less than the highest assessment for local tax purposes

Exemptions:

(1) wills
(2) mortgages
(3) transfers between husband and wife
(4) transfers between parent and child or the spouse of such child
(5) straw transactions
(6) correctional deeds without consideration
(7) transfers to the United States or Pennsylvania or any of their political subdivisions by gift, dedication or deed of confirmation in connection with condemnation proceedings
(8) reconveyance of condemned property to owner at time of condemnation and within one year thereof
(9) leases
(10) a conveyance under recorded trust agreement for purpose of holding title as security for a debt contracted at time of conveyance under which the trustee is not the lender and which requires the trustee to reconvey upon payment of the debt
(11) the transfer from a purchase money mortgagor to a vendor holding the purchase money mortgage
(12) transfers between nonprofit industrial development agencies and industrial corporations purchasing from them
(13) a transfer by owner of previously occupied residence taken in trade by builder as part consideration for new, previously unoccupied residence
(14) transfers to nonprofit industrial development agencies
(15) conveyance to townships, school districts and counties by sale of delinquent properties
(16) transfer between religious organizations of real estate which is not being or has not been used for commercial purposes

[3] Tenement—any kind of permanent property, e g , land, rents
Hereditament—real property that can be inherited

Legal Incidence: Every person, association or corporation who makes, executes, issues, delivers or accepts any deed, instrument or writing whereby any real property within Pennsylvania or any interest therein is conveyed; or in whose behalf such a document is conveyed. Various legal decisions have held that both parties to the transaction are liable for the payment of the tax, that in the absence of an agreement between the parties the tax must be borne by the seller, and that the taxing officials will look to the party recording the deed for payment of the tax, leaving him to seek contribution from the other party under such agreement. Where one party to a transaction is exempt, the nonexempt party remains responsible for payment of the tax It is customary for the tax in Pennsylvania to be divided equally between the seller and the buyer, although the law does not require this

Rate: The rate is 1 percent of the value of the property represented by the document, payable at the time of making, execution, delivery, acceptance or presenting for recording of the document.

Collection: Payment is by affixing documentary stamps to every document described above. It is unlawful for any recorder to record such a document without the proper stamps affixed thereto

Revenue: In 1962 Pennsylvania collected a little over $20,000,000 from the realty transfer tax In 1961 collections were $18 953,000 The 1962 Census of Governments provides an estimate for the total sales of real property for a six-month period in 1961

New houses	$104,509,000
Other nonfarm residential property	488,442,000
Acreage and farm properties	51,637,000
Vacant lots	23,726,000
Commercial and industrial properties	114,949,000
	$783,263,000

For a complete year, we can thus get a rough estimate of $1,576,526,000 for the value of properties transferred by sale. One percent of this figure would be about $16 million in anticipated realty transfer tax Property transferred in ways other than by sale must then account for nearly $4 million, or represent a value of property transferred of almost $400,000,000

According to Alfred C Buehler, Professor of Public Finance at the University of Pennsylvania, the state and local property transfer taxes in Pennsylvania do not, in general, appear to have affected real estate activity appreciably in Pennsylvania [4]

THE FEDERAL DOCUMENTARY STAMP TAX ON REAL PROPERTY SALES

The U S government imposes a tax on the transfer of equity in real property This approach is examined below:

Base: The tax is imposed upon deeds, instruments, or other writings whereby realty sold is granted, assigned, transferred, conveyed to, or vested in, the purchaser, or at his direction, in any other person, when the consideration for, or the value of, the interest or property

[4] Alfred C Buehler, *Tax Study, State of Connecticut*, March 1963, p 147

conveyed, exclusive at the time of the sale, exceeds $100.[5] The tax is limited to conveyances of realty *sold* and does not apply to other conveyances. The tax accrues at the time the deed or conveyance is delivered. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. The federal government has requested local recorders to advise district directors of internal revenue in all cases where deeds are presented for recording without bearing the proper stamps.

Rate: The rate of tax is 55 cents on each $500 ($1\frac{1}{100}$ of 1 percent) on each $500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed. This amounts to being the gross consideration or gross value less the amount of all liens or encumbrances on the realty existing before the sale, or the seller's equity in the property.

Exemptions:

(1) The conveyance of realty to secure a debt, also the reconveyance of such realty upon payment of the debt.
(2) Conveyances of realty without consideration including bona fide gifts.

Legal Incidence: The tax is payable by any of the parties to the taxable transaction. An agreement between the parties as to who shall pay the tax does not relieve the others from liability in case the agreement is not carried out.

ESTIMATE OF POTENTIAL YIELD IN THE STATE OF CALIFORNIA

1. *Estimated Yield of Federal Real Estate Transfer Tax, 1961 and 1963*

In 1961 the U.S. census estimated the measurable sales of real property in California in a six-month period to have been about $4 billion.[6] On the assumption that a full year's sales would have been about $8 billion, the federal tax, which is levied at the rate of 11 cents per $100, would have yielded $8.8 million had it been levied on the total sales value. However, the federal tax is levied on the net consideration paid for the realty conveyed, that is, the gross consideration or gross value less the amount of all liens and encumbrances existing before the sale. It is not known by how much the estimate should be reduced to take account of this net basis.

On the other hand, the above estimate is low because the "measurable sales" of the census do not include property transfers other than by sale. In Pennsylvania these were estimated to be from one-fifth to one-quarter of transfers other than by sale. If we apply a one-fifth in-

[5] *U.S. Excise Tax Guide*, 1963, p. 297.

[6] Census data on which these estimates are based are from the 1962 Census of Governments, *Taxable Property Values*. This survey was undertaken primarily to ascertain the relationship between the assessed value of property and the sales price, for property changing hands on an ordinary market basis, that is, between buyers and sellers dealing at arm's length with one another. The method used was a survey of 119,000 sample pieces of real estate sold. It was limited to sales of real estate listed on local property tax rolls, and did not include state-assessed property. It also excluded transfers between relatives and other types of transactions in which the total money consideration involved might not reasonably be regarded as the current market worth of the property changing hands. (See table on page 13.) On this basis, sales increased 45 percent between the 1956 census and the 1961 census.

crease to the $8 8 million, we would raise the estimate to $10 5 million Perhaps on balance a total of $9 million would not be unrealistic.

Between 1961 and 1963 the dollar volume of real estate loans recorded increased 45 percent for 30 California counties [7] This is not a totally satisfactory index of actual real property sales, since it includes both new and renewal loans But assuming a 30-percent increase in the dollar volume of property sales between 1961 and 1963, we then get a crude overall estimate of approximately $12 million for the 1963 yield of federal real estate transfer taxes in California.

2. *Estimate of Yield of 1-percent Tax on Gross Sales of Real Estate*

Assuming that California were to adopt the tax on the total value of property transferred, such as used in Florida, Pennsylvania, and other states, and further assuming a rate of 1 percent (the rate used in Pennsylvania), what would the yield be? If levied on the approximately $8 billion in "measurable sales" of the 1961 census, the yield would have been $80 million Assuming that transfers other than by sale would increase this by one-fifth, we would obtain an estimated yield of $96 million Projecting this to 1963 on the basis of an assumed 30 percent increase, we obtain an overall estimate of $125 million yield

TABLE IV

Measurable Sales of Property in California During a Six-month Period, 1961 *

Type of property	*Number of properties sold*	*Aggregate assessed value of properties sold (in thousands)*	*Aggregate of sales prices of properties sold (in thousands)*
Nonfarm			
Residential			
Previously occupied**	107,730	$413,257	$2,099,131
New houses	31,237	N.A	616,246
Acreage and farm properties	11,024	48,574	440,858
Vacant lots	26,034	24,952	178,353
Commercial and industrial properties	7,499	112,732	681,326
Total	N.A.	N A.	$4,015,914

N A Not Available

* Bureau of the Census, *Census of Governments, 1962, Taxable Property Values*

** Excludes new houses Transfers of previously occupied houses, a sub-category of nonfarm residential property, amounted to 95,415 with an aggregate sales price of $1,644,926 Thus the total sales of all new and previously occupied single-family nonfarm houses was $2,261,172 for the six-month period

The six-months' total of $4,015,914,000 would yield a one-year estimate of $8,021,828,000, for the total sales prices of all properties sold within the scope of this sample.

3. *Estimate of Yield of Mortgage Recording Tax*

Complete information about the dollar volume of mortgages and deeds of trust recorded in California is not available. However, several title insurance companies have supplied data covering 35 of the most populous counties [8] for 1963. The total dollar amount of new and renewal loans for this year was $14,862,933,822. Had all of these record-

[7] Security Title Insurance Co of Los Angeles

[8] Alameda, Butte, Contra Costa El Dorado, Fresno, Humboldt, Imperial, Kings, Los Angeles, Madera, Marin, Merced Monterey, Napa, Nevada, Orange, Riverside, Placer, Sacramento, San Bernardino, San Diego, San Joaquin, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Ventura, Yolo, Yuba

Source Security Title Insurance Company, California Tax Agency.

ings been taxable, a 1-percent tax in these 35 counties would have yielded $148 6 million. In New York State a tax of one-half of 1 percent is levied, with certain exemptions such as Federal Land Bank and Federal Home Loan Bank mortgages

In California there has been a rapid growth in the dollar volume of real estate loans in recent years. Data for 30 of the above counties, though incomplete, indicate that there has been an increase of about 80 percent in the three years 1960-1963. New household formation is expected to crest in the late 1960's when the "war babies" reach marriage age. We might conclude that the yield from a mortgage recording tax would rise substantially in the next decade.

USE OF REAL ESTATE TRANSFER TAXES BY LOCAL GOVERNMENTS

Mortgage recording taxes and estate transfer taxes are used by a number of local government units throughout the nation. The local government taxes are in addition to similar taxes levied by the respective state governments. The five states in which local governments used this tax in 1963 were Maryland, New York, Pennsylvania, Virginia, and Washington The District of Columbia also has a deed recordation tax.

In some cases the proceeds are devoted explicitly to schools. Counties in the state of Washington, which all levy this tax, must use all of the net proceeds for schools. In Pennsylvania, school districts may impose this tax on their own behalf, and 347 school districts collected more than $5 million from this source in 1957–58.[9] In the other states, school districts are indirect beneficiaries, since this tax relieves pressure on the traditional source of city and county financing, the property tax, and accordingly makes it more available to the school districts.

It has been suggested that a rationale for this tax can be found in many communities where the construction and sale of new homes is accompanied by increased costs for schools and other local government facilities such as roads, sewers, and water lines. Accordingly there is considerable justification for levying the tax on the groups associated with a substantial part of the increase in costs. An argument which may appeal to the already-established citizens of a community is that the tax would fall largely on newcomers, or at any rate the rather small segment of the community at any one time engaged in real property sales.

LOCAL USE IN THE STATE OF WASHINGTON

The state of Washington has had a state conveyance tax of 50¢ per $500 on realty since 1935, and has permitted a county real estate transfer tax since 1951, with the yield earmarked for the public schools. The statewide yield of this county tax is between $11 and $12 million a year In the largest county (King County), which was about the size of Alameda County in 1960, it has yielded over $5 million per year. In Pierce County (pop 250,000), the 1963 yield was $1,120,000.

The tax was initiated because of the need for money for the schools. The Washington State Legislature in 1951 passed an enabling act which authorized the board of directors of more than a majority of the school

[9] Albert L Alford, *Nonproperty Taxation for Schools*, Office of Education, U S Department of Health, Education, and Welfare, 1963, p. 114.

districts of each county to declare by resolution to their respective county commissioners the need for additional funds for the support of the schools.[10] The county commissioners are then required to furnish 17 cents per day of attendance credit, or to levy a tax of 1 percent of the sales of real estate within the county, the proceeds of which are transmitted to the county school fund, except for 1 percent of the taxes collected which goes to the county for administration expense.

If this tax does not produce 17 cents per day per pupil, the schools then qualify for state equalization money to make up the difference The result has been that all counties in the state have adopted this tax. Not to adopt means not to qualify for the additional state money for schools. The tax has provided 11 cents per pupil per day in King County, the maximum yield for any county in the state.

Thus the tax can assist in alleviating the financial problems of mushrooming suburban districts Where there is a lag between the time of construction and the placing of the new property on the regular property tax rolls, the tax can also be justified as a pickup device

In the Washington counties, the tax is stated to be the obligation of the seller. It is levied at the rate of 1 percent of the gross sales price of each piece of property transferred, that is, the total consideration paid for the property, including all unpaid encumbrances, except governmental, that are assumed by the buyer or grantee.

There is no tax charged under the following circumstances:

(1) There is no consideration paid beyond the mere assumption of a mortgage or a contract balance
(2) A bona fide love and affection transfer, usually between close relatives.
(3) One of the parties is a local, state, or federal political agency.
(4) Sellers assignment of a contract.
(5) Technical legal decisions may exempt in cases of dissolution of corporations solely owned by grantees of its stock

The tax is collected by the county treasurers in the county in which the property is located. Each transaction must have an affidavit signed by one of the interested parties, or his legal representative. After the tax is paid, a rubber stamp is applied to the deed or contract as evidence of payment. The deed may then be filed with the county auditor for recording. The excise tax must be paid within 30 days of the date of sale, with a 1 percent per month penalty on late payment Failure to pay is also a misdemeanor, and subject to fine. County auditors will not honor a contract without an affidavit and instrument stamped by the county treasurer.

Apparently the county ordinances are reenacted each year. Originally the tax met with considerable opposition from realtors, but in the opinion of county officials the tax has now grown to be accepted

[10] In Washington a general minimum standard of $1.03 per pupil per day is established policy It is provided as follows
40¢ from the state
46¢ from the local property tax, with a deficiency made up from the state school equalization fund
17¢ from the real estate property tax, augmented by the state school equalization fund
The state also provides an appropriation per teacher unit to motivate the proper number of students per teacher

as any other part of the tax program A side benefit is that it provides a yardstick for judging assessment levels between and within counties.

Generally the rates used by local government units are quite moderate, with a maximum of 1 percent on the total value of the property sold or transferred There is an exemption for transfers below $20,000 in Montgomery County, Maryland, and below $25,000 in New York City Although this concentrates the tax on those with the greatest presumable ability to pay, it also greatly restricts the possible yield of the tax

The following table gives the available information about the types and rates used by the various local governments.

Maryland

State tax Document recording stamp tax, 55¢ per $100 of actual consideration

Counties Montgomery, Baltimore, Worcester, Queen Anne's, St Mary's, and Anne Arundel Counties *document recording tax*, both on instruments conveying title to property and instruments securing a debt; rate $1 10 for each $500 of actual consideration paid

Harford County rate is $2 20 per $500 of actual consideration paid

Baltimore City rate is $1 65 per $500

Collected by affixing stamps at time of purchase from the clerk of the court

New York

State tax Mortgage tax 50¢ per $100 or fraction based on principal debt or obligation secured

New York City Realty transfer tax, ½ of 1 percent of the net consideration on each deed when the consideration exceeds $25,000, payable within 30 days after delivery

Pennsylvania

State tax Realty transfer tax, 1 percent of the value of the property transferred by the document

City of Philadelphia Realty transfer tax; 1 percent of the value of the property transferred by document [11]

City of Pittsburgh same as Philadelphia

Various other local governments: including school districts, 1 percent of the value of the property transferred by document [12]

Virginia

State tax Deed and mortgage tax, 15¢ per $100 of the consideration of the deed or the actual value of the property conveyed

City and County tax Recordation tax; tax is levied on the first recordation of each taxable instrument in the city or county and is at the rate of one-third of the state tax.

Washington

State tax Tax on conveyances, 50¢ per $500 or fraction of consideration; first $100 exempted

County tax Tax on real estate sales; maximum rate of 1 percent (all 39 counties levy at the maximum rate).

District of Columbia: has a deed recordation tax with a rate of 0 5 percent of the consideration paid for the deed, and a minimum tax payable on each deed of $1.

[11] Philadelphia collected $3 6 million from the realty transfer tax in 1961, or 1 56 percent of the general fund revenues of the city government, which does not include the school district Alfred G Buehler, *Tax Study of the State of Connecticut*, March 1963

[12] The State of Pennsylvania has a 1 percent tax rate, and the combined state and local tax rates may not exceed 2 percent, a rate which is reached in many communities It is apparently customary for the tax to be divided equally between the buyer and the seller, although not required by law According to Buehler, the state and local realty transfer taxes "do not, in general, appear to have affected real estate activity appreciably in Pennsylvania."

LOCAL REAL ESTATE TRANSFER TAX—CALIFORNIA EXPERIENCE, CITY OF SANTA BARBARA, CALIFORNIA

Santa Barbara adopted a "deed transfer tax" on November 20, 1962, which was at the rate of 1 percent of the face amount of the transaction However, the Santa Barbara Board of Realtors opposed this tax, and circulated an initiative petition to have it repealed [13] They gathered 7,000 signatures and got it on the May 7th ballot, when it was voted down by 2 to 1. The Santa Barbara Home Builders Association had also opposed the tax During the five months when the tax was in force, the city collected $41,158, but this was refunded by court order to the taxpayers.

ARGUMENTS FOR AND AGAINST A REAL ESTATE TRANSFER TAX

FOR:

1. If levied on the basis of the total value of the property transferred, this tax can be a significant revenue raiser At a rate of 1 percent, the estimated yield in 1963 would have been approximately $125 million.
2. This type of tax might be particularly suitable for use by local governments, subject to statewide uniformity provisions. Its attractiveness would be enhanced by earmarking the proceeds for school purposes, as in the state of Washington If collected on a countywide basis, with the revenue allocated to the various school districts on the basis of average daily attendance, the tax could be used to accomplish a measure of intracounty equalization among the various school districts within the county
3 There would be a byproduct of useful information about real estate sales and market values of property which would provide a yardstick for measuring assessment levels both within and between counties
4 Administration costs would be quite moderate, judging by experience in the state of Washington, where 1 percent is allocated for these expenses

AGAINST:

1 It may be argued that property owners in general and homeowners in particular have been subject to an increasing proportion of the local tax burden, and that this tax would be an addition to that burden for those who transfer property unless this tax were to be levied in lieu of ad valorem property taxes
2 It may be argued that sales of very low-priced houses should be exempted to the extent that these houses are valued at or below the shelter requirements of a minimum standard of living
3 The tax may add to the selling costs in real estate transfers If we assume that a 1-percent tax will not be quantitatively significant enough to bring about a withdrawal of property that would otherwise be for sale, then the tax will tend to be borne in combination by the buyer, seller and broker Marginal sellers may feel that the total of all selling costs is too large, and may attempt to avoid part of them by bypassing the use of real estate agents

[13] California Real Estate Magazine, December 1963

TAXATION OF PETROLEUM-PRODUCING PROPERTIES IN CALIFORNIA

by

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TAXATION OF PETROLEUM-PRODUCING PROPERTIES IN CALIFORNIA

There is little uniformity among the various states in the taxation of petroleum-producing properties, with the result that the relative merits of ad valorem and severance taxation come under continuing discussion [1] Ronald B Welch, Assistant Executive Secretary of the California State Board of Equalization, has clearly described the diverse methods of taxation currently used throughout the country:

> Ad valorem and severance taxation are the two major methods of exacting contributions from the production branch of the petroleum industry for the support of local governments. Some state governments also derive revenues from one or both of these taxes, as well as from income and franchise taxes that apply to the business community generally . .
>
> Severance taxes are often in lieu of ad valorem taxes on the mineral rights or reserves, and in some states they are also in lieu of ad valorem taxes on other tangible property committed to the extraction of oil and gas The one kind of property that severance taxes never immunize from ad valorem taxation (excepting, possibly in Wyoming) is what is left of the fee simple estate after the mineral rights have been sold—the surface rights
>
> At one extreme is a state like Alaska, which uses a severance tax almost to the exclusion of ad valorem taxes, and at the other extreme is a state like Illinois, which subjects all petroleum properties to ad valorem taxation and has no severance tax at all California is near the latter extreme We tax all petroleum properties ad valorem and have only a minuscule severance tax for the support of the Oil and Gas Division of the Conservation Department [2]

These varied techniques of taxing petroleum-producing properties reflect the pragmatic approach which is characteristic of state taxation, the diverse historical backgrounds of the states, and their unique political and economic conditions Texas and Louisiana, the two states presently producing more oil and gas than California, export most of their production to other areas of the country and have found it advantageous to impose various combinations of ad valorem and severance taxes on oil and gas properties and production Total receipts from such taxation for state and local governments account for as much as 20 percent of the combined state and local government budgets in each state.

[1] See, for instance, Earl C Crockett, "Some Policy Questions Relating to the Taxation of Mineral Resources," *Proceedings of the 1943 National Tax Conference*, pp 223–230, H K Allen, "Ad Valorem Versus Severance Taxation of Minerals," *Proceedings of the 1951 National Tax Conference*, pp 574–580 See also *Report of the [California] Senate Interim Committee on State and Local Taxes*, Sacramento, April 1951, III, pp 231–341

[2] Ronald B Welch, "Ad Valorem Taxation of Petroleum-Producing Properties," mimeographed, unpublished paper delivered at the Twelfth Annual Conference of the Western States Association of Tax Administrators, September 4, 1951

Present-day advocates of severance taxation do not base their arguments upon a theory of taxing natural resources to the exclusion of other sources of revenue for state and local governments, although in the past that point of view has had its advocates Rather today the imposition of severance taxation on petroleum-producing properties tends to find its justification in the need for revenue and in disparate criticism of (1) the methods available for determining the proper basis for ad valorem taxation of mineral deposits, (2) evaluations of the economic impact of these alternative taxes on the conservation of resources, and, perhaps by implication rather than open comment, (3) a lament that property tax revenues accrue to local governments which are, through no contribution of their own, lucky enough to have these resources within their tax jurisdictions rather than available for revenue purposes to the wider service of state revenue needs

The imposition of severance taxes in lieu of ad valorem taxation may be viewed as essentially an alternative technique for taxing oil and gas producing properties There are, of course, many difficulties in assessing the value of as yet hidden resources But assessment for ad valorem taxation in part makes use of the production expectations based upon past performance (which would be the basis for severance taxation) so that the two methods are not clearly demarcated The technical difficulties in estimating the value of hidden resources have been responsible for the development of several valuation techniques that appear to be as reasonably accurate (or perhaps, as inaccurate) over time as are property evaluation procedures for other forms of real property.[3] There are also problems associated with substituting severance taxation for ad valorem taxation One is that petroleum resources taxed by severance are taxable as produced For many reasons, production at any given location may be discontinued or reduced with a consequent loss in revenue Severance taxation is not, therefore, a cure-all for local property tax evaluation problems

Severance taxation of petroleum resources, in addition to being considered in lieu of ad valorem, is frequently suggested as an additional source of support for the state government. It is in this connection that one hears the argument that a severance tax on petroleum resources would be reasonable because it would provide payment to the state for the privilege of extracting scarce resources which are permanently removed from the state's stock of wealth In this view petroleum resources are regarded as akin to other mineral deposits and distinct from those resources which, it is suggested, are capable of replenishment, such as agricultural products, timber, fish, and, one must suppose, labor power To the contention that the state should conserve its natural resources which are capable of depletion is linked the further argument that the state should be reimbursed for the permanent loss of such resources

There is, of course, little question that wasteful use of the state's limited resources, whether they be petroleum, mineral, timber, agricultural lands or labor, should be discouraged. For example, wasteful uses of agricultural land are widely deplored and underutilization of labor is regarded in national policy as undesirable But having recognized that wastefulness is undesirable does not necessarily lead

[3] *Ibid*

one to the conclusion that the best method of insuring compliance with appropriate uses of resources is state taxation. Under an economy dominated by private ownership competition it is generally thought that wastefulness will be eliminated by heightening competition. Yet, taxation tends not to heighten competition but possibly to lessen it by increasing the costs of doing business.

Taxation in a private ownership competitive economy is generally regarded as primarily a method of securing income for the support of government services. It is thought to do so best when it is not also used for regulatory purposes. Thus, for instance, effective use of severance taxation for conservation purposes would significantly reduce government income the more successfully it served conservation and, conversely, the more successfully it provided revenue the less importance it would have for conservation.

There remains the further argument that severance taxation is potentially an additional source of state income which is justified as payment to the state for the depletion of resources. Here the issue appears to be straightforward since on the face of it such resources as petroleum once extracted are gone forever through consumption. Where or how, the question runs, is the state to obtain payment for this apparent permanent destruction of its natural resources? It must be borne in mind that in a private ownership economy the state receives its income primarily as an indirect recipient of funds from the income of its residents and others earning income in the state. Secondarily, it receives income from the sale or lease of public resources and from transfer payments from other governmental units. In the case of petroleum-producing properties these are the owners, producers, contractors, labor and other direct and indirect participants in the production and distribution processes Without petroleum production, both state and local government revenue would decline, since the income derived from that production and from the property would decline. Present generations of Californians and others deriving income from petroleum production do indeed consume petroleum products and thereby deplete California's petroleum resources Most of this income is, however, consumed in order to continue production of all wealth and some is, hopefully, reinvested either privately or publicly in order to increase the ability of future generations to produce wealth. All other industries considered in vertical integration are similarly depleting both natural and man-made resources. Thus, unlike virgin park lands or natural seashores which are capable of permanent destruction through public enjoyment, the state's mineral resources are directly consumed both in order to continue present production and to increase productive capabilities through new capital formation. Consequently, rather than depleting the state's wealth present consumption of petroleum resources tends to increase the wealth of both present and future generations and indirectly the revenue potential of the government.

But those who are particularly concerned with conservation of petroleum deposits tend to be impressed with supposedly predictable dire shortages of these resources in the future These shortages are predicated upon predicted increasing populations, increasing industrialization and economic development of underdeveloped countries, and new

uses for petroleum resources resulting from chemical engineering accomplishments, all of which will place greater demands upon these scarce and depleting resources. Thus, for California, for instance, the trend for the state as the third largest supplier of crude to a sizeable importer of petroleum resources is one which tends to confirm the dire consequences for the future confronting the state and in a similar manner the United States and the world, with regard to shortages of hydrocarbons.

The popularity of this general interpretation of world population development and resource scarcity is so great today that one must hesitate to offer even the most cautious questioning of it But another view of the potentially dire consequences arising from increasing scarcities of petroleum resources due to depletion is possible It should be considered if for no other reason than that it more closely corresponds to our historical experience than the current warnings of potential catastrophic shortage of resources.

What is frequently ignored in conservation discussions is that all natural and man-made resources are scarce whether they be taken from a limited supply in nature or from a supply which requires reseeding or restocking. Resources are scarce relative, that is, to our shifting requirements in consumption and production It is, for instance, only a short time ago that coal was one of our principal growth resources Today some of the country's most distressed areas are in the coal mining regions where mines have become so marginal that owners have reverted to techniques of production comparable to those of a hundred years ago.

The problem of making predictions as to the future need for petroleum over any long period of time is an extremely difficult one. For instance, the availability of petroleum as of any resource may if it is plentiful stimulate a number of different uses, some perhaps to the point of being integrated into the institutional order of things as have gasoline and oil in automobile transportation Relatively simple questions, when answered, might well distort even the most carefully worked out answers to questions of the expected future use of petroleum products. For instance, even if we adequately project population, can we predict the future status of employment and are not the two related to each other? Will there be war? Will the advancing nations use petroleum resources as we do? Will undersea deposits of petroleum become more readily available? Will the increasing density of population in urban areas and the declining density in rural areas bring about substitute forms of transportation? Will technological innovation in generating electricity by atomic energy replace the burning of crude and gas? Will smog problems force the use of a substitute means of generating power? Will these problems taken together significantly induce innovation to reduce the price of electrical energy, which in turn will result in a decline in the use of petroleum for heat and transportation? It is clear that the questions can be asked almost endlessly depending upon the time span into the future under consideration.

What tends to carry the problem of petroleum scarcity to dire warnings about future prospects is the present and past dependence upon the resource and the difficulty of finding new supplies Extrapolated

into an unlimited future of similar important dependence and use of the resource the problems cannot but appear terrifying It is not the purpose here to isolate those present or future developments in population growth or future developments in science or technology or changes in the social and economic organization which will determine the future dependence upon petroleum resources and consequently their relative scarcities, but rather to point out that such areas for prediction have not in the past been overly accurate Consider, for example, the dire warnings in the 1930's about the trend apparent in the declining rate of population growth A measure of the speed of recent technological change will serve to set the problems in perspective, namely, the fact that many of the products we use today were either chemically unknown or technologically unavailable 25 or 30 years ago. Furthermore, it seems unlikely that even if with great accuracy we could predict the future need and use of petroleum resources we would be willing or able to shift to alternative uses in the present. The most that could be achieved would be possibly to limit the types of use for such resources. In addition, since it is undoubtedly true that future petroleum resource needs will be supplied from a more widely dispersed geographical area than the state, it appears somewhat unreasonable to suppose that one state is capable of significantly modifying petroleum production in the interest of conservation And, finally, as noted above, the state would not be wise to pursue conservation policies with tax devices intended to produce revenue

From the point of view of the state taxpayer the ideal source of state revenue is one whereby someone else pays the taxes. Hence, the imposition of a tax whose impact falls outside the state and which does not in its consequence remove any competitive advantages enjoyed by goods bearing the tax would be most desirable. Such ideal taxes would be further increased in their advantage if their collection were at minimum cost and if the final disposition of the revenues collected were placed unencumbered in the General Fund Without questioning the ethical position of such an orientation to state taxation it is possible to recognize that many state and local taxes are to some degree paid in other states. Some state and local governments have pursued particular advantages afforded them in this respect. For instance, some states impose a disproportionately higher tax on petroleum resources which is in part explained by their net export of petroleum products

Since California is the third largest producer of petroleum products, a severance tax imposed on California's petroleum resources would seem to offer just such an opportunity to export some of the cost of state government Let us consider then for purposes of contrast a severance tax imposed on the privilege of extracting petroleum resources together with a similar tax imposed on the privilege of extracting agricultural products in California Both taxes may be imposed on a unit of physical output produced for sale within and without the state Because of federal constitutional restraints taxes imposed on goods in interstate commerce cannot be taxed differently from those within the state

Though California is a large producer of petroleum resources, it is also, with its newly enlarged population, a very large consumer of crude, gas and processed petroleum products, with the rate of importa-

tion growing at a faster rate than production. A reversal of this situation is foreseeable only as a result of new discoveries on land and in the tidewater areas from which the state and local governments would derive royalty income It is obvious that the only virtue which a severance tax imposed on petroleum resources under present conditions might have is that it would be hidden in the costs of production, since virtually none of it would be exported from the state Similarly, assuming that the present situation were to change as a result of new finds on royalty-income lands and assuming that the state and local governments would be deriving maximum royalties according to the market for these operations, these governments would then be able to export some of their fees and taxes. But until such time as the production of petroleum resources exceeds consumption any severance tax imposed would merely be equivalent to a hidden excise paid for wholly within the state

On the other hand, a similar severance tax imposed on the privilege of extracting agricultural products, most of which are consumed outside the state, would offer a far greater possibility for exporting part of the cost of government in California One might, for instance, trace the impact of present ad valorem taxes paid to local tax jurisdictions by the petroleum-producing industry and by the agricultural industry as in some measure contained in the final sales price of the various products. Although tax impact is one of the more difficult areas to measure, it would seem reasonable to hazard a guess that there is at present a more sizeable export of local ad valorem taxes contained in agricultural products than in the case of petroleum products which are largely consumed in California.

The question of how the petroleum industry bears or passes on its present ad valorem taxes and how it would react to an additional or in lieu severance tax, i e, the measurement of tax impact is perhaps the most difficult area in public finance so that the analysis which follows must be regarded as both tentative and speculative in the absence of more precise information. In the case of the petroleum-producing industry the probability is that ad valorem taxes are in part absorbed as a cost by owners of the property and in part passed on to processors who probably absorb very little because they are able to pass them on to consumers. Probably the more integrated the firm the more easily its ad valorem taxes may be contained in the final sales price The reasoning behind these generalizations is that petroleum resources are available to processors from national and international markets In California, for instance, Standard Oil imports heavily while Union Oil does not. Further, there are available today multiple transportation systems and out-of-state sources and to some extent even possible alternative resources in various stages of processing for final distribution. These factors tend to offer opportunities for interchange and substitution of petroleum resources based upon minimum cost conditions providing a basis for minimum tax cost. In addition, the size and integrated nature of the processing and distributing companies which dominate the petroleum market permit relatively great leeway in their selection of resources for operation. Possibly each major firm operates with not one but several optimum conditions for best production efficiency and minimum cost conditions. Until the last three or

four years the chemical composition of crude tended to restrict the interchange and uses for California's high residue resources The recent introduction of hydrocracking has tended to lessen that problem But California's competitive position with respect to crude resources still retains some disadvantage *The Wall Street Journal* of April 24, 1964, saw the problem this way:

> A refiner's stake in being able to alter his product mix is clear. U S. Bureau of Mines figures show that domestic gasoline demand has been rising an average 2 7 percent a year—to about 4.5 million barrels a day in 1963 from 3 7 million in 1956—while demand for heavy fuel oils during the same period has fallen slightly, to about 1 5 million barrels a day.
>
> On the West Coast the situation is even more striking Fuel oil use in seven western states has fallen about 4 5 percent a year since 1956 while gasoline consumption has risen 4 percent annually Yet West Coast refineries in 1962 fell 18 5 percent short of meeting gasoline demand while being forced to turn out 7 percent more fuel oil than was needed
>
> The switch by utilities to natural gas for powering generating plants accounts for much of the slide in fuel oil use.

The larger companies have met this change in demand for different petroleum products by shifting first to importation of gasoline and gas and then to more costly methods of cracking But California's crude, as noted above, retains some disadvantage and must be considered in relation to the possible alternative petroleum sources. The same *Journal* article explains as follows

> Catalytic cracking, in general use since World War II, usually leaves a residue of about 20 percent industrial fuel oil, and the like, after the extraction of gasoline and other higher-value products Hydrocracking forces these residues apart with wedges of hydrogen driven by secret catalysts, resulting in more gasoline.
>
> Signal Oil isn't the only refiner to discover the merits of hydrocracking. In the past three years 11 hydrocrackers have gone into operation and 12 more are under construction or being designed Standard Oil of California recently announced it will build an $80 million unit—three times larger than any now in existence—at its Richmond refinery near San Francisco
>
> Such refinery tinkering can markedly change product yields, as witness Signal's jump to 90 percent gasoline production at Bakersfield from 50 9 percent simply by, an official puts it "busting up all those dad-gum heavy oils " The refinery used to turn out 6 1 percent kerosene, 9 7 percent diesel oil and 17 9 percent industrial fuel oil that "we didn't know what to do with " Now the first two products are transformed into gasoline altogether and fuel oil output is trimmed to 4 percent, he says
>
> Signal is doing about as well as can be expected with California's heavy crudes, but given lighter oils such as predominate on the Gulf Coast, hydrocracking is able to produce nothing but gasoline, says William H Clausen, manager of invention development for California Research Corp, a California Standard Oil subsidiary.

From the point of view of judging tax impact on the supply side, California's relatively lower quality resources in respect to the changing composition of demand for higher quality final products places these resource owners at a slight disadvantage in the extended market for their products In a similar manner the composition of the petroleum industry, which is dominated by a relatively few large integrated firms which have access to multiple supplies from comparatively large numbers of leasers, tends to lead one to the conclusion that, though there may be differences as between firms, ad valorem taxes are probably in part absorbed by competitive lessors and in part passed on to the consumer.

On the demand side, for the final petroleum products, the processors are probably in a somewhat similar situation as they are in their relationship to resource leasers The demand for such items as gasoline has been found to be relatively price inelastic within the range of prices with which we have been familiar in this country. For instance, though people may switch from one service station to another due to a reduction in the price of gasoline, there is no noticeable increase in the overall use of automobiles nor in the consumption of gasoline as a result of decline in price. It would seem that the institutional solidification of our dependence on automobile transportation has made it possible for both the several states and the federal government to impose excise taxes at quite high levels without significantly affecting the rate of use of that mode of transportation

If then, on the one hand, competition by owners of petroleum resources in leasing their properties to producing-companies tends to absorb in part some of the present ad valorem taxes and if, on the other hand, the institutionally solidified demand for final petroleum products tends to permit processors to pass on the remaining portion to California consumers, it is reasonable to suppose that either additions to ad valorem or the imposition of severance taxes would have a similar impact Thus, a decision not to impose additional taxes is, in effect, an indirect aid to California petroleum resource owners whose resources are somewhat inferior to those of other areas of the market as regards the changing composition of demand and a benefit to the California consumer in lower prices of final products

It has been observed above that the one advantage which severance taxation offers is that it is a form of taxation not presently used by the state for revenue purposes With ad valorem revenues accruing to local government jurisdictions, the state has participated in taxation of the petroleum industry only as it would with any other industry by imposing taxes on franchise and income

However, recent developments in the discovery of petroleum resources on publicly owned lands and in offshore areas in which the state's rights have been established have made income from petroleum-producing properties available to the state's General Fund and Water Fund in significant amounts Oil and mineral royalties amounted to $27 2 million in 1962 and $49 2 million for the period closing June 30, 1963 It is reasonable to expect that the state's participation in royalty income could increase since explorations are in areas in which the state might be able to extend its claim However, most recently exploration has been extended out into blue water areas substantially offshore and

not clearly within state jurisdiction Water boundaries for states are at best rather vague at present The main points of concentration for such deep water exploration are in the North Sea, Gulf Coast and off Alaska and California It is possible that discoveries even in the continental shelf off the California coast could be claimed to be depleting of California's offshore deposits by subterranean connection. Such questions are, however, necessarily legal questions based upon geological evidence

Appendix

QUANTITY AND VALUE OF PETROLEUM OUTPUT IN CALIFORNIA BY COUNTIES—1962

County	*Quantity*[a]	*Value*
Fresno	26,730	$71,266,056
Kern	90,595	221,434,611
Kings	1,388	4,102,291
Los Angeles	74,386	190,563,120
Monterey	11,230	17,642,695
Orange	31,320	78,968,695
Riverside	3	9,102
San Benito	337	735,150
San Bernardino	87	221,123
San Luis Obispo	1,260	3,601,689
San Mateo	97	291,860
Santa Barbara	25,487	62,745,393
Solano	1	2,513
Tulare	46	97,225
Ventura	33,705	90,048,940
State	296,672	741,430,463
1963 Estimates for the state		
State	300,733	$745,818,000

[a] Unit—M Barrels (thousand barrels, 1 barrel = 42 gallons)

SOURCE California, Department of Conservation, Division of Mines and Geology, and Oil and Gas, letter to Assembly Committee on Revenue and Taxation

SEVERANCE TAXES—OIL AND GAS

In Selected States

State	Tax	Rates	Revenue fiscal year 1963
Alabama	Oil and gas severance taxes	Oil and gas—6% of gross value at point of production of oil, gas or other hydrocarbons produced or severed from the soil or water for commercial use	$483,000
Arkansas	Oil and gas severance or production taxes	Oil—well production per day [a] 10 or more bbls —5% of value, less than 10 bbls —4% of value, Gas—$0 003 per 1,000 cu ft	N B
California	Petroleum and gas severance taxes	Tax per barrel of oil produced and cubic feet of natural gas produced determined annually and based on estimate of annual conservation cost	854,000
Colorado [b]	Oil and gas production gross income taxes Oil and gas conservation taxes	Gross income from production of oil and gas under $25 000—2%, $25,000–100 000—3%, $100 000–300,000—4%, $300,000 and over —5% [c]	1,661,000 120,000
Florida	Oil and gas severance taxes	Oil and gas production—5% of gross value at point of production of oil or gas severed or produced from the soil or water Escaped oil—12½% additional	42,000
Indiana	Petroleum production tax	1% of the value of all petroleum removed from the soil	347,000
Kansas	Natural gas severance tax Oil proration tax Oil production tax	N A	195,000 318,000 105,000
Kentucky	Oil production tax	State—1/2 of 1% of market value of crude petroleum produced County— not to exceed 1%	286,000
Louisiana*	Oil and gas severance taxes	Oil—ranges from 18¢ per bbl for 22 gravity oil and less to 26¢ for over 43 gravity oil [a] Gas—$0 023 per 1,000 cu ft [c]	147,206,000
Mississippi*	Oil and gas severance taxes	Oil—6¢ per bbl or 6% of value, whichever is greater, Gas—6% of value or $0 005 per 1,000 cu ft	11,216,000
Montana	Oil production tax	2% and 2 5% of value [d]	2,106,000
Nebraska	Oil and gas severance taxes	Oil and gas—2% of value	1,352,000 [e]
New Mexico	Oil and gas severance taxes	Oil and gas—2 5% of value, plus privilege tax of 2% of value	N B
North Dakota*	Oil and gas production taxes	Oil and gas—5% of value	3,402,000
Oklahoma	Gross production tax	Oil and gas—5% of value	N B
Texas	Oil severance tax Natural and casing head gas severance tax	4 6% of value [a] 7% of value	122,114,000 64,051,000
Utah	Oil and gas production taxes	Oil and gas—2% of value in excess of $50,000 per year [f]	700,000
Wyoming	Oil and gas production taxes	Not to exceed 2/5 of 1 mill per dollar of value of oil and gas	66,000

* Severance or production tax is in lieu of state and local property taxes, with certain limitations on the exemption in the case of equipment not necessary and used in production Louisiana, however, exempts only the oil and gas, not equipment, from property taxation

[a] Limited credit is allowed against tax for depreciation and for cost of maintaining salt water disposal well

[b] Credit is allowed against tax due for property taxes paid on oil and gas, leaseholds, and royalties but not for property taxes on equipment and facilities used in production

[c] Tax on oil wells incapable of producing more than an average of six bbls per day is one-half of normal rate Tax on gas wells incapable of averaging 250,000 cu ft per day is $0 003 per 1,000 cu ft

[d] Tax rate is 2% of the portion of gross value of production from each lease or unit per calendar quarter not in excess of an amount equal to the number of producing wells thereon times 450 bbls , on the portion of value above this amount the rate is 2 5%

[e] Tax is 4 6¢ per bbl (not less than 4 6% of market value)

[f] An annual exemption of $50,000 is allowed in computing the amount of gross value subject to the tax

a Revenue for fiscal year 1962.

N A Data not available

N B No breakdown Oil and gas severance tax revenue yields not separable from total yields which also include other minerals Total severance tax collections in 1964 on all minerals subject to the tax were Arkansas $3,766,000, New Mexico $21,663,000, Oklahoma $35,628,000

SOURCE U S Department of Commerce, Bureau of the Census, *State Tax Collections in 1964*, (Washington Bureau of the Census) October, 1964, pp 12ff, Kansas Legislative Council, Research Department, *Major State and Local Nonproperty Taxes Kansas and Other States*, prepared for Special Committee on State and Local Finances (Publication No 240) January, 1963, pp 34-35

CHAIN STORE TAX

by

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CHAIN STORE TAX

HISTORICAL BACKGROUND

A major change in American economic life occurred in the 1920's as a result of the rapid expension of chain stores. In 1910, 3,000 chains operated only 13,500 stores in America. By 1928, 20,000 chains were operating 119,600 stores [1] Understandably, this change was viewed with alarm by many people sympathetic with the small independent retail businessman.

One of the reactions to this revolutionary change was the attempts by many states to impose special taxes on chain stores In this way, it was felt, the small businessman would be better able to more effectively compete with the "monolithic" chains. In 1927, the first chain store taxes were enacted in Georgia, Maryland and North Carolina. With the advent of the depression and the need by state governments for additional revenue, the chain store tax movement reached full bloom. In 1933, 13 states passed chain store taxes By 1938, 21 states had chain store tax legislation on the books [2]

Congress also became interested in this tax in the late 1930's On June 8, 1937, the House of Representatives accepted Representative Martin Dies' amendment to the District of Columbia appropriations bill (155 to 43) providing for a chain store tax in the District The amendment was rejected by the Senate. In 1938 Representative Wright Patman with 75 coauthors introduced a national chain store tax act. It established a tax rate of $50 per store on chains having 9 to 15 units and up to $1,000 per store on chains with more than 500 stores. The tax then was to be multiplied by the number of states in which the chain was operating. Under this bill, the Great Atlantic & Pacific Tea Company would have paid $523 million and Woolworth's $79 million. This measure died in committee.[3]

The movement for chain store taxes reached its peak in the 1930's. After World War II, several states abandoned this method of taxation. By 1963, only 14 states continued to impose this tax

CALIFORNIA'S 1935 CHAIN STORE TAX ACT

In 1935, the California Legislature enacted a chain store tax. The measure provided for license fees for retail stores as follows:

1st store	$1	6th store	$32
2nd store	2	7th store	64
3rd store	4	8th store	128
4th store	8	9th store	256
5th store	16	10th store	500

Each store above 10—$500

[1] Seventy-second Congress, First Session, *Senate Document 100*, Washington, D C Government Printing Office, 1931, p 53, 67

[2] Maurice W Lee, "Anti-Chain Store Tax Legislation," Journal of Business of the University of Chicago, July 1939, pp 5, 9 and 26

[3] Seventy-sixth Congress, Third Session, Hearings before the Committee on Ways and Means on H R 1, Excise Tax on Retail Stores, I, pp. 153–1961

Exempt from the provisions of the act were gasoline stations, ice distributing establishments, restaurant facilities of common carriers, newspaper offices, theater and motion picture houses, stores where sales were incidental to rendering of a personal service, and agricultural cooperatives.[4]

Supporting the measure, Senator Chris Jespersen and Assemblyman Melvyn Cronin stated:

"This proposal, providing a graduated scale of taxes for chain stores, represents California's first serious and successful effort to regulate monopoly within the borders of the state.

"Unrestrained by government, chain stores have grown to such colossal size within the past decade that the only proper method to prevent them seizing all forms of business is through taxation

"Financed and controlled by 'economic royalists' of the first water—whose headquarters are in Wall Street and other money centers—they suck the financial lifeblood from every community they enter, concentrating their gigantic profits in the hands of a few to sustain a reactionary oligarchy which is definitely anti-social and dedicated to the continuation of economic slavery.

"They have claimed that the consumer will pay the bill of increased taxation.

"A false complaint, since imposition of this tax will enable independent merchants to compete with monopoly on a basis of equality, thus tending to create competitive prices, for the consumer's benefit."

In opposing the bill, Senator Ray Hays and Assemblyman Paul Richie argued:

"The act is not intended as a revenue measure. It does not produce a substantial return. It is a punitive measure intended to destroy legitimate competition. It is not only unfair in this respect but it is discriminatory as well. Some chains handling the same products are exempted from the tax. It will raise the cost of living. Those whose incomes are modest are vitally affected.

"Chain stores distribute high grade merchandise directly from farm and factory to the consumer. They buy in large quantities at a lower price because of quantity and take advantage of cash discounts The costly service of the middleman is eliminated. Sales for cash avoid slow and bad accounts. The savings thereby effected result in the lowest possible price to the consumer.

"Chain stores are of tremendous value to California because they move farm and factory products in large volume. By efficient organization, advertising and promotion, they stimulate demand and provide a ready cash market to all producers.

"Of 130 chains in California which would be seriously affected by the chain stores tax, 100 are locally owned by California citizens and transact all their business in this state. National chains

[4] Statutes of 1935, Chapter 849.

do less than 7 percent of the retail business in California National food chains, alone, annually buy in California and ship to other states 89 millon dollars more in farm products than they receive for goods sold here.

"Chain stores operate on an exceedingly small margin of profit. In many cases the net profit per store is not much more, if any, than the amount of the proposed tax. Therefore, the tax must be added to the price of the food, clothing and other necessities; naturally other storekeepers influenced by larger profit, will raise their prices accordingly for the goods you buy. You will not benefit You will pay the amount of the tax in the increased price of the necessities of life and you will be compelled to deny yourself some of the modest luxuries that you may now enjoy. Many stores will be forced to close creating unemployment and affecting realty values."

Governor Merriam signed the measure in July 1935 However it did not take effect as the opponents successfully obtained enough signatures under the referendum provisions to put the measure to a vote of the people. Proponents and opponents staged what is remembered as the most hotly contested referendum in California history.

This is the way UCLA Professor Winston W Crouch describes it:

"Probably the most spectacularly fought referendum campaign was that in 1936 when California Retail Chain Stores Association fought a vigorous and well-financed campaign to defeat the measure that singled their type of business for special taxation and regulation.

"Each branch store belonging to a chain store organization would have been subject to a high tax.

"The Anti-Monopoly League of California, a well-financed group of independent store owners argued that chain stores monopolized business, drove out small establishments, and that as a large organization they should pay a special tax.

"However a skillfully organized propaganda campaign using the oft-repeated slogan 'Twenty-Two is a Tax on You' impressed the electorate sufficiently to defeat the measure, number 22 on the ballot." [5]

The measure was defeated by 300,000 votes—1,067,443 yes to 1,369,778 no—and only carried one county, San Francisco County.

A total of $1,207,764 was spent for and against the measure—a staggering amount considering the purchasing power of the dollar in 1936 [6]

LEGAL STATUS

Although several early chain store tax measures were overturned by the courts, the U S Supreme Court in 1931 ruled that this form of taxation was constitutional in *State Board of Tax Commissioners*

[5] Winston W. Crouch, *The Initiative & Referendum in California*, Los Angeles The Haynes Foundation, 1950, p 28

[6] *Ibid*, p. 30

of Indiana vs Jackson, (1931), 283 US 527, a decision which is still controlling. The principal question in this case was the validity of the classification of the chain stores under the 14th Amendment.

Speaking for the Court, Justice Roberts said.

> "A tax statute is not arbitrary if discrimination is founded upon reasonable distinction or if any state of facts reasonably can be conceived to sustain it
>
> "The record shows that the chain store has many features and advantages which definitely distinguish it from the individual store dealing in the same commodities."

However, in 1935, the Court held that classifying retail merchants for imposition of a graduated tax on sales according to the volume of sales, disregarding the number of stores operated, is invalid. [*Stewart Dry Goods Co vs. Leavis et al*, (1935), 294 US 550.]

While the number of stores within a state is the commonly accepted classification, the Court has ruled that a distinction may not be drawn with respect to the number of stores within a county compared with the number within a state [*Louis K Liggett Co. vs Lee,* (1933), 288 US 517] In fixing the applicable rate for state stores, however, a state may take into consideration the number of stores in the entire chain, wherever situated [*Great Atlantic & Pacific Tea Co. vs Grosjean et al*, (1937), 301 US 412]

CHAIN STORE TAX RATES IN THE UNITED STATES

As of September 1, 1964, 13 states imposed chain store taxes The rates and exemptions in the various states follow:

State	Rates		Exemptions
	Number of stores	Tax rate	
Alabama	1	$1	Stores selling petroleum products if constitute at least 51% of business and ice
	2- 5	15	
	6-10	22 50	
	11-20	37 50	
	Over 20	112 50	
Colorado	1	$2	Gas filling stations or gas bulk plants
	2- 4	10	
	5- 8	50	
	9-15	150	
	16-24	200	
	Over 24	300	
Iowa	1	Exempt	Nonprofit co-ops, farmers and gardeners, persons selling ice, coal, lumber, grain feed, seeds, fertilizer, twine and building materials where sales are 95% of gross, state liquor stores, hotels and roomingbouses
	2-10	$5	
	11-20	15	
	21-30	35	
	31-40	65	
	41-50	105	
	Over 50	155	

State	Rates		Exemptions
	Number of stores	Tax rate	
Louisiana	1–10	$10	Gas stations and public utilities
	11–35	15	
	36–50	20	
	51–75	25	
	76–100	30	
	101–125	50	
	126–150	100	
	151–175	150	
	176–200	200	
	201–225	250	
	226–250	300	
	251–275	350	
	276–300	400	
	301–400	450	
	401–500	500	
	Over 500	550	
Maryland	1– 5	$5	Gas stations
	6–10	20	
	11–20	100	
	Over 20	150	
Michigan	Chain stores		
	1	Exempt	Gas stations, bulk plants, warehouses and elevators in farm produce business
	2– 3	$10	
	4– 5	25	
	6–10	50	
	11–15	100	
	16–20	150	
	21–25	200	
	Over 25	250	
	Chain counters		
	1	Exempt	
	2–10	10	
	11–15	15	
	16–25	20	
	Over 25	25	
Mississippi	Towns with population under 3,000		
	1– 5	$6	Gas stations and public utilities
	6– 10	15	
	11– 50	30	
	51–100	60	
	101–250	120	
	Over 250	180	
	Towns with population 3,000–6,000		
	1– 5	8	
	6– 10	20	
	11– 50	40	
	51–100	80	
	101–250	160	
	Over 250	240	
	Towns with population over 6,000		
	1– 5	10	
	6– 10	25	
	11– 50	50	
	51–100	100	
	101–250	200	
	Over 250	300	

State	Rates		Exemptions
	Number of stores	Tax rate	
Montana	**General chain stores**		
	1	$5	None
	2	50	
	3	100	
	4	150	
	Over 4	200	
	Gas stations, hardware stores, and grain elevators		
	1	5	
	2	7 50	
	3	15	
	4	22 50	
	5	30	
	Over 5	37 50	
North Carolina	1	Exempt	
	Over 1	$65	
	Gas stations—wholesale distributor of motor fuels (pump tax)		
	(pumps)		
	1–50	2	
	51–100	4	
	101–200	5	
	201–300	6	
	301–400	7	
	401–500	8	
	501–600	9	
	Over 600	10	
	Gas stations—retail service station license (based on population)		
	Towns with population of	Per store	
	Under 2,500	*$10	
	2,500–5,000	*15	
	5,000–10,000	*20	
	10,000–20,000	*30	
	20,000–30,000	*40	
	Over 30,000	*50	
South Carolina	1	$5	None
	2	10	
	3	15	
	4	20	
	5	25	
	6	30	
	7	35	
	8	40	
	9	45	
	10	50	
	11	55	
	12	60	
	13	65	
	14	70	
	15	75	
	16	80	
	17	85	
	18	90	
	19	95	
	20	100	

State	Rates		Exemptions
	Number of stores	Tax rate	
South Carolina —Continued			
	21	105	
	22	110	
	23	115	
	24	120	
	25	125	
	26	130	
	27	135	
	28	140	
	29	145	
	Over 29	150	
Tennessee	Each store above one—$3 for each 100 square feet or major fraction thereof of taxable floor space		C is stations
Texas	For most stores[a]		
	1	$4	Religious book stores and nonprofit establishments
	2	9	
	3–5	27 50	
	6–10	55	
	11–20	165	
	21–35	275	
	36–50	550	
	Over 50	825	
West Virginia	General stores		
	1–5	$15	None
	6–10	40	
	11–15	80	
	16–20	120	
	21–30	160	
	31–50	400	
	51–75	800	
	Over 75	1,000	
	Special stores[b]		
	1–5	5	
	6–10	20	
	11–15	40	
	16–20	60	
	21–30	80	
	31–50	200	
	51–75	400	
	Over 75	500	

[a] Or $5 per pump, whichever is greater
[a] Other chain stores including ice stores, certain wholesale and retail lumber stores, certain oil and gas well supplies and equipment dealers, restaurants, certain gas stations, and certain utilities pay a tax of $4 for one store and $9 for more than one store
[b] Stores in which goods of any kind except cigarettes, tobacco products and soft drinks are sold and which contains no coin-operated device owned and operated by the store proprietor
SOURCE Agencies administering major state taxes in the various states

YIELDS IN OTHER STATES

The chain store tax is not a great revenue producer at the rates which it is levied in other states. Except for Texas, which raised over three million dollars in fiscal 1962–63, no other state receives as much as one million dollars from this source. Revenue collections for 1962–63 are as follows

TABLE I

Chain Store Tax Yield, 1962–63

State	*Yield*	*State*	*Yield*
Alabama	$128,577	Mississippi	$129,150
Colorado	248,317	Montana	185,093
Iowa	34,399	North Carolina	323,372
Louisiana	400,126	South Carolina	361,400
Maryland	N/A	Tennessee	336,974
Michigan	556,979	Texas	3,370,572
		West Virginia	N/A

Source Compiled from Budgets of various states and correspondence with various states

POTENTIAL YIELD IN CALIFORNIA

By comparing the rate structure proposed in California's ill-fated 1935 act with rate structures and collections in other states, it can be estimated that a chain store tax today would produce about $3,500,000 per year This is comparable with Texas' revenue from the same source The tax liability of 19 large chains in California would amount to nearly $900,000 This figure would indicate the $3 5 million estimate is in the proper range of magnitude.

TABLE II

Estimate of the Tax Liability of Some of the Larger Chains in California

Woolworth's	$73,511	Lucky Stores	$61,511
Kress	16,011	See's	59,011
Sears	20,511	Gallen-Kamp	63,511
Safeway	232,511	Mayfair	70,511
Grant's	36,511	Von's	31,511
Macy's	511	Thriftmart	22,011
Hale Bros	9,011	Food Giant	27,011
Thrifty	94,011	Fox Markets	13,511
Newberry	35,511		
Walgreen	2,511		$880,709
Market Basket	22,511		

Source Computed from the tabulations of number of stores in California as listed in *Moody's Industrials*, 1963

EFFECTS OF A CHAIN STORE TAX

A chain store tax is more an instrument of social policy than of tax policy Ostensibly the purpose of this tax is to place more of a competitive burden on the chain in order to protect and preserve the small independent entrepreneur The tax rate, coverage, demographic characteristics of the state and the nature of the chain store business are important in determining effects of the tax A minimal tax will have only nuisance effect on chains while a very large tax could drive the chains out of California If the tax rate is based just on the number of stores in California, the total impact will be greater on regional rather than national chains A chain store tax in states with most of the population in large urban areas will not be as effective as a regulatory or revenue measure as in states with a number of medium sized cities

Chain store taxes as a percentage of net income fall much more heavily on grocery chains than on variety chains[7] To the extent that

[7] Lyle E Craine, "Chain Store Taxes As Revenue Measures," *National Tax Journal*, September 1949, p 283

it is passed on to the consumer rather than the stockholders or management, this impact would weigh more heavily on lower income groups.

To fully evaluate the desirability of a chain store tax from the standpoint of social policy, several questions must be answered. Are "chains" detrimental to society? Is additional regulation needed? Is the tax device the most effective way of regulating chains?

Earlier studies have concluded that this form of taxation at rates generally imposed in other states has little impact on the expansion of chains and is generally ineffective as a regulatory device.[8]

In considering chain store taxes as revenue-producing rather than regulatory, measures, it is evident that such taxes cannot produce substantial revenue for California at rates generally prevalent in other states. However, California imposes a number of taxes—such as the wine tax, the private car tax, etc.—which bring in even less than would a chain store tax. Or high rates could be imposed which would raise a substantial amount of revenue.

One of the criticisms of the chain store tax is that there is not necessarily a relationship between number of stores and ability to pay. Further, it is highly discriminatory against one type of enterprise *vis-à-vis* another similarly located, and as such violates the principle of tax neutrality.

[8] See Reinhold P. Wolff, "The Chains Adjust Themselves to Taxation," *Dun's Review*, October 1939, p. 22; Maurice W. Lee, "Anti-Chain Store Tax Legislation," *Journal of Business of the University of Chicago*, July 1939, pp. 44, 74; Lyle E. Craine, "Chain Store Taxes As Revenue Measures," *National Tax Journal*, September 1949, p. 283.

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ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

THE INSURANCE TAX

A Major Tax Study

PART 8

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DECEMBER 1964

PUBLISHER'S NOTE

This report is the eighth part in a series of publications issued by the Assembly Committee on Revenue and Taxation during their 1963–65 interim study of the California tax structure It is concerned with the equitability, the economic impact, and the revenue impact of taxes imposed on insurers It deals specifically with the rationale of the gross premiums tax and its importance as a revenue source, the principal office deduction, retaliatory taxation of insurance companies, and problems pertaining to the collection of the gross premiums tax.

Where applicable, analyses of proposed legislation, and some recommendations and conclusions pertaining thereto, are made

The material relied upon for data and substantiation included published economic data, testimony offered in public hearings held by the Assembly Committee on Revenue and Taxation, publications of state and federal agencies, and the literature in the field

The recommendations in this report are those of the researcher and should not be construed as representing the views or decision of the committee. The committee recommendations will be made in due course.

ABOUT THE AUTHOR

Sylvia Lane is an assistant professor of finance at San Diego State College. She received her A.B and M A in economics at the University of California and her Ph D. at the University of Southern California, where she also was a lecturer in economics. Mrs. Lane is a member of the American Economic Association, the American Finance Association, and serves as chairman of the membership committee and a member of the executive committee of the Western Economic Association.

In 1963, she received a Ford Foundation fellowship for further study in public finance at U.C L A. She has done research for A J Wood and Company, the Psychological Corporation, the Mendota Research Group, and the Economic Research Group Mrs Lane was project economist for the Los Angeles County Welfare Planning Council, 1956 to 1959; and chairman of the Commission on Aging of the Community Welfare Council of San Diego County in 1963.

Among her other publications are: *Personal Finance* (John Wiley and Sons, Inc., 1963); *Buying Intelligently* (a supplementary text book), and numerous papers on economic growth and development and patterns of consumer expenditure She was assisted in the preparation of this report by Mr James Elden.

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THE INSURANCE TAX

by

SYLVIA LANE

DECEMBER 1964

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CHAPTER I

THE PRESENT LAW

The California tax on gross premiums received by insurance companies is embodied in the Constitution of the state, in the Revenue and Taxation Code, and the Insurance Code

The Present Law

The Constitution (Article XIII, Section 14¼) contains the provisions setting the rate for the gross premiums tax and states the voting requirement for any change of that rate For a change in the tax rate to be made, the Legislature must comply with paragraph (i) of Section 14¼, which requires a favorable vote by two-thirds of all of the members elected to each of the two houses of the Legislature

Every insurer doing business in the state pays a gross premiums tax in lieu of all other licenses and taxes, excepting real estate taxes, income taxes paid by trust departments of insurers, motor vehicle fees and taxes, and ocean marine insurance taxes [1] An exemption from the gross premiums tax is allowed fraternal fire insurers and nonprofit hospital service corporations, both of which are held to be charitable or benevolent organizations The basis of the tax for insurers other than title insurers is the amount of gross premiums, less return premiums, received during the year by the insurer upon the business done in this state. "Gross premiums" do not include premiums received for reinsurance or ocean marine insurance [2] Ocean marine insurers are subject to a tax in lieu of all other taxes except real estate, retaliatory, motor vehicle, and taxes on other types of insurance written [3] The ocean marine insurers' tax is based on the portion of underwriting profit equal to the ratio of California gross premiums to those written in the entire United States [4]

Surplus line brokers are also subject to a tax based on gross premiums from business done in the state under authority of license, less 3 percent of return premiums [5]

Title insurers pay tax on all income from business done in California except (1) interest and dividends, (2) rents from real property, (3) profits from the sale or other disposition of investments, and (4) income from investments [6] Each insurer may deduct California real estate taxes paid on the property in which its principal or home office is located [7]

Insurers, for the most part, now pay a rate of 2 33 percent, and will do so until 1967 when the rate will revert to 2 35 percent, on their

[1] California Constitution, Article XIII, Section 14¼, and Revenue and Taxation Code, Section 12003
[2] Revenue and Taxation Code, Section 12221
[3] Revenue and Taxation Code, Chapter 2
[4] Revenue and Taxation Code, Section 12101.
[5] Insurance Code, Section 1775 5
[6] Revenue and Taxation Code, Section 12231
[7] Revenue and Taxation Code, Section 12241

taxable gross premiums, excepting on premiums from pension and profit-sharing plans, on which rates are currently undergoing a change. (The rate for 1960 on these was 2 15 percent, in 1961, it was 1 95 percent; in 1962. 1.75 percent, 1963, 1 55 percent, for 1964, it will be 1 35 percent, and in 1965 and thereafter, it will be 1 percent [8]) Ocean marine insurers are taxed at the rate of 5 percent, and surplus line brokers at the rate of 3 percent [9] Foreign insurers are subject to retaliatory taxes [10]

Each insurer files a tax information return with the Insurance Commissioner on or before June 15 annually [11] Each insurer subject to the provisions pertaining to retaliatory taxation of the Insurance Code files a retaliatory tax information return with the Insurance Commissioner on or before May 1 annually [12] Taxes imposed upon insurers are due and payable annually on or before June 15 of the year following the calendar year in which the business reported was done [13] However, on June 15, 1964, payment for the gross premiums taxes due for business done between January 1 and March 31, 1964, was required, on June 15, 1965, taxes due on premiums resulting from business done between January 1 and March 31, 1965, shall be paid; on September 15, 1965, taxes on business done between April 1 and June 30, 1965, shall be paid, on June 15, 1966, taxes due on business done between January 1 and March 31, 1966, shall be paid, on September 15, 1966, taxes due on business done between April 1 and June 30, 1966, shall be paid, and on December 15, 1966, taxes due on business done between July 1 and September 30, 1966, shall be paid After January 1, 1967, gross premiums taxes due are to be paid on or before the 15th day of the 3rd month following the close of each calendar quarter [14] The prepayment provisions do not apply to ocean marine insurers The amount of prepayment may be the actual amount due as gross premiums taxes for the applicable quarter or an amount equal to at least 25 percent of the annual tax [15]

The tax lien levied on an insurer attaches on the first Monday in March [16]

Surplus line brokers' tax statements must be filed on or before March 1 [17]

Any taxes not prepaid by insurers are payable on June 15 [18] A tax return in duplicate must be filed by every insurer with the Insurance Commissioner by June 15 and the accompanying remittance made payable to the Controller [19] Surplus line brokers' taxes are payable on or before July 1 to the Insurance Commissioner [20] Retaliatory taxes are payable to the Controller on or before December 1 [21]

[8] Revenue and Taxation Code, Section 12202
[9] Revenue and Taxation Code, Section 12101, and Insurance Code, Section 1775 5
[10] Insurance Code, Section 685
[11] Revenue and Taxation Code, Section 12302
[12] Revenue and Taxation Code, Section 12281
[13] Revenue and Taxation Code, Section 12301
[14] Revenue and Taxation Code, Sections 12251 and 12251 5
[15] Revenue and Taxation Code, Section 12252
[16] Revenue and Taxation Code, Section 12492
[17] Insurance Code, Section 1774
[18] Revenue and Taxation Code, Section 12301
[19] Revenue and Taxation Code, Sections 12302 and 12305
[20] Insurance Code, Section 1775 5
[21] Revenue and Taxation Code, Section 12287.

RATIONALE OF THE GROSS PREMIUMS TAX

The tax imposed upon insurance companies in California has been held to be an excise tax The excise is paid for the privilege of doing business in the state in the year preceding that in which the tax is assessed.[22]

History

The history of California's taxation of insurance companies naturally falls into three distinct historical periods The early period, from 1846, the end of Mexican rule, to 1910, is marked by the adoption of the 1849 California Constitution, the four codes of 1872, and the second California Constitution adopted in 1879 The second period dates from the major revision of the California tax structure in 1910 to the promulgation of our current codes in the 1930's This period is marked by the codification of statutes relating to insurance taxation in 1911 and 1917, and the addition of the specific sections of the Revenue and Taxation Code, Division 2, Part 7, relating to insurance taxation which were adopted in 1941 The third period begins in 1943 with the revision of these codes, which remain, in modified form, the law governing present insurance company taxation in California

This discussion will include a delineation of the law taxing insurers during each of these historical periods with emphasis on the rates and changes in the rates of the tax, any deduction or offsets allowed against the tax, any retaliatory tax, and collection procedures

1846 to 1910

The requirement that insurance companies be incorporated and/or licensed to do business in California was imposed in 1850 [23]

Previously, Section 13 of Article 11 of the 1849 Constitution, entitled "Miscellaneous Provisions" had established, in two sentences, the state's right to impose an *ad valorem* property tax to be "equal and uniform throughout the state " In 1853, a franchise tax of $250 per quarter was imposed upon domestic insurance companies and a tax of $500 per quarter was imposed upon foreign insurance companies [24] This tax was followed by a stamp tax in 1857 [25]

In 1862, California amended its nascent tax structure so that all insurance companies paid an annual license tax of $100 [26]

At the same time, a gross premiums tax was levied but only on foreign companies with less than $50,000 invested in California property [27]

All foreign life insurance companies were taxed 1 percent of their gross premiums All other foreign insurance companies paid a tax of 2 percent on gross premiums. Domestic insurers were not taxed on their premiums (Contrary to the implications made in testimony before the Assembly Committee on Revenue and Taxation at the hearings held January 31, 1964, the tax exemption allowed foreign insurers with $50,000 invested in California property is not entirely analogous to the

[22] *Carpenter v Peoples Mutual Life Insurance Company,* 10 Cal 2d 299
[23] Statutes 1850, Chapter 351
[24] William C Faukhauser, *A Financial History of California,* Volume 3, University of California publication in Economics, 1913, p 168
[25] J Gould, "The California Tax System," in *West's Annotated California Codes,* Volume 59, West Publishing Co , St Paul, Minnesota, 1956, p 10
[26] Statutes, 1862, Chapter 227
[27] J. Gould, *loc. cit.*

principal office deduction presently allowed and was not the basis of the real estate property tax offset created by legislation in 1910) The Legislature repealed the investment provisions in the 1862 Tax Law after a few years.[28] In addition to the license tax and the gross premiums tax, a retaliatory tax was levied on foreign insurance companies in 1872 [29]

In 1867 the Legislature created the position of insurance commissioner imposing upon him the duties of regulating and controlling the insurance industry. He did not, however, actually collect any taxes [30] According to the Statutes of 1867 insurance companies were required to file a statement of premiums sold and taxes given to "the treasurer of the county or city and county" in which their principal office was located.[31] In addition they were required to post bond with the State Controller Penalties for failing to comply with these requirements were enforced by the local district attorney [32]

There were no substantial modifications in the provisions governing the tax imposed on foreign insurers from 1868 to 1903 However, in 1872, there was a rewriting and codification of the statutes and laws applicable to insurers adopted prior to that time, and a limitation of $150,000, which applied to the amount of property that could be held for use as a home or principal office by an insurance company, was included in the statutes.[33] This restriction was deleted in the 1901 revision of this section of the Civil Code [34] (The $150,000 valuation ceiling on property which an insurer could use for a principal or home office did not in any way affect his tax liability, since real property taxes were not an offset against the gross premiums tax until 1911)

The ratification of the second California Constitution in 1879 did little to alter the taxation of insurers although the Legislature's revenue powers were broadened and defined at length in Article 13 In contrast to the brief list of revenue powers appearing in the first Constitution, Article 13 of the new Constitution had 13 sections on revenue and taxation None of these sections mentioned the taxation of insurance companies Not until 1910 did the Constitution itself provide for the taxation of insurance companies

In 1885, all foreign companies writing fire insurance were subjected to a tax of 1 percent, specifically to be allocated to the Fireman's Relief Fund [35]

In 1903 existing laws governing the taxation of insurers were amended to impose a 2 percent gross premiums tax on all foreign nonlife insurers [36] This legislation was again amended in 1905 to include a 1-percent tax on the gross premiums of all foreign life insurers [37] The gross premiums tax thus imposed allowed for the deduction of return premiums, of reinsurance written for companies authorized to do business in California, and for losses paid on business done in

[28] Statutes, 1867–68, page 341
[29] Political Code, Section 622
[30] Statutes, 1867–68, p 336
[31] Statutes, 1867–68, *ibid*
[32] Statutes, 1867–68, *ibid*
[33] Civil Code, Section 415.
[34] Statutes, 1901, Chapter 157, p 332
[35] Statutes, 1885, p 13
[36] Statutes, 1903, p 359 and J Gould, *op cit.*, p 64.
[37] Statutes, 1905, Chapter 133, p 186

California [38] In 1907 there was in entirely new article added to the Political Code concerning the regulation of the insurance industry but no substantial revisions were contained therein [39]

In summary then, prior to the major revision of California tax laws in 1910, the California taxation of insurance companies included (1) a 2-percent gross premiums tax on all foreign nonlife insurance companies, (2) a 1-percent gross premiums tax on foreign life insurance companies, (3) retaliatory taxes on foreign insurance companies incorporated in a state which imposed taxes higher than California's, (4) corporation licensing fees levied on both foreign and domestic insurance companies, (5) miscellaneous special taxes, for example, the tax on foreign fire insurance companies in support of firemen's relief funds, etc, and (6) general property taxes levied on foreign and domestic companies by both state and local governments This period included no offset against premiums taxes for real property taxes paid, later known as the "principal office deduction," since there was, as yet, no division of state and local revenues

1910 to 1943

The second historical period began with the major revision of California's tax structure in 1910 This revision, occasioned by Senate Constitutional Amendment No 1, separated state and local sources of revenue Revenue from property taxes, previously shared by state and local governments, now went wholly to the support of local governments The state received revenue from business and income taxes

Insurance companies, both foreign and domestic, paid a gross premiums tax to the state under the provisions of a new section, No 14, that was added to Article 13 of the Constitution This was the first time that a provision imposing a gross premiums tax became a part of the Constitution Section 14 authorized a tax on the income of not only insurance companies but also railways, telephone and telegraph companies, public utilities, banks and other financial organizations Insurance companies "doing business" in California were taxed at the rate of 1½ percent of *adjusted gross premiums* Since property taxes were to be a revenue source for local governments, insurance companies were allowed to deduct any real estate taxes paid The gross premiums tax was in lieu of all other taxes except special taxes such as the retaliatory tax [40] The Constitution, while establishing a tax of 1½ percent of gross premiums, allowed the Legislature by a two-thirds vote to change the tax rate [41] These constitutional provisions were implemented by statute in 1911 [42] and codified in 1917 in the Political Code, Section 3664 [43] Over the years the Legislature, exercising its constitutional authority, changed the tax rate until in 1921 it became 2 5 percent [44]

The collection procedure established in 1910 is similar to the one existing today The Insurance Comissioner as he did under Section

[38] *Ibid*
[39] Statutes, 1907, p 162, added were Article 16, Chapter 3, Part 3, of Title 1 and Section 623a
[40] See Constitution, Article 13, Section 14¾, subsection (f), the current constitutional provision containing this exception and enumerating several others
[41] Subsection (f) of the original Section 14
[42] Statutes, 1911, Chapter 335, p 350
[43] Statutes, 1917, p 336
[44] J Gould, *op. cit*, p 66 or Statutes, 1921, Chapter 22, p 20

3666a of the then existing Political Code reports the facts and income of insurance companies to the Board of Equalization The board then assesses the tax Finally the taxes are paid into the State Treasury through the Controller's office The only noteworthy change in this system was the conversion to a prepaid tax instituted in 1964 [45]

In 1933, sections of the Constitution relevant to taxation of gross business receipts in California were substantially rewritten Noninsurance corporations such as railways, banks, savings and loan companies, previously covered by Section 14 were now taxed under laws taxing mercantile, manufacturing, and other business corporations [46] The 1933 amendment to Section 14 included a 2 6-percent tax on gross premiums of insurance companies but allowed for the deduction of real estate taxes Again this tax was in lieu of all other taxes Ocean marine insurers were taxed at 5 percent of their underwriting profit attributed to California premiums Previously, provisions relating to their taxation were included in Section 18, Article 13 adopted in 1930 [47] Except for these provisions relating to taxation of insurance companies now in Section 14¼, Section 14 is substantially at present as it was in 1933

In 1942 the gross premiums tax of 2 6 percent on insurers other than ocean marine was reduced Article 13, Section 14¾, was added in that year in an effort to correct inequities caused by the real estate tax deduction [48] These inequities were particularly troublesome during the 1930's when because of the Depression, some insurers found themselves with large numbers of property holdings even though they were not allowed for the most part, to own property not used as a principal or home office Insurance companies with property holdings were able to deduct local real estate property taxes from their gross premiums tax liability In many cases, this deduction reduced a company's state tax levy to zero This deduction not only resulted in lower revenue at the state level at a time when state revenues were sorely needed, but also gave what amounted to a subsidy to insurance companies who had acquired a number of holdings through foreclosure [49] The 1942 constitutional amendment allowed only for the deduction of real estate taxes paid on property in which an insurer's principal office was located To compensate insurers, the gross premiums tax was gradually reduced from 2 6 percent to 2 35 percent over a five-year period It has remained substantially the same since then, except for a recent temporary reduction to 2 33 percent to compensate for the shift to a prepaid tax Just prior to passage of the 1942 constitutional amendment, the Political Code sections relative to insurance taxation were transferred to a new code, the Revenue and Taxation Code [50]

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[45] Revenue and Taxation Code, Section 12251
[46] See Article 13, Section 16
[47] J Gould, *op cit*, p 65
[48] *Proposed Amendments to Constitution, Propositions, and Proposed Laws Together With Arguments To Be Submitted to the Electors of the State of California, General Election, Tuesday, November 3, 1942*, California State Printing Office, 1942, pp 12–13
[49] See Gould, *California Tax System*, pp 65–66, and *ibid*, pp 12–13
[50] Statutes, 1941, p 1139

1943 to the Present

Since they were revised in 1943, the Revenue and Taxation Code sections concerning insurance taxation, with some modification including a renumbering in 1961 and the new prepayment procedure, have remained substantially the same as they were

Proposed Changes

An historical review of any law would not be complete without some discussion of unsuccessful attempts to change the law

Some notable attempts made in the period from 1953 to 1962 are cited in this section In 1953 Assembly Bill 2586, which proposed an increase of the taxation rate to 2 75 percent from 2 35 percent was defeated Assembly Constitutional Amendment 21, proposed in 1953, would have eliminated the principal office deduction for general insurers It was also defeated in committee Two similar bills were defeated in the 1955 legislative session Assembly Bill 3444 would have restricted the principal office deduction to property taxes paid on that portion of the building actually housing insurance company operations Assembly Bill 3445 would have increased the tax rate on general insurers from 2 35 percent to 4 70 percent Neither bill passed either house of the Legislature

Senate Bill 1783, introduced in the 1957 session, would have modified the law to allow domestic insurance companies to deduct from their California gross premiums tax any retaliatory taxes paid by them in other jurisdictions This bill died in committee Senate Bill 2179, also introduced in the 1957 session, would have amended the section of the Revenue and Taxation Code then numbered 12256 in order to restrict gross premiums tax application to foreign insurers to admitted foreign insurance companies only It, too, died in committee

In 1958, Assembly Bill 15, that would have changed the tax rate on premiums on policies issued in connection with pension funds, was introduced, but it also died in committee However, a bill to tax premiums on pension and profit-sharing plans at lower rates did pass in 1959 [51]

In 1959, Assembly Bill 862, which was introduced, would have modified the section of the Revenue and Taxation Code then numbered 12258 in order to limit the principal or home office deduction to that portion of the principal or office building actually being used in the pursuit of its insurance business by an insurance company It died in committee

Assembly Bill 1469, also introduced in 1959, would have abolished the Franchise Tax Board and would have established a Department of Revenue to administer taxes It died in committee

Assembly Bill 2959, introduced in 1961, and Assembly Constitutional Amendment 82, introduced in that same year, would have limited the principal or home office deduction to that portion of the building actually occupied by insurers for the purpose of conducting their insurance business Neither one was adopted

[51] Statutes, 1959, p 5291.

In the 1963 session, Assembly Bill 1949 would have eliminated the principal office deduction by repealing Section 12241 of the Revenue and Taxation Code This bill was sent back to committee Assembly Bill 1947, which would have instituted the prepayment procedure, died in the Senate However, Senate Bill 8 to the same effect was passed.

Assembly Bill 2901, introduced in the 1963 session of the Legislature, would have changed the collection procedure for the premiums tax and the penalty provisions pertaining to delinquent tax payments and the late filing of retaliatory tax information returns It was not adopted.

Assembly Bill 2934 would have taxed insured employee welfare plans It was referred to committee

Two constitutional amendments were introduced. Assembly Constitutional Amendment 27 is discussed in Chapter 4. Assembly Constitutional Amendment 33, which would have limited the principal office deduction, was not adopted

In the first extraordinary session in 1964, Senate Constitutional Amendment 1, which would have removed Section 14¾ from the Constitution, died in committee Senate Bill 31, which would have curtailed the principal office deduction, also died in committee

It may be noted from this list of proposed changes that several attempts have been made to eliminate the principal or home office deduction; and an attempt was made in recent years to establish a Department of Revenue

INCIDENCE

Both the Bureau of the Census and court decisions have held the gross premiums tax to be an excise tax [52] The Bureau of the Census terms the gross premiums tax "a sales and gross receipts tax" [53]

According to authorities in public finance "a commodity tax" may reach all or a wide range of consumption expenditures or only those made for particular commodities The former type is known as a *sales tax* The second type is an *excise tax* [54] Therefore, the tax on insurance premiums is more properly classified as an excise tax

Due states further, "commodity" [55] taxes are levied upon the sales (or output) of commodities and collected from the vendors To the extent that the taxes are reflected in higher prices, individuals are essentially bearing the tax in the form of a tax supplement to the prices of goods they buy and thus in relation to their consumption expenditures, so long as their incomes are not affected by the tax [56]

Burden on Consumers

The extent to which insurance companies may shift the premiums tax on to consumers is determined by the extent to which they can raise premiums to cover the amount of the tax

However, it should be noted that consumers do not bear a very large burden because of the tax, even if it is completely shifted, simply because individual expenditures on insurance totaled only $10 7 billion

[52] United States Department of Commerce, Bureau of the Census, *Compendium of State Government Finances in 1963*, p 12, and *Carpenter v People's Mutual Life Insurance Company, op. cit*

[53] *Ibid*, p 12

[54] John F Due, *Government Finance*, 3rd Ed, Richard D Irwin, Inc, Homewood, Illinois, 1963, p 263

[55] In economic terminology a commodity is any economic good or service

[56] Due, *op cit*, p 263

in 1963 for the United States, out of which $4 2 billion was paid into nonmsured pension funds, and another $4 5 billion was paid for government insurance and into pension reserves, leaving only $1 3 billion as premiums paid to private insurers on individual insurance policies, or less than 0 4 of 1 percent of total consumer expenditures in that year [57] Since the tax is approximately 2½ percent of the premiums paid by individual policyholders, the aggregate burden of the premiums tax is currently less than one-hundredth of 1 percent of aggregate annual consumption expenditures in the United States

As for California, in their 1962–63 annual report the Board of Equalization stated

> The gross premiums collected by all 765 companies authorized to write policies in the State during 1962 amounted to $3,660,000,000, excluding premiums from ocean marine insurance This sum is equal to 8½ percent of the disposable personal income of all Californians during that year Approximately $160 million was returned to policyholders as dividends or as premiums on canceled policies leaving $3½ billion as taxable business
>
> Virtually the entire amount was subject to a tax rate of 2 35 percent Some $92,000,000 of premium receipts of 60 life insurers from policies issued in connection with a pension or profit-sharing plan, however, were subject to a tax rate of only 1 75 percent The gross tax assessed by us for the year was $81,646,000.[58]

Personal income in California in 1962 amounted to $49,187,000,000 [59] Therefore, the entire burden of the gross premiums tax assessed in California in 1962 was only some 0 0017 percent of aggregate personal income

Burden on Insurers

In the case of the insurance industry, firms have the power to raise premiums to compensate for the cost of the tax when policies are renewed or when new policies are written The insurance industry is a monopolistically competitive industry (it is neither purely competitive nor purely monopolistic, but its structure suggests that elements of both monopoly and competition exist in the industry), and characterized in some sectors by some degree of oligopoly, (i e , few sellers of, in this case, more or less differentiated products within product classes) [60] There is consequently a notable feeling of mutual interdependence among the various firms in the industry [61]

[57] See U S Securities Exchange Commission, *Statistical Bulletin*, April 1964, p 22, and Board of Governors of the Federal Reserve System, the *Federal Reserve Bulletin*, May 1964 p 627

[58] State of California, Board of Equalization, *Annual Report*, 1962–63, State Printing Office, Sacramento. 1963, p 16–17

[59] State of California, *Economic Report of the Governor*, State Printing Office, Sacramento, March 2, 1964, p 62

[60] Of interest in this regard are the publications of the U S Congress, Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, *Report, The Insurance Industry*, 85th Congress through 88th Congress 1958–1963, Parts 1–11, passim. Robert R Dockson, *The Insurance Industry in the California Market*, Union Bank, Los Angeles, 1959, pp 10, 12, 13, 17, 18, 21, 25, 27, 28 and 32, and Roy J Hensley, *Competition Regulation and the Public Interest in Nonlife Insurance*, University of California, Berkeley, 1962, Chapters 2, 5, and 9

[61] Witness the many industrywide associations and the association of those in the various sectors of the industry such as the Association of Casualty and Surety Companies, or the Institute of Life Insurance, or the National Association of Independent Insurers, et al

As a result, the reaction to any increase in tax is, most commonly an increase in the premium rate by the amount of the tax. The tax represents a cost increase to each firm [62] Each insurer knows that competitors are likewise affected and they are likely to increase premiums, especially if the firm in question is a well-known firm and lets it be known that it intends to do so Accordingly, each insurer increases premium rates, the Insurance Commissioner permitting,[63] when policies are renewed or when new policies are written Each insurer would find the increase profitable if prices had not already attained the levels which would maximize profits for the insurers as a group The tax provides an impetus for movement closer to the maximum total profit level, a movement which the firms could not make prior to the tax, if they were not members of interinsurance exchanges or other rate-computing groups, because the degree of cooperation among them is not sufficiently strong

Evidence indicates that the demand curve for insurance does not have a high price elasticity [64] Professor Jung found "there was no evidence that the amount of insurance the companies wrote in Illinois bore any direct relationship to the rates they charged" Consequently, a slight increase in price due to an increase in the premiums tax has a negligible effect on sales volume In fact, insurers as a group can raise premium rates more than the tax and suffer little or no decrease in sales volume Since, in addition, the industry is characterized by decreasing unit costs,[65] premiums will be increased more than the amount of the tax Figure 1–I shows the probable profit points before and after the imposition of the tax for a particular company.

In an industry or a firm characterized by decreasing unit costs, any increase in volume results in additional profit However, when an increase in total costs occurs, as it would because of the imposition or the increase of a premiums tax, profits are reduced In an effort to regain its former profit position the industry or the firm is behooved to attempt to increase its sales volume If its efforts are successful, it may increase its quantity sold to a point where profits are greater than they were before the imposition or the increase of the tax Thus the imposition or increase of the premiums tax may serve as a stimulus to increased effort and increased profits

Raising premiums by more than the tax will also result in higher profits on the same volume if all other expenses are properly considered

Actually, because certain costs, such as agent's commissions, are based upon the gross premiums, it takes a rate loading of slightly less than 1½ percent to recover a 1-percent tax

From the foregoing, it may be concluded that the premiums tax is not borne by insurers, except for that period of time during which policy rates remain in effect and cannot be changed, and to the extent that renewal rates and premium rates on new policies are not raised sufficiently to offset the tax on the rates which remain unchanged

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[62] Hensley, *op cit*, p 168

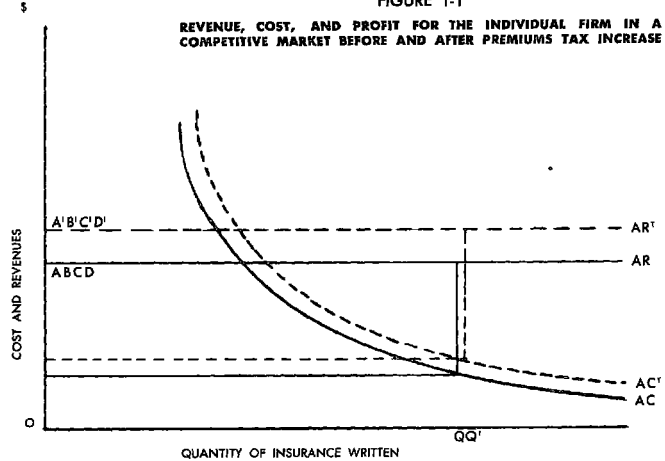
[63] Rating rules in every state in the United States permit a loading of the premium to cover the tax, John W Cowee, Robert L Hogg, George D Haskell, "Insurance Company Taxation," *The Journal of Insurance* Spring 1959, p 34

[64] Allen F Jung, "Rate Variations Among Suppliers of Automobile Insurance," *Journal of Insurance*, December 1961, p 576

[65] C Arthur Williams, Jr, "Expenses Incurred by Private Workmen's Compensation Insurers," *The Journal of Insurance*, March 1961, p 72

FIGURE 1-1

REVENUE, COST, AND PROFIT FOR THE INDIVIDUAL FIRM IN A COMPETITIVE MARKET BEFORE AND AFTER PREMIUMS TAX INCREASE



AR = *Average revenue* = Price per unit
AR' = *Average revenue after tax* imposed and premium rates increased
AC = *Average total cost* per unit before tax
AC' = *Average total cost* per unit after tax
Q' = Quantity of insurance written after tax
Q = Quantity of insurance written before tax
ABCD = Profit before increase
A'B'C'D' = Profit after increase

EQUITY

The general conclusions on the equitability of the premiums tax are essentially the same as for any other excise tax.

Equitability of Excise Taxes

A strong case can be made for a tax on expenditures rather than income.[66] This is pertinent in this instance because the premiums tax, as an excise tax, insofar as individuals are concerned, is a tax on a particular type of expenditure (true insurance is classified as savings in economic literature, but to the individual, money spent for insurance premiums appears as an expenditure)

A group of economists (among them John Stuart Mill, A C. Pigou, and Irving Fisher) over a long period of time has argued that income is approximately defined for tax purposes as consisting only of consumption expenditures This premise is based upon the idea that economic well-being is determined by consumption alone. A person's direct and immediate level of living depends upon his consumption expenditure. Following this argument, it has been held that spending capacity rather than income is the best measure of taxpaying ability.

There are many other arguments that may be used to justify taxes on expenditures rather than on income [67]

One opposing argument that should be cited is that specific sales or excise taxes distort consumer choice, hence, leave the consumer worse off than he would be if the same revenue were extracted from him through an income tax However, Professor Somers has countered, "This allegation against the sales tax relative to the income tax has been disputed. The income tax distorts choice too." [68]

Additional arguments against expenditure taxes are that they are regressive, i e., they take a larger proportion of lower incomes,[69] and they have a potential deflationary effect in that consumers can purchase less out of their same incomes when the tax must be paid Fewer purchases may make for a lower national income in the following time period, especially if investment is affected, and if there is a tendency toward unemployment, the use of an expenditure tax may aggravate this tendency and require that the government spend not only the amount received from the tax but more in addition to counter this tendency

However, the main consideration insofar as the equitability of a tax is concerned is generally whether it distributes the tax burden fairly

[66] See N Kaldor, *An Expenditure Tax*, George Allen and Unwin, London, 1955
[67] See Harold M Somers, "Theoretical Framework of Sales and Use Taxation," *Proceedings of the National Tax Association*, 1961
[68] *Ibid.*, pp 611–612
[69] When the expenditure tax is regressive, it is argued, purchases of necessities may, due to the tax, be curtailed for the lower income families However, an expenditure tax need not be regressive If necessities are exempted, as most are from the sales tax in California, and excises are imposed upon commodities purchased more and more as incomes increase, an excise tax becomes progressive

Equitability of the Gross Premiums Tax

Since the burden of this tax is borne by the purchasers of insurance, it then becomes necessary in order to inquire into this subject to determine who purchases insurance

As Table 1-1 clearly indicates, all types of insurance are utilized more by higher income groups than by lower income groups [70] Individuals purchase more insurance as their incomes increase There-

TABLE 1-1

Insurance Expenditures and Direct Burden of Insurance Premiums Tax on California Families in 1950, by Income Class

Annual net income class	Expenditures					Total tax
	Medical insurance	House and household insurance	Auto insurance	Personal insurance	Total insurance*	
Under $1,000	$4 16	$4 40	$6 70	$14 00	$29 26	$0 64
$1,000- 2,000	12 40	4 61	10 23	33 00	60 24	1 32
2,000- 3,000	23 54	4 87	21 31	54 00	103 72	2 28
3,000- 4,000	37 06	7 60	36 18	77 00	157 84	3 47
4,000- 5,000	41 39	11 15	46 57	113 00	212 11	4 66
5,000- 6,000	50 31	14 31	55 19	141 00	260 81	5 73
6,000- 7,500	48 19	15 13	70 13	196 00	329 45	7 24
7,500-10,000	51 66	18 80	81 94	339 00	491 40	10 80
10,000 and over	66 95	32 72	106 68	599 00	805 35	17 69

* All entries are based on data applicable to the sample category "large western cities" Detail, by type or total insurance, is not available for the California sample

SOURCE Wharton School of Finance and Commerce, *Study of Consumer Expenditures, Incomes, and Savings*, 18 vols, University of Pennsylvania, Philadelphia, 1956

fore, it may be argued that the premiums tax is, in reality, a progressive tax as far as individuals are concerned Hickman termed it mildly progressive.[71]

Firms paying the premiums tax may be assumed to shift the tax to consumers, other firms, and governmental units insofar as they can by charging higher prices for commodities. One can only estimate whether or not this will have a regressive or progressive effect, but a study of current consumer expenditure patterns which still reflect the fact that the greater part of most incomes is spent on necessities, i e , food, clothing, shelter, and requisite education and transportation,[72] would lead one to the conclusion that the net effect of the premiums tax paid by firms in the form of higher premiums for insurance and thereafter shifted is regressive Premiums taxes paid by federal governmental units are shifted progressively; by state and local governmental units, regressively [73] Thus Hickman's conclusion that all in all the premiums tax is mildly progressive was warranted However,

[70] William H Hickman, *Distribution of the Burden of California Sales and Other Excise Taxes*, State Board of Equalization, Sacramento, California, December 1958, p 33

[71] *Ibid*, p 18

[72] E Bryant Phillips and Sylvia Lane, *Personal Finance*, New York, John Wiley and Sons, Inc , 1963, Chapter 2

[73] It is generally agreed that the aggregate federal tax burden in the United States is progressive the state and local tax burden, regressive
See R A Musgrave, et al , *Compendium of Joint Committee on the Economic Report*, November 9, 1957, p 98

his conclusion that the total relative burden pattern of this tax is proportional is open to question.

Equitability of Tax Burden on Insurers

The question has been raised as to whether a gross premiums tax is the most equitable form of taxation for the insurance industry To answer this question it is necessary to consider the equitability of the alternatives. The alternatives in this case are: (1) an income tax, (2) a sales tax, and (3) a franchise tax.

Income Tax. Insofar as an income tax upon insurers is concerned, it has been held in several instances that insurance companies pose special problems in that the computation of taxable net income is difficult, as far as they are concerned, because of doubt as to how much to deduct for future losses, i e , casualties and bad loans.[74] Furthermore, since a good part of the income of insurance companies is composed of income from government bonds, a second theoretical difficulty arises with income taxation [75]

Insurers other than life insurance companies or departments, and mutual insurance companies do not have any special income tax privileges under the federal law [76] Their operating profits and capital gains are subject to the regular corporate income taxes, and their corporate dividends are taxable income to their stockholders. (Policyholder dividends are, however, no part of taxable income.) However, there is one peculiar factor about the computation of insurance company income taxes: Their income is based upon their statutory underwriting profits.[77]

Except for the relatively minor sums paid on investment capital gains, fire and casualty insurance companies, taxable corporate incomes are roughly measured by the following formula· taxable income equals premiums earned minus losses incurred minus expenses paid plus taxable interest earned plus approximately 15 percent of dividends received.

Fire and casualty companies, then, insofar as the federal system of taxation is concerned, are simply treated as all other corporations with minor differences due to the nature of the business

Life insurance companies, on the other hand, are taxed by the federal government under a special formula which is a combination of an income tax and a capital gains tax [78] Both investment and underwriting income are taxed Mutual insurers other than life or marine insurers are exempt from federal income taxation if the gross amount received during the tax year from specified investment income and

[74] William J Schultz and C Lowell Harriss, *American Public Finance*, 7th Ed , Prentice Hall, Inc, Englewood Cliffs, New Jersey, 1959, p 319, and United States Congress, House of Representatives, Committee on Ways and Means, Internal Revenue Subcommittee, *Hearings* November 17, 1953–November 20, 1953, passim

[75] *Loc cit*

[76] Internal Revenue Code, Sections 831 and 832

[77] The statutory underwriting profit or loss is computed by subtracting from premiums written during the accounting period the increase in unearned (prepaid) premium reserve to obtain the net premiums earned , then losses and operating expenses incurred during the period are subtracted from net premiums earned to obtain the statutory underwriting profit or loss The computation charges all the expenses incurred in obtaining new business to the year in which the policy is written even though the policy may be in effect for many years

[78] Internal Revenue Code, Sections 801–820

premiums does not exceed $75,000 [79] Only four states apply income tax laws to insurance companies, notably Idaho, Louisiana, Minnesota, and Mississippi Whether life insurance company profits should be exempt from the corporate income tax in any measure because of the nature of the business is a question not yet satisfactorily answered in the literature [80]

Sales Tax The gross receipts tax, which has been classified as a sales tax, (see page 16) is imposed upon retailers for the privilege of selling tangible personal property at retail [81] Although the tax is not levied directly on the consumer, the law provides that the retailer shall pass the tax on to the consumer insofar as it can be done A list of exempt transactions is included in the law The sales tax does not apply to insurance, because insurance is an intangible rather than a tangible commodity It may, however, be argued that insurance is a consumer good Its tangibility or intangibility in this instance does not affect the consumer's income allocation for this commodity He buys insurance just as he buys food or clothing or an automobile In regarding the premiums tax as a sales tax the mechanical problem involved that has a bearing on equity in this case is that part of life insurance premiums other than premiums on purely term insurance policies build a cash reserve and may be termed savings, but feasibility might dictate that the tax be imposed on every premium collected However, this should not pose an insurmountable difficulty to the reclassification of the premiums tax as a sales tax, and its treatment in that fashion

Franchise Tax Every bank located in California and every corporation doing business in California is subject to the franchise tax, unless specifically exempted [82] The franchise tax is imposed for the privilege of exercising the corporate franchise in California Insurance underwriting companies are exempt from the franchise tax in California [83] If the gross premiums tax is held to be a sales or excise tax, then the exemption of insurance companies from the franchise tax as well as from all income tax in the state may be questioned on the grounds of equitability

Comparison of Insurers and Comparable Firms

Insurance has been termed a form of savings in many instances This terminology merits some discussion In the case of insurance other than life insurance, the term cannot be applied, since the insurance is purchased for specific protection, and unless the event insured against occurs, no part of the amount of money paid as a premium is available for the purchaser's future use If the insured-against event does occur, the benefits are recompense for losses suffered and not a return of savings

In the case of life insurance, however, a portion of each premium may be classified as savings where the policy is not in its entirety a

[79] Sections 821, 831, 501(C)15, 822, Internal Revenue Code, and see Robert L Hogg, "Federal Income Taxation of Life Insurance Companies," *The Journal of Insurance*, spring 1959, pp 20–30

[80] Idem, and John W Cowee, "Insurance Company Taxation—The General Impact," *The Journal of Insurance*, spring 1959, pp 16–19

[81] Revenue and Taxation Code, Section 6006

[82] Revenue and Taxation Code, Part II of Division 2, Sections 23101–02, and 23151–54

[83] Revenue and Taxation Code, Sections 23701, 23705, and Section 14¼ of Article XIII of the Constitution

contract for term insurance It is on this basis that it has been argued that life insurance is a form of savings. However, equitability does not seem to warrant the taxing of insurers like banks or savings and loan associations whose business is not the writing of insurance.

ECONOMIC EFFECTS

The economic effects of the gross premiums tax will be analyzed in this section in order to assess whether, and where possible to what extent, the tax influences (1) profits of insurance companies, (2) California insurers' ability to compete in other states, and (3) aggregate income and employment.

Effect of Gross Premiums Tax on Profits

The effects of the gross premiums tax on the profits of insurers will be traced through its effects on prices, sales volume, and competition in the industry

Effect on Prices As previously noted, (see pp 20-22) it has been established that taxes on gross premiums are included as a cost when insurers are setting premium rates, and consequently, premium rates when they are first set or when they are subsequently changed reflect the full amount of the tax When the tax is raised or lowered, those premiums that cannot be changed immediately will not reflect the change

As a result, on outstanding policies, insurers absorb the effect of the change on profits until such time as premiums can be changed

Effect on Sales Volume in the Industry. Sales volume and profits have apparently not been lowered so much by the increase of the tax as to discourage the writing of insurance or the entry of insurance companies into the business in California Admittedly the evidence on this point is far from recent, but when the gross premiums tax rate was raised from 1 5 percent to 1 75 percent in 1913, the number of assessments increased from 285 to 313 Taxes assessed on premiums which reflect premiums written, increased from $637,964 in 1912 to $803,618 in 1913 When the gross premiums tax rate was increased from 1 75 percent to 2 percent in 1915 the number of assessments decreased from 319 to 315 But, taxes assessed on premiums increased from $856,999 in 1914 to $1,062,569 in 1915 When the gross premiums tax rate was increased from 2 to 2 6 percent in 1921, the number of assessments increased from 355 in 1920 to 405 in 1921, and the taxes assessed on premiums increased from $1,936,937 in 1920 to $3,204,242 in 1921 An increase in the tax rate was in two of the three applicable instances associated with an increase in the number of assessments, and in every instance associated with an increase in taxes assessed on premiums, reflecting increases in premiums written

Effect on Sales Volume

A question may be raised as to whether the fact that the gross premiums tax serves to increase premium rates decreases the sales volume of insurers It has been shown that insurance is characterized by a relatively low price elasticity of demand, and in consequence the raising of premiums does not result in a proportionate decrease in

TABLE 1-2

Number of Insurance Tax Assessments, Gross Premiums Tax Rate, and Taxes Assessed on Premiums

Year of assessments	Number of assessments	Gross premiums tax rate (percent)	Taxes assessed on premiums
1912	285	1 50	$637,964
1913	313	1 75	803,618
1914	319	1 75	856,999
1915	315	2 00	1,062,569
1920	355	2 00	1,936,637
1921	405	2 60	3,204,242

SOURCE California State Board of Equalization, *Annual Report*, 1952–53, p 104

volume.[84] (It is more importantly characterized by a very high income elasticity of demand)

A reduction of the tax rate, which though it may not serve to lower premiums will at least keep them from rising as much as they might otherwise, should, if there is any significant degree of price elasticity of demand, be associated with an increase in sales volume over and above that in the years in which there was no reduction

The gross premiums tax rates were reduced over the five-year period from 1943 to 1948 In 1942 to 1943, the year before there was any change, there was a 10 8 percent increase in premiums written in California over the previous year.[85] In each of the succeeding five years the gross premiums tax was reduced 0 5 percent per year. In 1943 to 1944 there was a 13 5 percent increase in premiums written. In 1944 to 1945 there was a 81 percent increase in premiums written In 1945 to 1946 there was a 16 2 percent increase in premiums written In 1946 to 1947 there was a 16 2 percent increase in premiums written In 1947 to 1948 there was an 8 1 percent increase in premiums written

In 1948 to 1949, the first year after the five under study in which there was no reduction in the gross premiums tax, there was a 2 7 percent increase in premiums written, and in the three succeeding years in which the tax also remained unchanged, the increases in premiums written amounted to 8 1, 13 5, and 16 2 percent.

True there were other reasons for the increases in premiums written beside the reduction in the gross premiums tax and the consequent effect of prices remaining lower than they would have otherwise, but the analysis suggests that premiums written increased to about the same extent as they would have otherwise had the gross premiums tax rate been reduced or not

Since the gross premiums tax is reflected in price, and since price elasticity for insurance is low, the argument that an increase or a decrease in the gross premiums tax rate will have a marked effect on the sales volume of insurers is not possessed of any appreciable degree of strength.

Effect on Competition Within the Industry The gross premiums tax has little effect on competition, and consequently profits, in the insurance industry because of the fact that it is considered as a cost

[84] See p 21

[85] Data on premiums written from Robert R Dockson, *The Insurance Industry in the California Market*, Union Bank, Los Angeles, 1959, p 5.

TABLE 1-3

Increases in Premiums Written and Gross Premiums Tax Rate

Year	Increase in premiums written over the previous year (percent)	Gross premiums tax rate (percent)
1942–43	10 8	2 60
1943–44	13 5	2 60
1944–45	8	2 55
1945–46	16 2	2 50
1946–47	16 2	2 45
1947–48	8 1	2 40
1948–49	2 7	2 35
1949–50	8 1	2 35
1950–51	13 5	2 35
1951–52	16 2	2 35

SOURCE California State Board of Equalization, *Annual Report*, 1962–63

and reflected in premiums charged by all insurers It cannot be argued that it affects one group more than another nor that it gives one group any competitive advantage over another by affecting their profits except in the case of those insurers who qualify for the principal or home office deduction and so reduce their tax The economic effects of the principal or home office deduction are discussed in Chapter 3

In summary, the gross premiums tax has little or no effect on the profits of insurers except where premiums cannot be changed to reflect changes in the tax when they occur and in the case where insurers have a competitive advantage because they take a principal or home office deduction as an offset against their gross premiums tax

Effect of California Insurers' Ability to Compete in Other States

The California gross premiums tax rate of 2 35 percent is higher than the gross premiums tax rate paid by life insurance companies in 33 other states; by fire insurance companies in 19 other states; and by casualty insurance companies in 32 other states[86] This being the case, California insurers do suffer from some handicap in competition, pricewise, in some states This is accentuated by the retaliatory provisions of the laws in many of these states, which impose upon California insurers the same tax burden, insofar as it can be ascertained, imposed upon insurers of that state in California.[87]

Aggregate Income in the State

The gross premiums tax would affect aggregate income in California adversely, if there was a curtailment of insurance sales volume due to the fact that the tax caused an increase in the price of insurance. However, as noted above, the tax has little effect on sales volume and thus little effect on income and employment In fact, it may be argued that the tax serves as an incentive to the consequent increase of aggregate income and employment (see pp 20–22).

[86] State of California, Department of Finance, Budget Division, *Quarterly Payments of Insurance Tax*, May 1, 1963, p 7

[87] See Chapter 4.

It may also be argued that the tax dollars respent by the state cause an increase in aggregate income and employment at least as large as that which would have been generated had these tax dollars been spent by consumers on commodities other than insurance or by insurance companies on other commodities

In summary, the gross premiums tax does not appear to have any significant deleterious economic effects

CHAPTER II

IMPORTANCE AS A REVENUE SOURCE

The tax on gross premiums is the fifth highest source of tax revenue for the state of California In 1962–63, as the following table shows, retail sales and use taxes were the foremost source of tax revenue, the personal income tax was the second highest source, bank and corporation taxes were the third highest source, the inheritance tax was the fourth highest source, and the insurance gross premiums tax, fifth highest.

Tax Rates and Yield

The growth in the revenue from the insurance tax is not because of the tax rate so much as it is because the tax base, i e , insurance premiums, has grown at such a high rate since this tax in its present form went into effect Table 3–6 shows the increase in the tax since 1911

Figure 2–1 shows the increase in premiums written in California from 1935 to 1957, and the amount that it may be anticipated will be written to 1975 It should be noted, though that the high projection predicted that $3 2 billion in premiums would be written in California in 1962 and net taxable premiums actually amounted to $3,497,834,111 [1]

TABLE 2-1

Revenue From Five Major State Taxes—1962–63

Tax	Total revenue 1962–63
Retail sales and use taxes	$813,465,455
Personal income tax	322,012 176
Bank and corporation taxes	311,250,827
Inheritance tax	86,783,149
Insurance gross premiums tax	77,970,110
Total	$1,611,481,717

SOURCE State of California, Budget for the fiscal year July 1, 1964, to June 30, 1965, Sacramento 1964, p A-43

in 1962 Admittedly, then, the projections are somewhat conservative

The gross premiums tax rate has remained at 2 35 percent since 1948, but taxes assessed on premiums have increased from $21,045,450 to $82,521,529, a fourfold increase in 15 years [2] The increase in insurance written in the state is closely correlated with the increase in income in the state as was clearly shown in the Dockson Study.[3]

The net taxes assessed on insurance, which are computed by deducting from taxes assessed on premiums the local property tax credit claimed and adding taxes assessed on underwriting profits which are

[1] California State Board of Equalization, *Annual Report*, 1962–63, *op cit*, p A-40
[2] California State Board of Equalization, *Annual Report*, 1962–63, *op cit*, p A-36
[3] Robert R Dockson *The Insurance Industry in the California Market*, Union Bank, Los Angeles, 1959, p 5

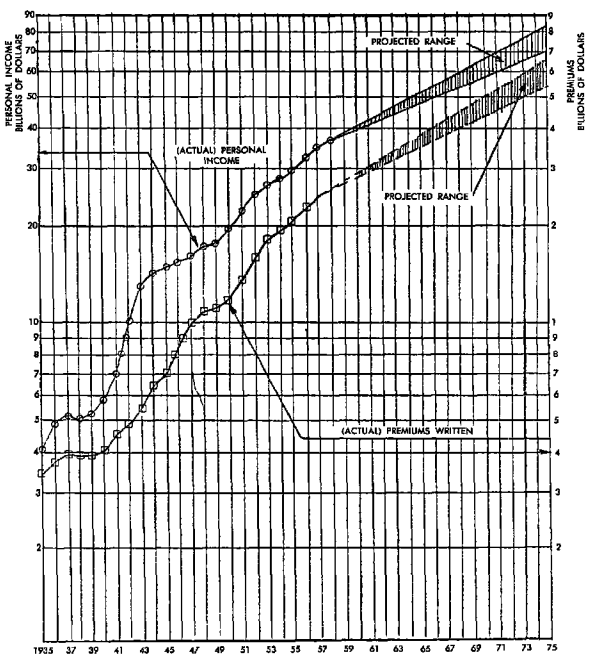
mainly from ocean marine insurers who are subject to a 5-percent tax on underwriting profits on that portion of their business which was written in California, increased from $20,344,679 in 1948 to $77,799,250 in 1963. Again, there was virtually a fourfold increase.

The respective share of the total state tax collections contributed by the insurance tax has, however, except for 1963, been decreasing, not only for the past 15 years but over the past 25 years, as Table 2-2 illustrates

This may in large part be attributed to the fact that tax rates for other business have been increased during this period while that on insurance premiums has been decreased

FIGURE 2-1

COMPARISON OF PERSONAL INCOME WITH INSURANCE PREMIUMS—CALIFORNIA



NOTE Actual, 1935–1957, projected range, 1958–1975
SOURCE Dockson, *op cit*, p 29

TABLE 2-2

Insurance Gross Premiums Tax Compared With Bank and Corporate Franchise Taxes as to Tax Rates and the Percentage of Total California State Tax Receipts

Year	Insurance gross premium tax rate (percent)	Franchise tax rate (percent)		Respective share of total state tax collections (percent)	
		Corporate	Bank	Insurance	Franchise
1935	2 6	2 0	6 0	3 60	3 25
1939	2 6	4 0	8 0	3 29	8 74
1945	2 5	4 0	8 0	3 01	14 97
1950	2 35	4 0	8 0	2 96	9 47
1955	2 35	4 0	8 0	2 90	10 28
1960	2 35	5 5	9 5	2 86	10 97
1961	2 35	5 5	9 5	2 89	12 43
1962–63	2 35	5 5	9 5	3 11	12 43

SOURCE 1935–1955 California Assembly Interim Committee Reports 1955–1957, Vol 4, No 3 *A Resume of California's Tax Structure 1850–1955*, 1960–63 State Budgets

Table 2-2 also shows the respective share percentagewise of total state collections of the franchise tax from 1935 to 1963

The percentages of *General Fund* revenue contributed by banks and corporations and insurance companies is shown in Table 2-3. Between 1950 and 1963 bank and corporation payments increased 234 percent; insurance tax payments, 182 percent.

In summary, then, as a percentage of total California state receipts taxes on insurers have been declining, except for an increase this past year The percentage share of the bank and corporate franchise taxes, on the other hand, with which the insurance tax may be roughly compared, since insurance companies may be held to be financial entities to some extent, has been increasing The relative contribution for state support, as measured by the proportion of its taxes to the total of state taxes, of the insurance industry is relatively low, i e , 3 11 percent Its relative contribution to general fund revenue for 1962-63 was 4 35 percent, while banks and corporations contributed 22 7 percent It should be added that since the gross premiums tax is an excise tax, profits for the insurance companies, for the most part, are little different than they would be without the tax

The insurance industry contributes a relatively small percentage to state support and bears a relatively low tax burden. However, except on the grounds of equity, there is no practicable gauging of whether the burden should be increased

It may be noted that the burden is as light as it is because the insurance gross premiums tax is in lieu of all other taxes, state and local, on the insurers except taxes on their real property, excluding their home or principal office and upon their motor vehicles California insurers pay no tax on investment income, capital gains, or personal property, and no local license taxes or franchise fees

Interstate Comparisons

The gross premiums tax rate in California is higher than the rate on life insurance companies in 33 other states; on fire insurance companies in 19 other states, and on casualty insurance companies in 32

TABLE 2-3

Insurance Tax Compared With Bank and Corporate Franchise Taxes as to Percentage of Total General Fund Revenue

Fiscal year ending	Banks and corporations (percent)	Insurance companies (percent)
1935–36	12 2	5 3
1940–41	11 7	4 1
1945–46	15 7	3 9
1950–51	15 2	3 6
1955–56	16 1	4 0
1960–61	17 7	4 3
1961–62	17 7	4 4
1962–63	22 7	4 3

SOURCE State Budgets, 1935–1964

other states (See Figure A-1) When, however, the tax is temporarily reduced to 2 33 percent over the next four years, the relative position of California insurers, insofar as the tax rate is concerned, will be somewhat improved

The average insurance tax rates for the United States and for California are as follows

	California	*Average 50 states*
Life insurance	2 35%	2 30%
Fire	2 35%	2 83%
Casualty	2 35%	2 36%

A mean, however, is not always the best basis for comparison The highest 10 states in respect to revenue from the gross premiums tax are shown in Table 2-4

New York, which is second only to California in the tax revenue received from the gross premiums tax, had a 2-percent tax rate on fire and casualty insurance and a 1 75-percent tax rate on life insurance Texas, which is third on the list, however, had a 5 1-percent tax rate for fire insurance, 4 25-percent tax rate for casualty insurance premiums, and a 3 3-percent rate on life insurance premiums Pennsylvania, which is fourth, has a 2-percent gross premiums tax rate, and Ohio, which is fifth, a 3-percent rate on fire insurance, a 2 5-percent rate on casualty insurance, and a 2 5-percent rate on life insurance Thus of the five highest states in the country insofar as tax revenue from the insurance tax is concerned, California is lower than two, i e , Texas and Ohio, and higher than two, New York and Pennsylvania

Of the total revenue from the gross premiums tax for all 50 states collected in 1963, California's was the highest percentage of the total California's tax collections comprised 12 2 percent of the total gross premiums tax collected in the United States, New York was next highest and its gross premiums tax collections were 11 9 percent of the total collected from this tax in the United States in 1963 Texas, which was third, collected only 5 79 percent of the total collected in the United States in 1963 California and New York are the two top-ranking insurance states in the United States, and they are literally in a class by themselves However, it should be noted that although New York's gross premiums tax rate is lower than California's, the New York law

has no in lieu features and New York insurers, therefore, actually may pay a higher rate of tax, when all taxes and fees are taken into account, than California insurers. For that matter, the fact that California is the highest state in the collection of revenue from the gross premiums tax only reflects the fact that more insurance is being written in California then anywhere else in the United States [4]

TABLE 2-4

Revenue From Gross Premiums Tax: Ten States With Highest Revenues

State	Revenue (in thousands)	Percent of total in United States	Tax rates, percent—1962		
			Life except annuities	Fire	Casualty
California	$78,275	12 25	2 35	2 35	2 35
New York	76,560	11 98	1 75	2 00*	2 00
Texas	36,563	5 72	3 30	5 10	4 25
Pennsylvania	33,605	5 26	2 00	2 00	2 00
Ohio	32,485	5 08	2 50	3 00	2 50
Illinois	30,471	4 77	2 00	2 50*	2 00
Michigan	23,787	3 72	2 00	3 00	2 00
New Jersey	21,270	3 32	2 00	2 00*	2 00
Connecticut	14,592	2 75	1 75	2 00	2 00
North Carolina	16,063	2 51	2 50	4 00	2 50
Total 10 states	$366,671	57 4	22 15	27 95	23 60
Average			2 22	2 8	2 36

* Excluding local premiums taxes for support of fire departments, firemen's pensions, etc

SOURCE U S Department of Commerce, Bureau of the Census, *Compendium of State Government Finances in 1962*, p 12

Figures A1-6 show the tax rates and yields and features of the tax laws in all of the states

Insurance Tax as a Possible Source of New Revenue

The gross premiums tax, even if it remains unchanged, will result in more tax revenue from year to year, as the insurance industry in California grows. The tax rate that is now effective does not appear to be so high as to be inequitable, when compared with other states, nor so low as to necessitate consideration of any increase in this rate at this time.

However, if the principal office deduction is eliminated, there will be additional revenue from this tax amounting to between $5 and $6 million (see Chapter 3) in the fiscal year 1964–65 If the retaliatory provisions are strengthened there will be an additional slight increase in revenue. (See Chapter 4)

Consideration might also be given to additional taxes on the income of insurers Additional study of this matter is warranted,[5] but it would probably not be practicable to impose an income tax on insurers until

[4] U S Bureau of the Census, *Statistical Abstract of the United States, 1963*, Washington, D C , 1963, p 484

[5] No insurmountable difficulties in the administration of such a tax can be foreseen if it is imposed on the same insurers that pay a federal income tax and it is a percentage of the federal tax paid

such time as more states have done so Otherwise, if the retaliatory provisions remain in effect in the many states in which they are law (see Figure A-4), California insurers would be subjected to additional taxes when they were doing business outside of California in retaliating states

CHAPTER III

THE PRINCIPAL OFFICE DEDUCTION

It is recommended that the deduction for principal or home office real property taxes allowed insurance companies as an offset against the gross premiums tax (but not allowed against the tax liability incurred by ocean and marine insurers) be eliminated and no reduction be made in the tax rate on insurance premiums because of this rescission.

In regard to the principal office deduction, Professor Paul J. Strayer has commented:

> . . This provision has greatly lessened the effectiveness of the tax and has been abused by companies who buy a building, lease a part of it, and gain full exemption for the entire real estate tax. There is no justification for this deduction, and the only reasonable solution is to repeal this provision in its entirety. If this is done, insurance companies will be no more severely treated than other companies, and the local revenue base as well as the state base will be increased significantly.[1]

The material that follows in this chapter implements and details the basis of the above recommendations.

CONSTITUTIONAL PROVISIONS

The provision for the allowable deduction from the tax on gross premiums for the real property tax paid on the home or principal office of an insurance company is embodied in Article XIII, Section 14¼ of the Constitution and is worded as follows:

> Each insurer shall have the right to deduct from the annual tax imposed by this section upon such insurer in respect to a particular year the amount of real estate taxes paid by it, in that year, before, or within 30 days after, becoming delinquent, on real property owned by it at the time of payment, and in which was located, in that year, its home office or principal office in this State. Such real property may consist of one building or of two or more adjacent buildings in which such an office is located, the land on which they stand, and so much of the adjacent land as may be required for the convenient use and occupation thereof.

Should the Legislature wish to eliminate this deduction, now allowed, from the gross premiums tax for real property taxes paid on the home or principal office of the insurance company it must comply with paragraph 1 of Section 14¼, which requires a favorable vote of two-thirds

[1] Paul J. Strayer, *The California Revenue System*, California Teachers' Association, San Francisco, California, 1959, p. 12.

of all the members elected to each of the two houses and the proposal must be placed on the ballot for ratification by the voters of the state

RATIONALE

The rationale of this provision can be better understood if its history is traced, its incidence explained, its equitability considered, and its economic effects are analyzed.

History

The principal office deduction is a vestige from a provision dating back to 1862.

> "Prior to that time, insurance companies were subject to various fees and stamp taxes and to local property taxation Because foreign companies had very little property holdings in the state, the 1862 law levied a 2-percent tax on the gross premiums on foreign insurance companies—forgiving the tax to those that owned more than $50,000 of property located in California.
>
> In 1903, a 2-percent gross premium tax was levied on all insurance companies other than life and in 1905, foreign life companies were added to the gross premium tax law at a 1-percent rate
>
> The 1903 and 1905 premium tax statutes did not provide for any credit for real estate taxes paid, so that as of 1906 the status of California taxation of insurance companies show:
>
> 1 A gross premium tax levied upon foreign companies;
> 2 Retaliatory taxes levied upon foreign companies whose domiciliary state imposed higher taxes than California companies;
> 3. Fees levied on foreign insurance companies; and
> 4. General property taxes levied on both foreign and domestic companies by both state and local governments
>
> The report of the Commission on Revenue and Taxation of 1906 recognized inability of the property tax to reach foreign companies because of the limited investments in California property. Accordingly, the 1906 commission's recommendations submitted to the Legislature in December 1906 were that a 2-percent premium tax be levied on domestic and foreign companies in lieu of all other taxes and licenses except taxes on real estate, that a reduction be given for return premiums and re-insurance and that an offset from the premium tax be given for county and municipal taxes on real estate
>
> The proposal was revised as to the rate of 1½-percent and the power to change it This was passed by the Legislature by Senate Constitutional Amendment 1, of 1909, adopted by the electorate in 1910. And the principal office deduction first became effective in 1911.
>
> This 1910 amendment gave essentially the same tax relief then as does the principal office deduction today
>
> Even though the language of the 1910 amendment appears to be more inclusive than the present constitutional language.

The 1910 amendment provided for an offset against the premium tax for all real estate taxes paid on the property owned by the insurer While this sounds to be much broader in scope than the principal office deduction, it really was not Because Section 415 of the Civil Code which had been in effect since 1872 expressly limited the right of insurers to hold real property, other than that actually used in its business for a period of not more than five years.

The 1905 admendment removed the limitation of $150,000 as the total amount that could be invested in the principal office In other words, a company could own real estate indefinitely if that property was used for home office, or principal office in this state. Other real properties, however, acquired through foreclosures or mortgages, or otherwise, could not be retained, but had to be liquidated by the company and the law gave the company a maximum of five years in which to liquidate such property Thus, even though the credit first granted to the insurance companies in 1910 was in the form of an offset for all real estate taxes paid, other sections in the insurance law restricted the practical effect of this offset to a principal office deduction much similar to that which is found in the law today "[2]

The 1910 tax plan also provided for a gross receipts tax upon all privately owned utilities and exempted these utilities from local property taxes Insurance companies which were taxed on gross premiums, but were not exempt from local property taxes were allowed to offset all of their real estate tax payments against their tax liability resulting from the state levy on gross premiums

This offset initially stemmed from the application of the policy of the "separation of tax sources" Under this policy, state gross earnings taxes were susbstituted for local property taxes on the operating properties of public utilities Insurance companies, philosophically, were held to be akin to public utilities and at that time the personalty of insurance companies was exempted from property tax, and the taxes on their realty were credited against the then 1½-percent state tax on premiums.

Historical records indicate that the crediting of real estate taxes against the insurance premiums tax was instituted in part as a means of encouraging insurance companies to invest their funds in California. Other records indicate, however, that another motive was at least partially responsible

The general property tax was almost the sole support of state and local governments in 1911 There were no state "business taxes" in the sense in which we know them today Businesses were taxed on their property, and when other than ad valorem property taxes were imposed, they were substitutes for not additions to the property tax Under the philosophy of the times, it would have been improper to tax an insurance company on both its premiums and its real estate without

[2] Statement of Mr Lee Groezinger representing the Life Insurance Association of America, at hearings before the Assembly Committee on Revenue and Taxation on AB 2901, held in Fresno on January 31, 1964 The credit or offset was not entirely analogous to the principal office deduction today

offsetting one tax against the other unless it could have been reasoned that the two were totally unrelated, which they obviously were not [3]

The gross receipts tax on utilities was repealed in 1933 and utility property was subjected to local tax levies, but the property tax offset was continued for insurance companies While vestiges of the theory that business taxes were property taxes in disguise were to be found in the tax laws applicable to other corporations until 1933 (at which time the property tax offset against the state franchise tax measured by net income was repealed), the insurance premiums tax is virtually the only tax originating under this theory that has survived to the present day Insurance companies are the only corporations who can do business in California today without paying a business tax to the state.

As a result of foreclosures during the depression years in the 1930's, the offset made serious inroads into the state levy In 1937, in fact, the deduction amounted to 25 percent of the gross insurance tax levy

Recommendations that the offset be abolished resulted in a compromise in 1942, whereby the real estate tax offset allowed insurance companies was limited to taxes paid on California property in which the principal office or the home office of the company was located The elimination was imposed gradually over a period of five years.

In Section 14¼, which was added to Article 13 of the state Constitution in 1942, provision was made for the gradual elimination of the deduction for taxes on real estate not used for operational purposes and the restriction of the real estate deduction, after five years, to taxes on real estate in which the insurer's principal or home office was located The tax on insurers, other than ocean and marine insurers, to compensate for the change, was reduced gradually from 2 6 percent in 1942, to 2 55 percent in 1943, and finally after 1946 to 2 35 percent The offset for taxes on real estate other than the principal office in the state was also diminished gradually In the 1944 assessment, the maximum offset for taxes on real estate other than the principal or home office in the state was 75 percent of the company's 1940 offset on such property. The next year it was 55 percent, the next 35 percent, and then the next 15 percent From 1948 on, only taxes on principal or home offices have been eligible for offset The rates and the rights to the principal office deduction have remained essentially the same since the 1942 legislation

Assembly Constitution Amendment No 21, introduced in 1953, would have eliminated the principal office deduction for general insurers It did not get out of the committee [4] In the 1955 session, Assembly Bill No 3444 would have eliminated the principal office deduction by a provision limiting the amount of the home or principal deduction to the real property tax represented by that portion of the real property actually used for the transaction of insurance business This bill was not passed by the Legislature Nor were any bills to the same effect that have since been proposed

[3] "Taxation of Insurance Companies," *Annual Report of the California State Board of Equalization*, 1952–53, pp 14-15

[4] John F McCarty, *A Survey of State Taxes* Bureau of Public Administration, University of California, 1955 Legislative Problems, No 3, p 29

Incidence

The question of incidence is the question of who ultimately pays the tax or on whom it falls In this case it is a question of who pays a higher price and who a lower because the deduction exists

Effect on Consumers Since premiums are set after taxes are considered as one of the costs of doing business,[5] the fact that real property or principal office deductions exist may, in some cases, have made premiums somewhat lower than they otherwise would have been

Evidence exists[6] that premiums are set with competition in mind and insurance companies that are not eligible for the principal office deduction include in their premium rates the full cost of the tax on their property Companies that take advantage of the principal office deduction, need not charge lower rates, but they may on the same type of coverage If they use the principal office deduction, which lowers their cost, as a means of lowering premiums, the consumer benefits, i e , the company pays less tax and the consumer pays less tax as an inclusion in his premium; but the exact extent to which he benefits cannot be accurately estimated However, it must be to a minor extent, for as the following table shows, premium rates charged for the same type of insurance coverage are very similar (See Table 3-1)

If the principal office deduction were eliminated any increase in premiums which might result, competition permitting, would only affect new policy premiums or premiums when the policy is renewed since companies could not change the premium rate on policies already outstanding

TABLE 3-1
Comparisons of Premium Rates *

Company	Type of policy†	10 annual premiums, 1951 scale
John Hancock	Paid up at 85	$277 90
Lincoln National	Ordinary life	278 40
Massachusetts Mutual	Paid up at 85	277 60
Metropolitan Life	Paid up at 85	276 90
Minnesota Mutual	Paid up at 85	278 80
Mutual Trust	Paid up at 85	276 80
New England Life	Paid up at 85	275 70
Northwestern Mutual	Ordinary life	276 40
Ohio National	Ordinary life	274 70
Pacific Mutual	Ordinary life	279 60

* Source *Comparisons* (See footnote 6)
† CSO 2½ percent on all policies

Effect on Tenants What would probably happen if the principal office deduction were eliminated is that the rent of the tenants in the buildings subject to the deduction would be raised, as conditions permitted, to compensate for the "cost" of the additional tax

Effect on Profits To the extent that premiums could not be raised because of existing competition, and rents of tenants could not be

[5] C Arthur Williams, Jr , "Analyzing the Expenses Incurred by Private Workmen's Compensation Insurers," *The Journal of Insurance*, March 1961, p 73 and Insurance Department, Chamber of Commerce, U S A , *Hidden Taxes in Your Premiums*, Insurance Bulletin No 34, 1927, passim

[6] *Ibid*, p 76 and *Comparisons*, reprinted from *Life Insurance Courant*, July issue, annually.

raised, the elimination of the principal office deduction may result in a lowering of profits for those companies that enjoy its benefits

Contrariwise, an inverse effect is equally possible The elimination of the principal office deduction may give insurance companies with a principal or home office in California some excuse to raise premiums. Their action may be followed by their competitors raising their premiums to comparative levels for the same types of coverage Thus prices would increase to some extent and profits would, in turn, increase This is entirely possible since this is an industry characterized by monopolistic competition and often prone to use administered prices [7]

However, it is unlikely that this will cause prices or premiums to increase to a significant extent and this should not serve as a deterrent to the repeal of the principal office deduction

Equity Considerations

The question involved herein is the "fairness" or equitability of the principal office deduction

Competitive Advantage. The principal office deduction serves to give those insurance companies which own office buildings an unfair competitive advantage relative to those insurers that do not In effect, the principal office deduction is a subsidy to the 105 insurance companies (out of the total of 756 against which tax assessments were levied in 1963) that own the building in which their principal or home office is located or the building adjacent thereto and took the deduction in 1963. These 105 companies lowered their 1963 tax liability by $4,766,754, or nearly 11 percent Tax offset reduced the effective tax rate from 2 35 percent to 2 21 percent when computed on the 1962 taxable premiums of all insurers For the companies that took advantage of the principal office deduction, it meant a reduction of their aggregate effective tax rate to 2 09 percent [8]

The 14 percent of the companies that are taking the deduction have an unfair competitive advantage costwise over those companies that do not have a principal office in California Table 3-2 lists the 105 insurance companies owning home or principal offices in 1962 and the amount of principal office deduction allowed as of June 30, 1963

Additional Inequities It may be noted that even though one or more insurance companies may be controlled by another, the deduction for each is still allowed An interesting case in point may be cited Title Insurance and Trust Company controlled several subsidiaries prior to 1962

Three of these, California Pacific Title (San Francisco), Pioneer Title (San Bernardino), and Union Title (San Diego),

[7] *Ibid*, both sources, *passim*, also Allen F Jung, "Rate Variations Among Suppliers of Automobile Insurance," *The Journal of Insurance*, December 1963, pp 573–576, Alfred N Guertin, "Price Competition in the Life Insurance Business," *The Journal of Insurance*, July 1958, *passim*
The industry is characterized by monopolistic competition largely because in almost every case the product is "unique", evidence that prices are administered stems from the fact that rates do not readily respond to changes in supply or demand for the product in the market place One reason for this is that premium rates can only be changed when a new policy is issued or a policy is renewed, also another is that a large segment of the industry sets premium rates in the light of the same information received from the same sources

[8] "Taxation of Insurance Companies," *Annual Report of the California State Board of Equalization*, 1963, p 17

TABLE 3-2

Insurance Companies Owning Home or Principal Office in California in 1962 *

Company	Amount of principal office deduction allowed (June 30, 1963)
Allied Insurance Company	$7,641
Allstate Insurance Company	42,619
American Insurance Company	20,888
Argonaut Insurance Company	14,613
Associated Indemnity Corporation	24,301
California Compensation and Fire Company	30 504
California State Automobile Association Inter-Insurance Bureau	58,484
Canadian Indemnity Company	9 228
Civil Service Employees Insurance Company	58,561
Continental Casualty Company	96,082
Employers' Liability Assurance Corporation, Ltd	12,999
Enterprise Insurance Company	10,603
Financial Indemnity Company	17,883
Fireman's Fund Insurance Company	218,022
General Insurance Company of America	22,422
Guarantee Insurance Company	16,841
Hartford Fire Insurance Company	44,533
Home Insurance Company	80,337
Indiana Lumbermans Mutual Insurance Company	5,117
Industrial Indemnity Company	62,889
Insurance Company of North America	47,917
Liberty Mutual Insurance Company	21,023
Lumbermen's Mutual Casualty Company	42 642
Michigan Millers Mutual Insurance Company	2,519
Mission Insurance Company	10,458
National American Insurance Company	37,214
National Auto and Casualty Insurance Company	39,567
New Zealand Insurance Company, Ltd	14,470
Northwestern Mutual Insurance Company	8,381
Pacific Automobile Insurance Company	4,243
Pacific Employers Insurance Company	13,412
Pacific Indemnity Company	144,428
Reliance Insurance Company	18,915
Republic Indemnity Company of America	2,898
Republic Insurance Company	13,522
Royal Insurance Company, Ltd	30,302
Safeco Insurance Company of America	12,481
Sequoia Insurance Company	4,853
Standard Accident Insurance Company	8,903
State Compensation Insurance Fund	162,573
State Farm Mutual Automobile Insurance Company	21,075
Transport Indemnity Company	40,476
United Pacific Insurance Company	3,987
United States Fidelity and Guaranty Company	23,448
Wilshire Insurance Company	7,524
Zenith National Insurance Company	5,515
Zurich Insurance Company	13,676
345 Other Casualty Insurers	384,129
Beneficial Standard Life Insurance Company	20,666
California Life Insurance Company	9,983
California-Western States Life Insurance Company	69,079
Constitution Life Insurance Company	14,045
Continental Assurance Company	61,362
Equitable Life Assurance Society of the United States	476,448
Franklin Life Insurance Company	77,777

TABLE 3-2

Insurance Companies Owning Home or Principal Office in California in 1962 *—Continued

Company	Amount of principal office deduction allowed (June 30, 1963)
Golden State Mutual Life Insurance Company	20,608
Independence Life Insurance Company of America	19,841
Intercoast Life Insurance Company	2,991
John Hancock Mutual Life Insurance Company	229,364
Massachusetts Mutual Life Insurance Company	33,882
Metropolitan Life Insurance Company	208,799
Mutual Benefit Life Insurance Company	10,168
Mutual of Omaha Insurance Company	56,037
North American Life and Casualty Company	5,491
Occidental Life Insurance Company of California	85,570
Pacific Mutual Life Insurance Company	293,340
Pacific National Life Assurance Company	127,004
Pierce Insurance Company	5,702
Prudential Insurance Company of America	340,893
Seaboard Life Insurance Company of America	4,563
Travelers Insurance Company	186,836
West Coast Life Insurance Company	32,400
182 Other Life Insurers	171,908
City Title Insurance Company	5,399
First American Title Insurance and Trust Company	11,200
Title Insurance and Trust Company	187,233
13 Other Title Insurers	3,017
Grand total	$4,766,754

* California State Board of Equalization, *Annual Report* 1962–1963, pp A-37–40
SOURCE Annual Report of the California State Board of Equalization, 1962–1963, pp A-37–A-40

were merged with the parent on December 31, 1961, thereby eliminating the right of the three subsidiaries in each individual case to take the deduction The total allowable deduction for these three controlled subsidiaries prior to merger was $82,078, yet the parent corporation, Title Insurance and Trust Company, was entitled to $181,971 for the home office of the parent; this deduction did not include the subsidiaries There is nothing wrong with such treatment under the law as it now stands, and in fact it makes good business sense to take deductions for controlled subsidiaries, however, it is doubtful that this was the original intent of the legislation [9]

It was reported that three companies paid no tax on premiums because the deductions were greated than the tax [10]

The 23 insurance companies with the largest principal office deductions in 1961 were selected for an analysis of the effect of the deduction on the gross premiums tax rate Figure 3–1 displays the results of this analysis Effective rates ranged from 0 94 percent to 2 25 percent [11]

[9] From a report of the California Senate Fact Finding Committee on Revenue and Taxation, April 1963 "A Study of the Feasibility of Increasing State and Local Government Revenues from Selected Taxes," p 13
[10] *Ibid.*
[11] *Ibid.*, p. 15.

FIGURE 3-1

Insurance Companies With Principal Office Deduction Over $50,000 in 1961

(Amounts in thousands)

Company	Gross state tax at 2 35 percent	Principal office deduction	Net tax	Net tax rate	Principal office		
					Rental Value of own occupancy	Rental from tenants	Percent own occupancy
Equitable Life Assurance	$1,759	$422	$1,338	1 74	$161	$1,745	8 4
Prudential Insurance Co	3,965	335	3,630	2 11	*1,407	*110	77 4
Pacific Mutual Life	883	291	593	1 60	656	1,069	38 0
Metropolitan Life	3,222	198	3,025	2 18	1,059	1,061	49 9
Fireman's Fund	1,582	193	1,389	2 06	256	104	71 1
John Hancock Mutual Life	788	190	597	1 73	**	**	†9 3
Title Insurance and Trust	953	182	771	1 90	††800	††688	††53 8
State Compensation Insurance Fund	1,405	154	1,250	2 09	422	61	87 4
Pacific National Life	198	119	79	0 94	109	972	10 1
Continental Insurance Co	115	98	17	0 36	102	251	28 9
Occidental Life Insurance Co	2,731	88	2,643	2 25	620	31	95 2
Continental Casualty Co	918	85	833	2 13	63	369	14 6
Western & Southern Life	99	81	17	0 42	242	80	75 2
Franklin Life Insurance Co	215	77	138	1 50	12	332	3 5
Pacific Indemnity Co	704	77	626	2 09	**	**	†60.0
Home Insurance Co	203	76	127	1 47	165	63	72 4
Olympic Insurance Co	71	74	nil	nil	66	713	8 5
California-Western States Life	1,329	69	1,260	2 23	366	10	97 3
Travelers Insurance Co	1,895	65	1,830	2 26	**	**	†27 3
Continental Assurance Co	296	61	234	1 86	32	396	7 5
Industrial Indemnity	942	56	887	2 21	77	210	26 8
California State Auto Association	669	55	613	2 15	178	--	100 0
Civil Service Employees	205	50	155	1 77	47	158	22 9
Totals, 23 companies	$25,147	$3,096	$22,052	2 06	$6,840	$8,723	n a
Totals, 746 companies	$74,625	$4,291	‡870,337	2 21	n a	n a	n a

* Based upon 1962 data
** Not reported
† Based upon space occupied
†† Based upon 1959 data because later data not available or in error
‡ In addition, the state assessed ocean marine taxes totaling $42,206 and retaliatory taxes of $876 263
n a —Not available

SOURCE California State Board of Equalization, *Annual Report*, 1961–62, and insurance company reports to the State Insurance Commissioner's Office
State Department of Finance Budget Division, April 30,1963

There is no direct correlation between effective rates and gross premiums, except that companies with large gross premiums tend to have higher effective tax rates since the net effect of the deduction lessens when it is applied to a larger base It may be noted that within a group of large companies, an adverse correlation may be found The first three insurers in California ranked by total gross premium dollars in 1961 were first, Prudential Life Insurance Company; second, Metropolitan Life Insurance Company; and third, Occidental Life Insurance Company Their effective rates were 2 11 percent, 2 18 percent, and 2 25 percent respectively [12] Apparently, their effective rates of tax were adversely proportional to their gross premiums,

[12] *Ibid.*, p 14.

TABLE 3-3

Ten Insurance Companies With the Largest Principal Office Deduction Offset Against Gross Premiums Tax in California in 1962 and Effective Gross Premiums Rate Resulting From the Offset

Insurance company	1962 annual statement number	Building number and address	Amount of principal office deduction allowed 6-30-63	Amount of rental attributed to company occupied portion of building	Gross income from buildings including rents attributed to company occupancy	Company occupancy based on rental income ratio (percent)	Net taxable premium	Net assessed tax	Net tax rate on net taxable premium (percentage)
Equitable Life Assurance Society of the United States	200	97 120 Montgomery Street, San Francisco	$476,447 66	$177,013 43	$1,958,190 31	9 0	$83,158,730 46	$1,429,929 22	1 72
Fireman's Fund Insurance Company	230	3 California St and Presidio Ave, San Francisco	218,021 72	[1]255,600 00	360,000 00	[1]71 0	76,818,719 94	1,587,218 20	2 07
John Hancock Mutual Life Insurance Company	322	4 California and Battery St, San Francisco	229,363 72	89,986 50	774,064 39	11 6	36,483,603 38	598,496 39	1 63
Metropolitan Life Insurance Co	371	900005 600 Stockton St, San Francisco	208,798 93	1,178,331 75	1,179,555 78	99 9	154,073,121 00	3,342,226 31	2 17
Pacific Indemnity Co	479	3 Wilshire Blvd and Vermont Ave, Los Angeles	144,427 72	417,952 26	608,722 76	68 7	32,227,290 36	612,913 60	1 90
Pacific Mutual Life Insurance Co	481	1 523 W Sixth Street, Los Angeles 14	293,339 43	654,217 00	1,781,066 54	36 7	42,802,728 74	711,440 33	1 66
Prudential Insurance Company of America	520	None 5757 Wilshire Blvd, Los Angeles 36	340,893 21	1,411,187 04	1,822,236 06	77 4	183,957,457 54	3,816,518 82	2 07
State Compensation Insurance Fund	586	1a, 2 525 Golden Gate Ave, San Francisco 1	162,572 73	603,696 00	738,774 00	81 7	77,481,236 30	1,658,236 32	2 14
Title Insurance & Trust Company	613	76317 7 433 S Spring St, Los Angeles	187,233 16	1,140,792 00	1,479,470 42	77 1	55,750,010 10	1,122,892 08	2 01
Travelers Insurance Co	628	None 3600 Wilshire Blvd, Los Angeles	186,835 78	420,738 00	829,459 89	50 7	83,893,385 22	1,777,601 60	2 12

[1] Fireman's Fund Insurance Company only Remaining 29 percent was occupied by and charged to Home Fire and Marine Insurance Company and National Surety Company, wholly owned insurance company subsidiaries

SOURCE Premium tax returns and annual statements for 1962 filed with Insurance Commissioner by insurance companies, and in certain cases, directly from companies

A similar comparison for 1962 discloses that the insurance company among the 10 with the largest principal office deductions that year that occupied the least amount of its building (Equitable Life Assurance Society of the United States—company occupancy based on Rental Income Ratio, 9 percent) had the lowest tax rate on its net taxable premiums, i e , 1 72 percent [13]

Office Building Subsidy The right to offset local property taxes against the state gross premiums tax has proved to be a powerful incentive for insurance companies to build office structures A detailed study made in 1962 showed that 105 insurance companies owned principal offices in the state About 25 percent occupied the entire building, one-third used less than half of the building

About half the companies apparently viewed the tax concession as a subsidy for their investment in commercial office buildings. The data showed that 41 companies, occupying less than 60 percent of their respective buildings, took a $2 4 million in property tax credits on their state tax returns and had a rental income of $9,736,000 from the lease of space in these principal office structures

These companies had several distinct advantages over other firms in the insurance and the commercial rental fields

1 By offsetting property tax against state tax, they achieved a reduction from the statutory 2 35-percent rate to an average of 1 89 percent
2 By passing on their property tax to the state, they achieved a $2 4 million advantage over other commercial building operators on a rental income of $9 7 million
3 By leasing space in their commercial structures to others, many insurers had a completely tax-free source of income as far as California was concerned
4 By owning an insurance company, at least one major commercial enterprise charged off the property tax on its office building against the premium tax on its insurance business
5. By offsetting the property tax against the insurance tax, they escaped the 100 percent property tax increase since 1945 [14]

TABLE 3-4

Percent of Occupancy of Insurance Companies Owning Buildings

Percent occupancy	Number of companies	Percent occupancy	Number of companies
0–10	9	60 1– 70	9
10 1–20	9	70 1– 80	8
20 1–30	7	80 1– 90	5
30 1–40	4	90 1–100	28
40 1–50	8	Not reported	14
50 1–60	4	Total	105

SOURCE State of California, Department of Finance, Budget Division

[13] *Ten Insurance Companies With the Largest Principal Office Deduction Offset Against Gross Premiums Tax in California in 1962 and Effective Gross Premiums Rate Resulting From the Offset*

[14] California, State Department of Finance, Budget Division, *Highlights of Proposed Changes in the Insurance Tax*, California State Printing Office, Sacramento, 1964, pp. 3–4.

A few illustrations of the manner in which this subsidy has been used follows (the cases cited illustrate the situation in 1961):

A New York insurance company:	
Occupied 8.4 percent of its building	
Had rental income of	$1,745,000
Had a gross state insurance tax of	1,750,000
But offset property tax of	422,000
Thus reduced its state insurance tax rate from 2 35 percent to 1 74 percent.	
An Illinois company:	
Occupied 3 5 percent of its building	
Had rental income of	$332,000
Had a gross state tax of	215,000
But offset property tax of	77,000
Thus reduced its state insurance tax rate from 2 35 percent to 1 50 percent.	
A California company:	
Owned by a transportation company	
Occupied 10 1 percent of its building	
Had rental income of	$971,771
Had a gross state tax of	198,118
But offset property tax of	118,793
Thus reduced its state insurance tax rate from 2 35 percent to 0 94 percent	
Another California company:	
Occupied 38 0 percent of its building	
Had rental income of	$1,069,000
Had a gross state tax of	883,281
But offset property tax of	290,519
Thus reduced its state insurance tax rate to 1 60 percent	
Another company:	
With taxable premiums of	$3,024,903
Occupied 8 5 percent of its building	
Had rental income of	713,225
And a computed tax of	71,085
Took a principal office deduction of	74,247
And paid no state insurance tax	
Still another example:	
Taxable business	$980,207
Computed tax	23,035
Principal office deduction	24,077
Paid no insurance tax	

Two British and one California companies jointly owned an office building on Montgomery Street in San Francisco They occupied 11 7 percent of the building In 1961, they obtained rental income of $745,000 and paid $131,836 in property tax with the following results on state tax:

	California Company	*British Company*	*British Company*
Insurance premiums	$1,459,801	$1,701,315	$2,309,438
Gross tax	34,305	39,985	54,272
Principal office deduction	32,959	32,959	65,918
Net tax	$1,340	$7,022	Nil
Effective tax rate	0 09%	0 40%	None

Compared with a statutory tax rate of 2 35 percent, the California company had an effective insurance tax rate of less than one-tenth of 1 percent, one British company had an effective rate of less than one-

half of 1 percent, and the other paid no state tax whatever on over $2 3 million of California premiums [15]

Charts showing the insurance companies with principal office deductions of $50,000 or more in 1961, and those with the 10 largest principal office deductions in 1962 are attached (See pp 42 and 43.) It may be noted that the relative positions of the companies insofar as their principal office deductions are concerned were unchanged It may be noted that the net tax rate of the Equitable Assurance Society of the United States had a decrease (1.74 percent to 1.72 percent) and so had the rate of John Hancock Mutual Life Insurance Company (1 73 percent to 1 63 percent), and the Prudential Insurance Company of America (2.11 percent to 2.07 percent). Where there were increases, they were slight (Firemens Fund Insurance Company's net tax rate went from 2 06 percent to 2 07 percent) There is no question of the fact that this is a differential subsidy based on whether or not the insurance company owns property with a higher or lower rental value. The amount of the subsidy depends upon (1) how much property the insurance company owns which qualifies for the principal office deduction, and (2) how much tax-sheltered rental income it derives from this property.

Economic Effects

The question may be raised as to whether the elimination of the principal office deduction will destroy the incentive for insurance companies to set up principal or home offices in California, and the further question as to whether it will decrease the amount of insurance written in California, thus having adverse effects upon employment in the insurance industry, and the income derived therefrom; and consequently, upon the level of economic activity in the state.

The Location of Home Offices in California Evidence indicates that insurance companies have located in California because there was business to be written in this part of the country and this was a logical location from which to write it, rather than because there was a tax advantage in locating a principal or home office here As Dean Robert R. Dockson stated·

> All the leading companies have recognized since World War II the growing importance of the California market for . insurance Many of them have accelerated their activities by increasing both their personnel and physical facilities in the state. Prudential, for example, established a western home office in Los Angeles in 1948 and, as of that year, greatly expanded its sales efforts From 1948 to 1957, this company increased its share of California's ordinary life insurance in force from 12 9 percent to 14 6 percent [16]

[15] California, State Department of Finance, Budget Division, *Insurance Tax—Elimination of Principal Office Deduction*, California State Printing Office, Sacramento, May 1, 1963, pp 4–5 Charts showing percent of occupancy for all companies claiming principal office deduction in 1962 and Table showing insurance companies with deductions over $25,000 in 1962 are on pp 54–55 below

[16] Robert R Dockson, *The Insurance Industry in the California Market*, Union Bank, Los Angeles, California, 1959, p 10

And he later stated,

> Since 1940, the total premiums written for all types of insurance have advanced more than 500 percent in California compared with 345 percent for the entire United States The more rapid rate of growth of premiums in California is a reflection of the state's expanding economy more than any other single factor.[17]

It is doubtful if the incentive for an insurance company to locate in California will be imperiled by the elimination of the principal office deduction For that matter, this deduction exists in only three other states, Alabama, Florida, and Utah Of these, only Utah allows the deduction without limitations In Alabama, the deduction is only given if the property is occupied 50 percent by the insurance company In Florida, the deduction is only given if it applies to a regional office serving three or more states that is owned by an out-of-state insurance company and is substantially occupied by that company [18]

None of these three states is among the top-ranking states insofar as the number of insurance companies located in the state or insurance written in the state is concerned, and there is little likelihood of insurance companies locating in them rather than in California [19]

The Effect Upon the Amount of Insurance Written in California The elimination of the principal or home office deduction should have little or no effect upon the amount of insurance written in California for the amount of premiums an insurance company writes is not affected by the fact it may deduct the tax on its principal or home office and thus pay less taxes True, insurers attempt to maximize profits after taxes but tax or no, the insurance industry is characterized by decreasing unit costs [20] and insurers will only maximize profit if they increase volume, not if they decrease supply In fact, according to economic theory since the premiums tax is included in "costs" when premiums are set, firms, as a consequence, should try to write more insurance than would otherwise be the case were there no tax, for the quantity written at which marginal revenue just covers marginal costs, and profits are maximized, is greater than it would be if "costs" were lower If anything, elimination of the deduction will serve as an incentive to increased effort and thus may serve to increase employment in the insurance industry in California

Effect on Companies' Ability to Compete Outside of State. California insurance companies pay a higher rate of tax on premiums than life insurance companies in 33 other states, than fire insurance companies in 19 other states, and than casualty insurance companies in 32 other states.[21]

If the comparison is made on the basis of the effective tax rate, then 22 states in the case of life insurance companies have a higher rate

[17] *The Insurance Industry in the California Market, op cit*, p 32
[18] California State Department of Finance, Budget Division, *Insurance Tax—Elimination of Principal Office Deduction*, California State Printing Office, Sacramento, May 1, 1963, and State of Florida, Insurance Code, 624 0312, Codes, Chapter 624, pp 25 and 26
[19] See *Cyclopedia of Insurance in the U S*, 1962, The Index Publishing Company, Paterson, New Jersey, p 485, for number of life insurance companies in the various states and for ranking by insurance tax collected in the state
[20] C Arthur Williams, *op cit*, p 73
[21] Source of rates *Quarterly Payments of Insurance Tax*, State of California, Department of Finance, Budget Division, May 1, 1963, p 7

than California, 34 states have a higher rate on premiums of fire insurance companies, and 21 states have higher rates on premiums of casualty companies However, since the principal or home office deduction makes a difference of only 0 26 of 1 percent, on the average, in the effective tax rate paid by the insurance companies on premiums, it will not change their relative position, taxwise, appreciably as compared with other states

The elimination of the principal or home office deduction will only eliminate the differential in effective tax rates for those companies that qualify for this deduction Others are competing successfully without it

Thus it cannot be argued from any strong economic base that the principal or home office deduction's elimination will cause any appreciable economic hardship on California insurance companies insofar as their ability to compete with insurance companies in other states is concerned

Effect Upon the Availability of Office Space Elimination of the principal office deduction will in all likelihood have some effect upon the amount of office space available in California since without this added incentive, some insurance companies may not build office buildings for rental purposes This raises the question of whether it was the intent of the principal office deduction to encourage the building of office buildings where space would be available for rental According to all available data, this was never the intent of the provision

It cannot be argued that this subsidy is needed because there is a shortage of office space in California Recent vacancy rates for office space in commercial buildings in California were estimated at 6.98 percent [22] From an economic viewpoint there is no justification for an increase in this subsidy In fact, to the contrary, its elimination should serve to stimulate sales effort to some extent, encourage the growth of the insurance industry and increase employment in California

PRESENT EXTENT

The local property tax credits (or the principal or home office deduction) claimed by California insurance companies in 1963 amounted to $4,766,754.

Number Taking Deduction —Although the number of insurance companies authorized to do business in California is still increasing, as indicated by Table 3-5, the number of companies taking the principal office deduction has leveled out in the last five years In 1948, 10 3 percent of all insurance companies were taking the deduction, and by 1958 this had increased to 15 1 percent. There has been a slight decline of 1 percent in the last four years; however, because of the increase in the total number of authorized companies, there has not been a reduction in the number of companies taking a deduction. The latest figures show that of 761 authorized companies, 105 (or 13 8 percent) are taking the deduction.

[22] Figure for October 1962 Now higher Estimates from Thomas Frey, Ph D, economist, San Diego First National Trust and Savings Bank, based on data from National Association of Building Owners and Managers
The office vacancy rate for early 1964 in California cities was estimated at 17 percent, *Skyscraper Management*, June 1964, p 7.

Governor Brown stated:

> "Curiously, only one out of every seven insurance companies have taken advantage of this deduction. In many instances the home office is principally an insurance company office But in many other instances it is a commercial structure, housing stores, offices, garages and other business tenants in direct competition with other commercial building operators who receive no offset against their state tax obligations "[28]

Comparison With Other Years—The amount of the principal or home office deduction claimed in 1963 was 521 percent of the amount claimed in 1949, the first year in which only the taxes on the principal or home office could be claimed as a credit against the gross premiums tax.

TRENDS

"The principal office deduction" has increased 421 percent over the last 14 years In 1963 it was over four times what it was in 1950 Table 3-6 shows the increase in the principal office deduction from 1911 through 1963.

TABLE 3-5

Insurance Companies Authorized to Do Business in California, With Number and Percentage Taking Principal Office Deductions *

Fiscal year ending 6-30	Number of insurance companies authorized to do business in California	Number with principal office deductions	Percent of companies taking deductions
1963	761	105	14
1962	746	105	14 1
1958	675	102	15 1
1954	638	89	13 9
1948	621	64	10 3

*SOURCE To 1963 from A Report of the Senate Fact Finding Committee, *op cit*, California State Board of Equalization, *Annual Report*, 1963

Over the years since 1911 the average rate of local property tax credits claimed to taxes assessed on premiums has been 7.54 percent. Over the last 10 years the average rate has been 5 percent. If taxes assessed on premiums and taxable premiums increase at the same rate as they have over the past five years, and no more, at the average rate of 5 5 percent of the taxes assessed on premiums in 1972–1973, the principal office deduction should amount to at least $11 million

(The amount of increase of local property tax credits claimed each year over the previous year from 1947 through 1963 is shown in Table 3-7.)

More probably the minimum of the tax credit will be in the neighborhood of $12 million The maximum as Table 3-8 indicates will be about $19 million. Table 3-8 shows the estimated increase of the real property tax deduction from the gross premiums tax projected to 1973

[28] *Statement of Governor Edmund G Brown on Tax Reform and Revenue Recommendations*, transmitted to the California Legislature on Tuesday, March 19, 1963, p 15

TABLE 3-6

Number of Insurance Tax Assessments, Gross Premiums Tax Rate, Taxes Assessed on Premiums, Local Property Tax Credits Claimed, Taxes Assessed on Underwriting Profits, and Net Taxes Assessed, 1911–1963

Year of assessments	Number of assessments[a]	Gross premiums tax rate (percent)	Taxes assessed on premiums[b]	Local property tax credits claimed as a percentage of taxes assessed	Local property tax credits claimed	Taxes assessed on underwriting profits[c]	Net taxes assessed[d]
1963	815	2 35	$82,521 529	5 7	$4,766,754	$44,475	$77,799,250
1962	899	2 35	75,594,917	5 7	4,291,305	42,206	71,255,818
1961	767	2 35	71,235,283	5 4	3,854,507	39 688	67,420,464
1960	736	2 35	65,169,948	5 1	3,341,844	20,307	61,848,411
1959	711	2 35	58,377 347	5 4	3,153,605	13,601	55,237,343
1958	716	2 35	53,461,244	5 1	2,714,160	19,843	50,766,927
1957	[e]728	2 35	48 365,723	4 7	2,278,623	54.234	46,141,334
1956	828	2 35	44,476,726	4 6	2,026,931	83,296	42,553,091
1955	809	2 35	40,810 154	4 4	1,781,071	75,118	39,104,201
1954	803	2 35	40,040,521	4 0	1,604,342	61,743	38,500,922
1953	796	2 35	35,934 480	3 9	1,393,689	83,909	34,34,700
1952	782	2 35	30,384 576	4 4	1,331,108	123,333	29,176,801
1951	781	2 35	26,404 603	4 8	1 266,639	144,753	25 282,722
1950	783	2 35	24 045,773	4 6	1,099,147	96,719	23,043,305
1949	769	2 35	23,689,427	3 9	915,103	75,616	22,849,940
1948	755	[e]2 38	21,045,450	3 7	[e]770,733	69,962	20 344,679
1947	747	[e]2 40	17,947,419	4 1	[e]742,767	99,247	17,303,899
1946	736	[e]2 45	15 006 118	4 3	[e]650,649	112,839	14,468,308
1945	669	[e]2 50	14,280 911	5 6	[e]798,892	17,528	13,499,547
1944	649	[e]2 55	12,448,604	8 4	[e]1,040,342	12,293	11,420,555
1943	644	2 60	10 705,855	11 1	1,187 720	8,862	9,520,997
1942	729	2 60	10,910,696	12 2	1,327,026	58,012	9 641,682
1941	716	2 60	9,795,166	14 6	1,423,682	42,312	8,383,796
1940	721	2 60	9,337,235	15 9	1,485,265	15,232	7,867,202
1939	711	2 60	9,178,000	16 6	1,522,282	8,541	7,664,169
1938	648	2 60	9,152 539	18 6	1,701,221	8,203	7,459,521
1937	648	2 60	8,419 953	25 0	2,101,365	12,525	6,331,113
1936	677	2 60	8,339,449	19 0	1,585 835	14,859	6,768,473
1935	691	2 60	7,426,551	10 8	802,800	15,055	6,638,806
1934	618	2 60	6,038 675	10 9	658,425	23,420	5,403,670
1933	613	2 60	6,444,305	8 6	551,582	22,233	5 914,956
1932	600	2 60	7,265,420	8 6	628,330	16,414	6,653,504
1931	606	2 60	7,675,738	9 1	701,657	10,051	6,984,132
1930	642	2 60	7,562 017	7 0	531,820	----	7,030,197
1929	596	2 60	7,043,079	7 6	533,006	----	6,510,073
1928	557	2 60	6 656,275	7 0	463,857	----	6,192,418
1927	519	2 60	6,257,100	12 4	775,429	----	5,481,680
1926	520	2 60	5,624,943	12 9	727,043	----	4,897,900
1925	487	2 60	5,013 263	13 4	627,891	----	4,340,372
1924	433	2 60	4,678 225	6 1	283,415	----	4,394,810
1923	402	2 60	3 886,015	6 3	244,610	----	3,641,405
1922	402	2 60	3 380 065	4 2	143,395	----	3 245,670
1921	405	2 60	3,204,212	3 5	116,911	----	3,087,931
1920	355	2 00	1,936,967	3 8	73,812	----	1 863,125
1919	335	2 00	1,602,908	3 4	54,581	----	1,548,327
1918	330	2 00	1,406,225	3 7	51,621	----	1,354,604
1917	328	2 00	1,201,601	4 1	48,750	----	1,152,851
1916	316	2 00	1,109,342	4 0	44 070	----	1,065,272
1915	315	2 00	1,062,569	3 8	40,113	----	1,022,456
1914	317	1 75	856,999	4 8	40 902	----	816,097
1913	313	1 75	803,618	5 1	40,914	----	762 704
1912	285	1 50	637,964	5 6	35,759	----	602,205
1911	258	1 50	532,375	2 3	12,160	----	520,215
Totals	----------	----------	$893,453,542	6 2	$55,664 106	$1,501,884	$839,291 300

[a] Includes only assessments showing a tax liability
[b] Includes retaliatory assessments (except for the period from 1945, when the retaliatory tax law was repealed, through 1959 when the law was reestablished), penalties for late filing or nonfiling of returns, and adjustments of prior-year taxes
[c] Includes penalties for late filing or nonfiling of returns By constitutional amendment adopted in 1930, ocean marine insurance was removed from the scope of the gross premiums tax and subjected to a 5 percent tax on underwriting profits
[d] Includes penalties for late filing or nonfiling of returns and adjustments of prior-year taxes
[e] In 1957, life insurance companies writing disability insurance were assessed only once In all prior years such companies were assessed twice, one assessment covered their life insurance and annuity policies, and one covered their disability insurance business In 1958 there were 93 such companies
[f] Beginning in 1952, the State Compensation Insurance Fund has been subject to assessment by the board
[g] The declining tax rate from 1944 to 1948 was intended to compensate for a gradual restriction of the real estate tax offset privilege In the 1944 assessment, the maximum offset for taxes on real estate other than the principal office in the state was 75 percent of the company's 1940 offset on such property The next year it was 55 percent, the next 35 percent then 15 percent From 1948 on, only taxes on principal offices have been eligible for offset
SOURCE California State Board of Equalization, *Annual Reports*, 1961–62, Table 12A, p A-36

TABLE 3-7

Principal Office Deduction, Percentage Increase

Year	Local property tax credits claimed	Amount of increase over previous year	Percent of increase on preceding year
1962–63	$1,766,754	$475,449	11 09
1961–62	4,291,305	436,798	11 33
1960–61	3 854,507	512,663	15 34
1959–60	3,341,844	188,239	5 97
1958–59	3,153,605	439,445	16 19
1957–58	2,714,160	435,537	19 11
1956–57	2,278,623	251,692	12 42
1955–56	2,026,931	245,860	13 80
1954–55	1,781,071	179,729	11 33
1953–54	1,601,342	207,653	14 90
1952–53	1,393,689	62,581	4 70
1951–52	1,331,108	64,409	5 09
1950–51	1,266,639	167,492	15 24
1949–50	1,099.147	184,044	20 11
1948–49	915.103	144,370	18 73

SOURCE Percentage increases computed from local property tax credits as reported in California State Board of Equalization, *Annual Report*, 1962–63, Table 12A, p A-36

TABLE 3-8

Estimated Increase in Real Property Tax Deductions From Gross Premiums Tax on Basis of Prior Fifteen Years' Experience

	Minimum increase projected Projection based on a 10-percent increase		Maximum increase projected Projection based on a 15-percent increase	
Year	Local property tax credits claimed	Amount over previous year	Local property tax credits claimed	Amount over previous year
1963–64	$5,243,429	$476,675	$5,481,767	$715,013
1964–65	5,767,772	524,343	6,304,032	822,265
1965–66	6,344,549	576,777	7,249 637	945,605
1966–67	6,979,004	634,455	8 337,083	1,087 416
1967–68	7,676,904	697,900	9,587,645	1,250 562
1968–69	8,444,594	767,690	11,026,792	1,439,147
1969–70	9,289,053	844,459	12,679,600	1,653 868
1970–71	10,217,958	928,905	14,581,609	1,901,949
1971–72	11,239,754	1,021,796	16,768,850	2,187,241
1972–73	12,363,729	1,123,875	19,284,173	2,515,323
Total	$83,566,746	--------	$123,979,913	--------

The projection shown below based on the past five years' experience corroborates that the deduction would be in the neighborhood of $11 million by 1973: [24]

	Year	Taxes assessed on premiums	Increase over previous year	Increase as a percent of previous year's taxes assessed
Average increase 9 3%	1958	$53,461,244	$5,095,521	10 5
	1959	58,377,347	4,916,103	9 1
	1960	65,169,948	6,792,601	11.6
	1961	71,235,283	6,065,335	9 3
	1962	75,504,917	4,269,634	5 9
	1963	82,521,529	7,016,612	9 2
Projected at 9%	1964	89,948,467	7,426,938	9
	1965	98,043,829	8,095,362	9
	1966	106,867,774	8,823,945	9
	1967	116,485,874	9,618,100	9
	1968	126,969,603	10,483,729	9
	1969	138,396,867	11,427,264	9
	1970	150,852,585	12,455,718	9
	1971	163,808,303	14,697,747	9
	1972	178,006,050	16,020,545	9
	1973	194,008,595		9

As Tables 3-7 and 3-8 indicate, however, the local property tax credits claimed may well be expected to increase 13 percent a year over the next 10 years, if the experience of the past 15 years serves as a basis for the forecast

REVENUE EFFECTS

The statistics reflecting the growth of the principal or home office deduction indicate that a minimum of approximately $83,566,746 will probably be lost to the state in tax revenue in the next nine years, if the provisions authorizing this deduction are not rescinded. By 1973, the state will probably be losing between $12 and $16 8 million annually in revenue because of this deduction (See Tables 3-7 and 3-8) This loss in tax revenue may amount to as much as $123 million between now and 1974

SUMMARY AND CONCLUSIONS

The case against the principal office deduction may be briefly stated as follows:

1 It serves to complicate the state's tax structure
2. California is one of only four states allowing a tax offset for property taxes paid by insurance companies on their principal or home offices and none of the other three are high-ranking insurance states.
3 It results in a loss in tax revenue In 1963 this principal office deduction amounted to $4,767,000; and it is increasing by approximately $500,000 a year
4. In some instances this provision has become a tax "loophole" Only one out of seven insurance companies is in a position to take this deduction. Of the 761 insurance companies subject to the state tax on gross premiums in 1962 only 105 owned their principal or

[24] This admittedly is too conservative a forecast It is based on the prediction that taxes assessed on premiums as shown will increase at the rate of only 9 percent a year and the principal office deduction will remain 5½ percent of taxes assessed on premiums

home office and took the real estate tax deduction These insurance companies achieved an average reduction of 11 percent in their state insurance tax rates Thirteen companies using less than 50 percent of their buildings took $1 8 million in tax credits, had at least $7.3 million in rental income, and achieved a 15-percent reduction in their state gross premiums tax in 1961 because of the principal office deduction

5 The principal or home office deduction is a subsidy In many instances the structure involved is a multistory office building or other commercial building, only a part of which is occupied by the owner for insurance purposes The remainder is leased to tenants and the source of tax-sheltered rental income, since the gross premiums tax is levied in lieu of all other taxes and fees—state, county and municipal—except those on real estate and motor vehicles Insurance companies receiving the offset against the premiums tax have a competitive advantage over those who do not

6. The principal office deduction has been increasing 60 percent faster than the tax base [25]

7. Removing this subsidy will most probably not affect premium rates or profits to any marked extent

8 It is not needed as an incentive to attract insurance companies to locate principal or home offices in California

9 Its rescission will serve to increase the amount of insurance written in California, employment in the insurance industry in this state and the state's revenue from the gross premiums tax

In order to eliminate this deduction it will be necessary to amend the Constitution, since the provision for this offset is contained in both the state Constitution and the Tax Code In accordance with the requirements of paragraph (1) of Section 14¼ of Article XIII of the Constitution, a favorable vote of two-thirds of the members elected to both houses of the Legislature will be necessary before this provision can be eliminated from the Constitution

If the deduction for the principal or home office real property tax is eliminated, it is estimated that the additional revenue resulting for the state would be between $5 and $6 million in the fiscal year 1964–65 By 1970–71 the additional revenue would amount to a minimum of $10 million Over the next 10 years the minimum of total additional revenue for the state resulting from the elimination of the deduction will be over $83 million The maximum will be over $120 million.

[25] See State of California Department of Finance, Budget Division, *Highlights of Proposed Changes in the Insurance Tax*, April 30, 1963 and *Insurance Tax Principal Office Deduction*, January 31, 1964

TABLE 3-9

Insurance Companies With Principal Office Deductions Over $25,000 in 1962

(Amounts in thousands)

Company	Gross state tax	Principal office deduction	Net state tax	Gross tax rate	Net tax rate	Principal office		
						Rental value		
						Own occupancy	Total	Percent own occupancy
Equitable Life Assurance Society	$1,906	$476	$1,430	*2 29	1 72	$177	$1,958	9 0
Prudential Insurance Company	4,157	341	3,817	*2 26	2 07	1,411	1,822	‡77 4
Pacific Mutual Life Insurance Company	1 005	293	711	2 35	1 66	654	1,781	36 7
John Hancock Mutual Life Insurance Company	826	229	596	*2 26	1 63	90	774	11 6
Fireman's Fund Insurance Company	1,805	218	1,587	2 35	2 07	256	360	‡71 0
Metropolitan Life Insurance Company	3,551	209	3,342	*2 30	2 17	1,178	1,180	‡99 9
Title Insurance and Trust Company	1,310	187	1,123	2 35	2 01	1,141	1,479	‡77 1
Travelers Insurance Company	1,964	187	1,778	*2 34	2 12	421	829	‡50 7
State Compensation Insurance Fund	1,821	163	1,658	2 35	2 14	604	739	‡81 7
Pacific Indemnity Company	757	144	613	2 35	1 90	418	609	‡68 7
Pacific National Life Assurance Company	237	127	110	*2 33	1 08	149	920	16 2
Continental Insurance Company	125	103	22	2 35	0 42	102	443	23 0
Continental Casualty Company	953	96	857	2 35	2 11	64	96	‡66 7
Western & Southern Life Insurance Company	108	96	12	2 35	0 26	176	382	45 9
Occidental Life Insurance Company	2,801	86	2,716	*2 32	2 25	624	655	‡95 2
Home Insurance Company	200	80	119	2 35	1 40	176	228	‡77 2
Franklin Life Insurance Company	225	78	147	*2 34	1 53	†	344	----
California-Western States Life	1,321	69	1,252	2 35	2 23	426	437	‡97 5
Commercial Union Assurance Company	69	69	----	2 35	----	9	391	2 4
Industrial Indemnity Company	1,097	63	1,034	2 35	2 22	79	230	34 5
Olympic Insurance Company	63	63	----	2 35	----	54	737	7 3
Continental Assurance Company	269	61	207	2 35	1 81	32	437	7 3
Civil Service Employees Insurance Company	240	59	181	2 35	1 78	49	212	23 1
California State Automobile Association	720	58	661	2 35	2 16	178	178	‡100 0
Mutual of Omaha Insurance Company	368	56	312	2 35	1 99	6	224	2 7
Insurance Company of North America	861	48	813	2 35	2 22	155	305	‡50 7
Hartford Fire Insurance Company	536	45	492	2 35	2 15	106	222	47 9

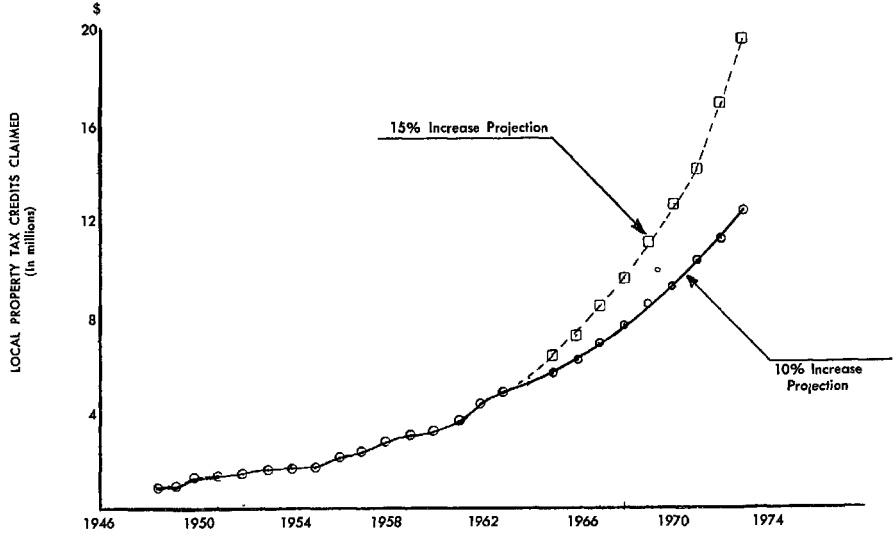
Lumbermen's Mutual Casualty Company	243	43	200	2 35	1 94	161	188	‡85 9
Allstate Insurance Company	1,804	43	1,762	2 35	2 29	229	229	‡100 0
Transport Indemnity Company	177	40	136	2 35	1 81	61	209	29 2
National Auto & Casualty Insurance Company	183	40	144	2 35	1 84	71	296	23 9
Pacific Fidelity Life Insurance Company	86	38	48	2 35	1 32	59	285	20 6
The California Insurance Company	42	37	5	2 35	0 28	3	196	1 4
Commercial Union Insurance Company	40	37	3	2 35	0 17	6	196	3 3
National American Insurance Company	331	37	294	2 35	2 09	†	116	----
Massachusetts Mutual Life	479	34	445	*2 32	2 16	†	92	----
West Coast Life Insurance Company	259	32	226	2 35	2 06	116	190	‡61 2
California Compensation and Fire Company	293	31	263	2 35	2 11	125	137	‡91 2
Royal Insurance Company	81	30	50	2 35	1 47	22	176	12 7
California Union Insurance Company	66	29	37	2 35	1 33	7	71	10 2

* Less than statutory 2 35 percent rate because company had annuity business where rate was 1 75 percent
† Data not reported by company, hence percent own occupancy could not be computed
‡ Occupied more than 50 percent of building

SOURCE Premium tax returns and annual statements for 1962 filed with Insurance Commissioner by insurance companies

FIGURE 3-2

PROJECTED INCREASE IN THE PRINCIPAL OFFICE DEDUCTION



CHAPTER IV

RETALIATORY TAXATION

The taxation of insurance companies by states is unique in that most states have "retaliatory" legislation that in effect provides that if one state taxes or regulates the insurance companies of another more or differently than the second state taxes or regulates the insurance companies of the first, then the second state may, in turn, tax or regulate the insurance companies of the first state so that the taxes or regulations borne by the companies are equalized between the two states The essence of retaliatory legislation is simply "revenge "[1] The conflict which occasions the laws is between states, not between domestic and foreign companies in the same state The effect of these statutes is to subject insurance companies of higher taxing and more stringently regulated states to retaliation in other states Hence, the domestic companies enduring retaliation because they are based in the higher taxing state have, in many instances, brought pressure to bear on the legislatures of their own state to keep foreign rates low [2]

Retaliatory legislation is one of the methods that has been used by the insurance industry to oppose increases in taxes levied or the imposition of certain types of regulation by state and local governments [3]

Forty-four states now have retaliatory provisions in their statutes relating to insurance companies As far as the states are concerned, retaliatory legislation serves two purposes For those states that have domestic companies, if there is any appreciable number of domestic companies in the state, the purpose is generally to protect the domestic companies from higher tax rates and more stringent regulations that may be imposed by other states on their operations therein. However, for those states that have relatively few domestic companies operating outside of their borders, the purpose is to raise revenue Retaliatory laws are generally applicable to similar impositions and bases but the question of what is a similar imposition or a similar base has posed many problems since the retaliatory provisions of the various states contain many dissimilarities (See Figure A-4)

California is the only state in which the retaliatory provisions of the law are contained in the Constitution and only in California is it required that taxes, fees, or regulations be discriminatory with respect to the California insurer as compared with a domestic insurer of the other state or country before California may take retaliatory action.

Present California Provisions

Presently, the retaliatory provisions in the California law are in paragraph (3) of subsection (f) of Article XIII, Section 14¼ of the

[1] Raymond Harris "Lex Talionis," *Examination of Insurance Companies,* Vol 5, Privately Printed, New York, 1955

[2] Robert S Felton, "Retaliatory Insurance Company Taxation," *The Journal of Insurance,* September 1961, p 71

[3] *Ibid*

Constitution, in Chapter 3 5, Sections 12281 through 12290 of Part 7 of Division 2 of the Revenue and Taxation Code; and in Section 685 of the Insurance Code.

Paragraph (3) of Subsection (f) of Article XIII, of Section 14¼ of the California Constitution states.

> When by the laws of any other state or country any taxes, fines, penalties, licenses, fees, deposits of money or securities or other obligations or prohibitions are imposed on insurers of this State doing business in such other state or country, or upon their agents therein, in excess of those imposed upon insurers of such other state or country or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions of whatsoever kind may be imposed by the Legislature upon insurers of such other state or country doing business in this State, or upon their agents herein.[4]

Chapter 3 5 which was added to Part 7 of Division 2 of the Revenue and Taxation Code in 1961[5] provides for annual retaliatory tax information returns; penalties for the failure to file the returns on time; the recommendation to the Board of Equalization by the Insurance Commissioner of the amount of retaliatory tax payable by each insurer; the assessment of the tax due by the Board of Equalization annually; the applications for correction of the tax due by insurers, increases or decreases of assessment, due dates, payment of the tax, interest and penalties for delinquencies; and deficiency assessments.

Section 685 of the Insurance Code which became effective in September of 1959 states:

> When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this State, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this article[6]

[4] State Board of Equalization, *California Tax on Insurers*, 1963, p 6
[5] Statutes, 1961, p 984, in effect March 31, 1961
[6] Added by Statutes 1959, p 4945, in effect September 18, 1959

Section 685 also contains Subsection 685 1 which states that Section 685 shall not apply to personal income taxes, ad valorem taxes on real or personal property, special purpose obligations or assessments imposed before the effective date of the section by another state or foreign country in connection with particular kinds of insurance, other than property insurance However, deductions from premiums taxes or other taxes allowed because of real estate or personal property taxes are to be taken into consideration when determining the amount of the retaliatory tax.

Subsection 685 2 clarifies the determination of the domicile of alien insurers

Subsection 685 3 imposes upon the Insurance Commissioner the duty of enforcing the provisions of Section 685 and upon the State Board of Equalization, the Board of Control, and the State Controller, the duties of enforcing the provisions of Section 685 that fall within the scope of their duties and powers

Subsection 685.4 makes the provisions of Section 685 applicable to reciprocals, interinsurance exchanges, and fraternal benefit societies.

History

Section 14¼ of Article XIII of the California Constitution authorized the Legislature to adopt a retaliatory tax on insurance companies under the following conditions· (1) if taxes, fines, penalties, licenses, fees, deposits of money for securities or other obligations or prohibitions were imposed on California insurers doing business in another state or country, or upon their agents therein, in *excess* of those imposed upon the insurers of the other state or country, or their agents, in California, (2) for as long as the retaliatory laws of the foreign state or country applying to California insurers or their agents were in force; and (3) if the same obligations and prohibitions could be imposed by the Legislature on the insurers of the other states or their agents, for the Constitution provided that the same ones were to be imposed [7]

Since at least as early as 1872, California has taxed foreign insurers[8] and a retaliatory tax was in effect from 1872 until 1945 when in response to a ruling by the United States Supreme Court the Legislature repealed the retaliatory provisions[9] in the California law In 1959, Chapter 2120 was adopted by the Legislature amending Section 685 of the Insurance Code to provide for such taxes to be exacted in California when other states taxed or regulated California insurance companies more stringently than their own home-based companies The 1959 retaliatory statute was designed to cover all foreign insurance companies from all states and countries However, some foreign companies pointed to the present language of the California Constitution and claimed exemption from the effect of the statutes [10]

[7] California Constitution, Article XIII, Section 14¼, subdivision (f), paragraph 3
[8] Political Code, Section 622
[9] It was held in *U S v South-Eastern Underwriters Association* (1944), 322 U S 523, that insurance could be the subject of interstate commerce However, any effect that this decision might have had upon retaliatory insurance taxes was stayed by Congressional action (*Prudential Insurance Co v Benjamin* (1946), 66 S Ct 1142)
[10] See *Franklin Life v State Board of Equalization*, Civil 21798, District Court of Appeals, First Appellate Division, California, Pending

In 1960 the language of the statute was ruled by the Attorney General to be in conflict, in part, with the provisions of the Constitution. To quote the Attorney General

> . . the Constitution expresses the power of the Legislature to impose retaliatory taxes when, by the laws of another state, taxes are imposed on California insurers . in excess of those imposed upon insurers of such other state In contrast, the Insurance Code section appears to make the test for application of retaliation on the basis of a comparison between amounts imposed on California insurers by the other state and amounts imposed by the laws of California upon similar insurers of the other state doing business here [11]

He further stated:

> . . . the Insurance Code section provides that where the foreign state charges California companies more than California charges the companies of that state, then California shall retaliate by assessing additional tax sufficient to bring the California exaction up to the amounts which the foreign state would charge a California company on the same business But the Constitution prescribes that California taxing authorities may do this only when the foreign state charges California companies and their agents doing business there more than it charges its own domestic companies and their agents in that state . . .[12]

Assembly Constitutional Amendment 27, which is now proposed, is an amendment to eliminate this conflict and to prevent foreign insurance companies from not paying retaliatory taxes because of the present wording of the constitutional provision In effect, the proposal is to insure that foreign insurance companies will be treated in California as California insurance companies are treated in the foreign states

Proposed Constitutional Amendment

Assembly Constitutional Amendment 27, now proposed as an amendment to subdivision (f) of Section 14¼ of Article XIII of the California Constitution, adopted June 26, 1963, with the Senate concurring, to be submitted to the voters in November of 1964, reads as follows·

CALIFORNIA
Regular Session

ASSEMBLY CONSTITUTIONAL AMENDMENT No. 27*

A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending subdivision (f) of Section 14¼ of Article XIII, relating to retaliatory taxation of insurers

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1963 Regular Session commencing on the seventh day of January, 1963, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be

[11] *The Tax Digest,* First Quarter 1964, p 24
[12] *Ibid*
* California Regular Session, 1963 New Laws, Page 1765

amended by amending subdivision (f) of Section 14¼ of Article XIII thereof, to read

(f) The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property except:

(1) Taxes upon their real estate

(2) That an insurer transacting title insurance in this State which has a trust department or does a trust business under the banking laws of this State is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this State

(3) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this State, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this paragraph (3) of subdivision (f).

The provisions of this paragraph (3) of subdivision (f) shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state or foreign country in connection with particular kinds of insurance, other than property insurance, except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration in determining the property and extent of retaliatory action under this paragraph (3) of subdivision (f).

For the purposes of this paragraph (3) of subdivision (f) the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

The provisions of this paragraph (3) of subdivision (f) shall also be applicable to reciprocals or interinsurance exchanges and fraternal benefit societies.

(4) The tax on ocean marine insurance.

(5) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

Adopted, June 21, 1963

Since this amendment contains the wording of Section 685 of the Insurance Code and is proposed to eliminate the conflict between Section 685 of the Insurance Code and the constitutional provision governing retaliatory taxation, a comparison will be made between the constitutional amendment and the code provision, and the effects of both, and

an analysis will be made to determine if the proposed changes will succeed in this objective.

Assembly Constitutional Amendment No. 27 and Section 685 of the Insurance Code Paragraph (3) of subdivision (f) in the amendment to Section 14¼ of Article XIII of the Constitution adds the words "or pursuant to" after the words "whereby" so that retaliatory action may be taken by this state in the cases where California insurers are discriminated against through *executive actions* taken pursuant to the laws of the "foreign" state, not just when the law discriminates

"Or *foreign* country" was the phrase used after "any other state" when the Insurance Code provision was written Since the constitutional provision stated in any "other state or country," it might have been construed as applying to the United States Therefore, the word "foreign" was apparently required for clarification

The addition of the words "in aggregate" after "any taxes, licenses, and other fees" was necessitated in order that a comparison might be made between the aggregate taxes, licenses, and fees, imposed upon California insurers in the other state or foreign country and those imposed in California upon their insurers These aggregates can, in most cases, be feasibly computed and compared Without the words "in the aggregate," the Insurance Commissioner was being asked to compare unlike entities Comparisons had, at times, not only been difficult but impossible [13] It should also be noted that it had been held that the aggregate of all taxes had to be compared with the aggregate of taxes in the other state to determine if retaliation was in order [14] The words "fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions" were placed after the words "in the aggregate" because these are not directly amenable to summation in dollars and cents in every case and therefore are more practicably retaliated against separately and individually rather than in the aggregate, and not necessarily in terms of money

The word "requirements" was added in the code after the word "deposit" so that not only actual deposits made but whatever deposits were required whether they had as yet been made or not by California insurers could be the object of retaliation

The word "material" was added in the code before the word "obligations" because it had proven difficult to compare or assess nonmaterial obligations

The word "restrictions" was added in the code provision to permit California to retaliate when California companies were subject to restrictions in other states in which they were doing business, which California did not impose upon their insurers or their agents. There were many such

The words "or would be" were added to restrain other states from discriminatory impositions upon California insurers by putting them on warning that if any discriminatory provisions were applied to California insurers they could expect the same ones to be applied to their domestic insurers doing business in California

[13] Robert S Felton, *op cit*, p 72, and *State* v. *Continental Insurance Company*, 67 Indiana Appellate 536, 116 F E 929

[14] *Employers Casualty Company* v *Hobbs*, 149 Kansas 774, 89 p 2d 933, 1939

"Upon California" insurers was substituted for "insurers of this state" for clarity.

"Or representatives of such insurers" was added so that not only agents but representatives were covered under this provision. In some states attempts had been made to tax representatives rather than insurers or their agents, since no retaliation was foreseen as resulting from the taxing of representatives [15] New Jersey, for example, was one of these states

The phrase "which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers of such other state or country under the statutes of this state," was substituted for "in excess of those imposed upon insurers of such other state or country or upon their agents therein" to clarify the provision and to make it more easily administerable since it provides for direct comparisons of aggregates or of separate provisions that were directly imposed.

The words "or are so applied" were added so that retaliation could be made for as long as discriminatory laws were applied to California insurers.

The words "of whatever kind" were added after the words "or restriction" to strengthen the preventive effect of the provision as it applied to restrictions.

But most important the word "may" in the clause "may be imposed by the Legislature" was changed to "shall" in the Insurance Code making the California provision *mandatory*—rather than permissive.

The sentence "Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be by such state or country within the meaning of this paragraph (3) of subdivision (f)" was added to permit retaliation against local taxes and to permit local taxes to be included when computing the aggregate dollar amount paid in another state or country by California insurers or their agents or representatives in taxes, licenses, and fees so that this aggregate might be compared with the aggregate dollar amount paid in taxes, licenses, and fees to California by the insurers, and agents, or representatives from another state.

All in all Section 685 of the Insurance Code is much stronger and clearer in so far as its retaliatory effects are concerned than the existing constitutional provision and bringing the Constitution into conformity with this section will serve to strengthen the retaliatory power of the California law,[16] so that it cannot only be used against states that have clearly discriminatory legislation favoring their own insurers, but against all states in which California companies pay more in taxes and fees or are under more severe impositions than the companies of

[15] Harris, *op cit*, pp 330–331

[16] California under its Constitution cannot retaliate if California companies and domestic companies pay the same rates and fees and are subject to the same regulations, even if the taxes or fees in the other state are higher than those paid by the other states' insurers in California and its regulations are more stringent than California regulations

the other states have imposed upon them in California; and it will furthermore eliminate the conflicts between the Constitution and the code.

Arguments for the Amendment (Assembly Constitutional Amendment 27)

The arguments presented for the amendment by its proponents are as follows:

Forty-four states, including California, have enacted insurance company retaliatory laws This proposal revises the provisions of California's Constitution to parallel those in the laws of the 43 other states

Retaliatory laws primarily affect the total amount of taxes, licenses and fees a foreign insurer must pay to a state that has higher taxes, licenses and fees than California, the retaliatory law operates automatically to impose on insurers from such other state the same higher taxes, licenses and fees that such state imposes on California insurers

The present California constitutional provision permits retaliation only if the other state discriminates between insurers domiciled in that state and California insurers This requirement is unique to California, and is not in the law of any other state

The principal change made by this amendment deletes this unique requirement, so that California's retaliatory law hereafter will apply to insurers from other states in the same manner the other 43 states now apply their retaliatory laws to California insurers

Additionally, this amendment changes the language of California's constitutional provision to conform with that of the model retaliatory law, which model law was added to the California Insurance Code by Chapter 2120, Laws 1959, and has been included in all modern insurance codes enacted by other states since 1958

These phraseology changes prescribe in detail the rules included in this model law for determining how and when retaliation is to be applied. Adding these details to the Constitution does not change the substance of the law in these respects, but will prevent any possible confusion in applying the Insurance Code retaliatory provisions, and will promote uniformity in interpreting retaliatory laws throughout the country

Including such details of insurance company taxation in the Constitution has been done in California since 1910 Other constitutional provisions prescribe the tax base and rate and limit the Legislature's power to change the rate Under those sections, insurance companies are taxed on the basis of insurance premiums received, a form of gross income tax which results in $2 35 tax on every $100 premiums paid by California's residents, less a wise deduction for local real estate taxes paid on investments in California principal office properties

This particular constitutional amendment will close the gap that now permits foreign insurers from some states to escape payment of retaliatory taxes to California, and will bring in additional tax revenue from such foreign insurers

> This amendment received the unanimous vote support of the members of the California State Legislature at the 1963 session, and its adoption by the people is recommended Vote YES.[17]

No arguments have been presented against the amendment

As for the arguments presented this amendment *will eliminate* the conflict between the statute, i.e., Section 685 of the Insurance Code and the Constitution; it should act to strengthen the retaliatory effects of the California laws so that foreign insurance companies in the state will be taxed more like California insurance companies when they are doing business in other states, and it is true that, the present constitutional provision does act to permit retaliation *only* if another state discriminates between insurers domiciled in that state and California insurers This requirement *is* unique to California

The amendment will eliminate the technicality under which some foreign insurance companies escaped payment of retaliatory taxes in California; [18] and the amendment will bring in additional tax revenue. However, this revenue will not, in all probability, amount to very much (The revenue from retaliatory taxes in 1963 was $873,484 in all) [19]

The amendment will result in a more equitable tax between California and other states; however, the question of what is an equitable tax, in this instance, is a very difficult one, but it will mean that the tax paid by foreign insurance companies in California and California companies in other states will be closer to being equalized.

RATIONALE

The ostensible purpose and the actual rationale of the retaliatory provision merit further discussion in a consideration of the proposed constitutional amendment and the problems pertaining thereto.

Purpose

The ostensible purpose of the retaliatory provision is to prevent other states from discriminating against California insurance companies by imposing higher taxes or fees or more stringent regulations upon California companies than they do upon their own insurance companies. However, as it was pointed out above, the conflict reflected in the retaliatory provisions is between states and not between domestic and foreign insurance companies. The fact of the matter is that domestic insurance companies attempt to keep premiums taxes and other taxes, licenses, fees, penalties, restrictions, and requirements imposed upon foreign insurance companies in the state lenient, so that they will not be discriminated against in other states. Their attempts, when successful, defeat the second purpose of retaliatory provisions, i e, the raising of revenues by states Also, as noted above, the defensive purpose of the retaliatory provision is more important in states that have a relatively high number of insurance companies, and California is one of these. The second purpose is more important for those that have relatively few domestic insurance companies

[17] Statement of Lester A McMillan, Assemblyman, 61st District and Lou A Cusanovich, Assemblyman, 64th District, September 19, 1963
[18] See Franklin Life, *op cit*
[19] See California State Board of Equalization, *Annual Report*, 1962–63, *op cit*, p 16

Specifically, California had 830 insurance organizations, including fraternal societies authorized to transact business in the state in 1963, and out of this number 147 were domestic companies and 684 were foreign. The revenue from retaliatory taxes is not a major part of the state revenue, as evidenced by the fact that in 1963 retaliatory taxes in California amounted in total to only $873,484 as noted above,[20] or less than one-twentieth of 1 percent of the total tax revenue for 1962.[21] Actually, the revenue to be obtained from the retaliatory provision, in itself, probably does not justify having a retaliatory provision.

Actual Rationale

The actual rationale for the provision is that the application of the retaliatory laws acts as a deterrent to state taxation on the insurance industry. Section 685 of the Insurance Code is, almost word by word, the "model" provision recommended to state legislatures by the insurance industry.

Felton has stated "granting the assumptions that the domestic companies are politically powerful, retaliatory laws help the insurance industry in that the application of the laws acts as a brake on taxes."[22] It is true that insurers are disadvantaged by retaliatory taxation provisions in the short run, for they usually result in some insurers paying more in taxes in retaliating states. But, in the long run, insurers as a group pay less in taxes because of these provisions, since legislators, when considering measures affecting insurers, do consider retaliatory effects in instance after instance. The insurance industry apparently understands this well.[23]

The State Department of Finance has stated:

> Whether the insurance companies have sponsored this legislation or not, in their resistance to tax change they have benefited by it. The home-owned companies in all but a half-dozen states are able to say, 'Don't raise our taxes. If you do, we will have to pay more in other states.' The effectiveness of this barrier is demonstrated by the fact that of the 48 states, only 9 increased their insurance tax rates in the last 12 years. They were Alabama, Colorado, Georgia, Mississippi, Montana, New Mexico, Oregon, South Carolina and Wyoming. None of these is an outstanding insurance state.[24]

Incidence

In the short run, retaliatory taxation provisions serve to decrease insurers' profits not only because insurers may pay higher taxes, licenses, fees, or be subject to more stringent restrictions in retaliatory states but also rates are not always set and approved, in cases where they are subject to approval, with retaliatory taxes fully considered in the costs on which they are based. As Felton has stated.

> If taxes are paid on a retaliatory basis, they are not always passed through in the rate structure. If State A imposes a greater

[20] California State Board of Equalization, *Annual Report*, 1962–63, *op cit*, p. 16.
[21] California Franchise Tax Board, *Annual Report*, 1962, p. vi.
[22] Robert S. Felton, *op cit*, pp. 77–78.
[23] Felton, *op cit*, p. 71.
[24] State Department of Finance, Budget Division, *Highlights of Proposal for Quarterly Insurance Tax Payments*, May 1, 1963, p. 3.

tax burden on foreign companies, and a company of State A is operating in State B where the tax burden on foreign companies is lower, the company of State A pays the higher tax in State B. When the rate filings are made in State B, the rate cannot include enough for taxes paid on the retaliatory basis, because there may be companies from almost every other state operating in State B which do not pay the higher tax because their states do not charge a greater amount to foreign companies Therefore, it is only the companies of State A that must pay the higher taxes Apparently, taxes paid under retaliation are not included in the rate because the commissioner in State B cannot be concerned about what happens in other states, that is, he is not concerned with the fact that State A taxes foreign companies at a higher rate Another reason why retaliatory taxes are not included in the rates is that the rate filings do not assume *all* companies will pay on a retaliatory basis for the same risk [25]

The longrun effect of the retaliatory provision on taxes paid by insurers has probably been to keep them at a lower level than they otherwise would have risen to, as the material above indicated, and consequently, they have kept premiums lower and insurers' profits higher than would otherwise have been the case

SUMMARY AND CONCLUSIONS

In summary, retaliatory taxation provisions exist, in California and in 43 other states, and subject California insurers doing business in those states to the same taxes, fees, and regulations that are imposed upon the insurers of those states doing business in California These provisions have served as a brake on the taxation of insurance companies The problem now is whether to amend the Constitution so that Subdivision (f) of Section 14½ of Article XIII shall be made to conform to Section 685 of the Insurance Code, the "model" provision approved by the insurance industry

It would appear to be advantageous at this time to make this change A strong moral case can be made against retaliatory taxation provisions The question to be asked would be Should the principal of "an eye for an eye" rather than positive objectives be the basis for any legislation However, from a pragmatic standpoint, these provisions do defend California companies from a certain amount of discrimination Consequently, it may be argued that California should not be in the small group that do not have such laws The other point is that as long as we have these provisions they may as well be strengthened and made more effective The proposed constitutional amendment would, in all probability, prove to be more effective than the preceding one since it is stronger and eliminates any alleged conflicts between the Constitution and the provisions of the code

[25] Robert S Felton, *op cit*, p 78

TABLE 4-1

Insurance Tax Laws

Outline of Rates and Other Major Features of State Taxes Applied to Out-of-state Insurance Companies—1962

	Tax rates, percent				
	Life except annuities (percent)	Fire (percent)	Casualty (percent)	In lieu features	Retaliatory provisions
Alabama	3 00	2 50	3 00	No	No
Alaska	3 00	3 00	3 00	No	No
Arizona	2 00	2 00	2 00	Yes	Yes
Arkansas	2 50	2 00	2 50	Yes	Yes
CALIFORNIA	2 35	2 35	2 35	Yes	Yes
Colorado	2 25	2 25	2 25	Yes	Yes
Connecticut	1 75	2 00	2 00	Partly	Yes
Delaware	1 75	1 26	1 75	Yes	Yes
Florida	2 00	2 375*	2 00	Yes	Yes
Georgia	2 25	3 25	2 25	No	Yes
Hawaii	2 50	3 25	3 25	Yes	No
Idaho	3 00	3 00	3 00	Yes	No
Illinois	2 00	2 50*	2 00	No	Yes
Indiana	3 00	3 50	3 00	No	Yes
Iowa	2 00	2 00	2 00	No	Yes
Kansas	2 00	4 75	2 00	No	Yes
Kentucky	2 00	2 75	2 00	No	Yes
Louisiana	1 70	4 80	1 75	No	Yes
Maine	2 00	3 50	2 00	No	Yes
Maryland	2 00	2 00	2 00	Yes	Yes
Massachusetts	2 00	2 00	2 00	No	Yes
Michigan	2 00	3 00	2 00	No	Yes
Minnesota	2 00	2 50*	2 00	No	Yes
Mississippi	3 00	3 50*	3 00	No	No
Missouri	2 00	2 00	2 00	No	Yes
Montana	2 00	2 25	2 00	Yes	Yes
Nebraska	2 00	2 50	2 00	No	Yes
Nevada	2 00	2 00	2 00	No	Yes
New Hampshire	2 00	2 00	2 00	No	Yes
New Jersey	2 00	2 00*	2 00	No	Yes
New Mexico	2 50	2 50	2 50	Yes	No
New York	1 75	2 00*	2 00	No	Yes
North Carolina	2 50	1 00	2 50	Yes	No
North Dakota	2 50	3 00	2 50	Yes	Yes
Ohio	2 50	3 00	2 50	Yes	Yes
Oklahoma	4 00	4 31	4 00	Yes	Yes
Oregon	2 25	2 75	2 25	Yes	Yes
Pennsylvania	2 00	2 00	2 00	No	Yes
Rhode Island	2 00	2 00	2 00	No	Yes
South Carolina	3 00	4 10	3 00	No	Yes
South Dakota	2 50	3 00	2 50	Yes	Yes
Tennessee	2 00	2 50	2 00	No	Yes
Texas	3 30	5 10	4 25	Yes	Yes
Utah	2 25	2 25	2 25	Yes	Yes
Vermont	2 00	2 00	2 00	No	Yes
Virginia	2 25	2 25	2 25	Yes	Yes
Washington	2 00	2 00	2 00	Yes	Yes
West Virginia	3 00	3 50	3 00	No	Yes
Wisconsin	2 00	4 375	----	No	Yes
Wyoming	2 50	2 50	2 50	Yes	Yes

* Excluding local premiums taxes for support of fire departments, firemen's pensions, etc

Italic type indicates higher than California

SOURCE *State Tax Guide* Commerce Clearing House, Chicago, *State Taxation Manual*, Association of Casualty and Surety Companies and National Board of Fire Underwriters, 1959, *Abstract of Fees and Taxes*, New York Insurance Commission

CHAPTER V

COLLECTIONS

The responsibility for overseeing and effecting the proper payment and collection of the gross premiums tax, and taking care of difficulties that may arise in the process, is divided among three state agencies in California, i e , the Insurance Commissioner, the State Board of Equalization, and the Controller.

The Collection Procedure

Presently, each insurer transacting business in the State of California files an annual statement with the Insurance Commissioner. Accompanying this statement is a tax return, which must be filed on or before June 15, and show the computation of the amount of tax for the period covered by the return, and the total amount of any prepayments Separate returns are filed with respect to (a) life insurance, (b) ocean marine insurance, (c) title insurance, and (d) insurance other than life insurance (or life insurance and disability insurance), ocean marine insurance or title insurance [1]

It is required that a remittance payable to the Controller for the amount of the tax computed and shown on the tax return, less any prepayments that have been made, accompany the return when it is filed.[2]

The Insurance Commissioner may, if he finds there is good cause therefor, extend the time for filing a tax return or paying any amount required to be paid with the return for 10 days [3] The insurer to whom an extension is granted is required to pay, in addition to the tax, interest at the rate of one-half of 1 percent per month, or any fraction thereof, from June 15 until the date of payment [4]

A duplicate copy of each tax return received by the Insurance Commissioner is forwarded to the Board of Equalization [5] The Board of Equalization then assesses the tax due in accordance with the data reported by the insurer on his return [6] The Board of Equalization thereafter transmits the notice of its assessment to the Insurance Commissioner and the Controller, and if the board's assessment differs from the amount of the tax as computed by the insurer, notice is sent to the insurer.[7] When it makes its assessment, the Board of Equalization may offset an overpayment for one calendar year against an underpayment for another calendar year, against penalties, and against any interest due on an underpayment [8]

As soon is is practicable after the insurer files his return, the Insurance Commissioner examines the return and any other information

[1] Revenue and Taxation Code, Section 12302
[2] Revenue and Taxation Code Section 12305
[3] Revenue and Taxation Code, Section 12306
[4] Revenue and Taxation Code, Section 12307
[5] Revenue and Taxation Code, Section 12411
[6] Revenue and Taxation Code, Section 12412
[7] Revenue and Taxation Code, Section 12413
[8] Revenue and Taxation Code, Section 12414

he may have in his possession pertaining to the matter, and determines the correct amount of tax for each particular insurer.[9] If the Insurance Commissioner determines that the amount of tax disclosed by the return and assessed by the Board of Equalization is less than the amount of tax disclosed by his examination, he sends a written proposal to the Board of Equalization containing a deficiency assessment for the difference. The proposal sets forth the basis for the deficiency assessment and the details of its computation.[10]

If an insurer fails to file a return, the Insurance Commissioner may require a return. A notice is mailed to the insurer to file a return by a specified date. Alternatively, the Insurance Commissioner may, without requiring a return, or if no return was filed after a demand upon the insurer was made, make an estimate of the amount of tax due for the calendar year or years in respect to which the insurer failed to file the return. The estimate is made from any available information in the Insurance Commissioner's possession. The Insurance Commissioner then sends a written proposal to the Board of Equalization containing a deficiency assessment for the amount of estimated tax. The proposal sets forth the basis of the estimate and the details of the computation of the tax.[11]

The Board of Equalization then makes a deficiency assessment on the basis of the proposal submitted to it by the Insurance Commissioner.[12] There may be one or more deficiency assessments for one or more calendar years.[13] The Board of Equalization may offset overpayments for one year against underpayments, penalties, or interest on underpayments for other years when making deficiency assessments.[14] The insurers are notified by the Board of Equalization of any deficiency assessment made.[15]

An insurer against whom a deficiency assessment is made may petition for a redetermination of the deficiency assessment within 30 days after service upon the insurer of the notice thereof, by filing with the Board of Equalization a written petition setting forth the grounds of objection to the deficiency assessment and the correction sought. At the time the petition is filed with the Board of Equalization, it is required that a copy of the petition be filed with the Insurance Commissioner. If a petition for redetermination is not filed within the 30-day period prescribed, the deficiency assessment becomes final and due and payable at the expiration of the 30-day period.[16]

If the petition for redetermination is filed as prescribed, the Board of Equalization reconsiders the deficiency assessment, and if the insurer has requested it, grants him an oral hearing for the presentation of evidence and argument. The hearing is held before the Board of Equalization or its authorized representative.[17]

The Board of Equalization may decrease or increase the amount of the deficiency assessment before the assessment becomes final. However,

[9] Revenue and Taxation Code, Section 12421.
[10] Revenue and Taxation Code, Section 12422.
[11] Revenue and Taxation Code, Section 12423.
[12] Revenue and Taxation Code, Section 12424.
[13] Revenue and Taxation Code, Section 12425.
[14] Revenue and Taxation Code, Section 12426.
[15] Revenue and Taxation Code, Section 12427.
[16] Revenue and Taxation Code, Section 12428.
[17] Revenue and Taxation Code, Section 12429.

the amount may only be increased if a claim for the increase is made by the Insurance Commissioner or the Board of Equalization at or before the hearing referred to above.[18] The order or decision of the Board of Equalization upon a petition for redetermination of a deficiency assessment becomes final 30 days after a notice thereof is served on the insurer [19] Copies of each notice of a deficiency assessment made by the Board of Equalization are transmitted to the Insurance Commissioner and the Controller The Controller keeps a record of all the assessments and any payments made thereon [20]

Any amounts of taxes, interest and penalties not remitted to the Insurance Commissioner with the original return of the insurer are payable to the Controller [21]

An insurer who fails to pay any tax, except a tax determined as a deficiency assessment by the Board of Equalization, within the time required, pays a penalty of 10 percent of the amount of the tax, in addition to the tax, plus interest at the rate of ½ of 1 percent per month, or any fraction thereof, from June 15 of the year in which the tax became due and payable until the date of payment [22]

A similar provision applies to deficiency assessments except that the 10 percent applies to the deficiency assessment exclusive of interest and penalties and no interest need be paid on penalties [23] When a deficiency assessment is made on the basis of a proposal submitted by the Insurance Commissioner concerning the taxes of an insurer who failed to file a return, a penalty of 10 percent of the amount of the deficiency assessment is added to the tax due [24] A similar penalty is applied when a deficiency assessment is made on the basis of a proposal submitted by the Insurance Commissioner concerning an underestimate of the tax due where the deficiency was due to negligence or disregard of the applicable rulings without intent to defraud on the part of the insurer [25] If fraud was involved, the penalty becomes 25 percent of the amount of the deficiency assessment and is in addition to any other penalties that may have been imposed [26]

The Controller may at any time within four years after any amount of tax becomes due and payable, and at any time within two years after any deficiency assessment of tax becomes due and payable, bring an action to collect the delinquent taxes, and any interest and penalties owing [27] The action is prosecuted by the Attorney General [28] In the action a certificate of the Controller or of the Secretary of the Board of Equalization, showing unpaid against an insurer, may be used in evidence.[29]

The Controller may recover any refund which has been erroneously made or any credit which has been erroneously allowed in a court action [30]

[18] Revenue and Taxation Code, Section 12430
[19] Revenue and Taxation Code, Section 12431
[20] Revenue and Taxation Code, Section 13435
[21] Revenue and Taxation Code, Section 12601
[22] Revenue and Taxation Code, Section 12631
[23] Revenue and Taxation Code, Section 12632
[24] Revenue and Taxation Code, Section 12633
[25] Revenue and Taxation Code, Section 12634
[26] Revenue and Taxation Code, Section 12635
[27] Revenue and Taxation Code, Section 12676
[28] Revenue and Taxation Code, Section 12678
[29] Revenue and Taxation Code, Section 12681
[30] Revenue and Taxation Code, Section 12691

The Controller, between December 10 and December 15, transmits an annual statement to the Insurance Commissioner showing the names of all insurers that failed to pay any tax that became delinquent in the preceding June on or before December 10, or any tax which has been unpaid for more than 30 days from the date it became due and payable as a deficiency assessment The statement shows the amount of the tax, interest, and penalties due from each insurer [31]

The Insurance Commissioner, after a hearing, revokes the certificates of authority for insurers which do not establish to his satisfaction, at or before the hearing, that taxes, interest, and penalties due have been paid [32] An insurer whose certificate of authority has been revoked may have the certificate restored by the Insurance Commissioner during the period for which it was issued upon payment by the insurer of all taxes, interest, and penalties due and a fee of $10 to the Insurance Commissioner [33]

If an amount in excess of $250 has been illegally assessed, the Board of Equalization records this fact and certifies to the State Board of Control the amount assessed in excess of the amount that should have been assessed legally and the insurer against whom the assessment was made If the State Board of Control approves, it authorizes the cancellation of the amount upon the records of the Controller and the Board of Equalization If an amount not exceeding $250 has been illegally assessed, the Board of Equalization, without certifying this fact to the State Board of Control, authorizes the cancellation of the amount upon the records of the Controller and the State Board of Equalization The State Board of Equalization mails a notice to the insurer of any authorized cancellation [34]

If the Insurance Commissioner discovers an amount assessed by the Board of Equalization which he believes to be illegally assessed, he notifies the Board of Equalization of this fact in writing and sends them a statement containing any information he may have concerning the correctness of the assessment [35]

If the Board of Equalization determines that any tax, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the Board of Equalization notes the fact in its records and certifies to the Board of Control the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom they were collected or by whom paid If approved by the Board of Control the excess is certified to the Controller for credit or refund If the amount involved is less than $250, the Board of Equalization may certify the amount to the Controller for credit or refund without obtaining approval from the State Board of Control The Controller, when he receives a certification for a credit or refund, credits the insurer, deducting the credit or refund from any amounts due and payable, and if there is an excess over such amounts, refunds the balance [36] A credit or refund must be allowed or approved within four years after June 15 of the year following the year for which the overpayment was made

[31] Revenue and Taxation Code, Section 12801
[32] Revenue and Taxation Code, Section 12802
[33] Revenue and Taxation Code Section 12803
[34] Revenue and Taxation Code, Section 12851
[35] Revenue and Taxation Code, Section 12852
[36] Revenue and Taxation Code, Section 12977.

or within six months after the date a deficiency assessment became final, or after six months from the date of the overpayment, whichever period expires the later, unless a claim for a refund or credit is filed with the Insurance Commissioner of the Board of Equalization before the expiration of the periods noted [37] If the claim for a refund or a credit is presented to the Insurance Commissioner, he transmits it to the Board of Equalization together with a statement of any information he may have concerning a subject of the claim [38]

Interest is allowed upon the amount of any overpayments of insurers' taxes at the rate of 6 percent per annum from the due date of the tax for the year for which the overpayment was made No interest is paid to the insurers on refunds or credits.[39] However, if the Board of Equalization determines that any overpayment has been made intentionally or made where there was no reasonable legal liability, no interest is allowed on the overpayment [40] Claimants may sue the Board of Equalization when there is disagreement on claims for refunds or credits upon which the Board of Equalization has taken action [41]

In summary, then, the Insurance Commissioner, who is also responsible for the enforcement of all state regulations concerning insurers, receives annual statements from all insurers, conducts periodic audits of insurers, and receives the tax returns, which he examines for accuracy, and the insurers' checks in payment of their taxes, which he deposits in the bank to the account of the Controller The Board of Equalization assesses the tax due from insurers on the basis of the return and the Insurance Commissioner's findings The board sends a notice of each assessment to the Insurance Commissioner and the Controller. The Insurance Commissioner, after the tax is assessed, when he examines the return, determines if there are deficiencies in the assessments and notifies the Board of Equalization if there are, or of estimated taxes due when no returns are filed The Board of Equalization considers and rules on deficiency assessments The Controller brings action to collect delinquent taxes and submits an annual report of delinquent insurers to the Insurance Commissioner The Insurance Commissioner is responsible for revoking insurers' certificates to do business and restoring them when they have taken care of any delinquencies If there has been an illegal assessment in excess of $250, the State Board of Control must authorize its cancellation If the illegal assessment is less than $250, the State Board of Equalization alone may authorize its cancellation

If the Insurance Commissioner discovers a Board of Equalization assessment which he believes to have been illegally assessed, he notifies the Board of Equalization If the Board of Equalization discovers any erroneous or illegal computations or collections, it notes the fact, notifies the Board of Control, and any excess is credited or refunded by the Controller If the amount is under $250 the Controller will make the credit or refund upon receipt of a certificate from the Board of Equalization without any further certification being required If a

[37] Revenue and Taxation Code, Section 12978
[38] Revenue and Taxation Code, Section 12932
[39] Revenue and Taxation Code, Section 12982
[40] Revenue and Taxation Code, Section 12984
[41] Revenue and Taxation Code, Section 13103

claim for a refund or a credit is presented to the Insurance Commissioner, he transmits it to the Board of Equalization

In conclusion, it would seem that having three agencies involved in the collection of the gross premiums tax makes for some undue complication One of the problems occasioned therefrom arises from the fact that the insurer, on many matters, has to correspond with all three agencies

Proposed Changes in Collection Procedure

Under existing law, as noted above, insurers' tax returns, together with a remittance payable to the State Controller for the amount of tax shown thereon, are submitted to the Insurance Commissioner on June 15. The State Board of Equalization assesses the tax, as required by the Constitution, and the Controller records all tax payments, and collects the taxes whether they be delinquent or not.

It has been proposed that all regular (nonretaliatory) insurance tax returns be submitted to the Insurance Commissioner by April 1; that the commissioner notify the Board of Equalization of the amounts due by May 15; that the Board of Equalization assess the taxes and notify the insurers of the amounts due by June 1; and that the Insurance Commissioner, rather than the State Controller, collect the taxes by June 15 The bill proposed further provided that the Insurance Commissioner be responsible for collecting all such amounts not more than two years delinquent [42]

The proposed bill also deleted the existing 10-percent penalty for delinquent tax payments and substituted a sliding scale depending upon the amount of tax There was also a provision reducing the minimum penalty for the late filing of retaliatory tax information returns.

Section 14¼(h) of the California Constitution requires that the tax on insurers be assessed by the State Board of Equalization. The proposed bill would eliminate the requirement that the Insurance Commissioner send the Board of Equalization a copy of the tax return The Board of Equalization would, therefore, be assessing the tax in accordance with a list or roll forwarded by the Insurance Commissioner without any other supporting evidence This would, in effect, reduce the assessing function to a so-called clerical or ministerial act This, then, raises the question as to why the Insurance Commissioner could not assess the tax as well In fact, if simplification is the objective, this might be considered

Under present law the Controller is responsible for collection of the insurance tax, maintaining the records, showing the status of all assessments and payments, and bringing necessary court actions for collection of delinquencies The Insurance Commissioner is frequently involved in this litigation The proposed bill states:

> The commissioner shall be responsible for the collection of all taxes, interest and penalties that are not more than two years delinquent and shall conduct all correspondence with insurers in respect thereto, and all such amounts shall be made payable and be paid to the commissioner The commissioner shall promptly

[42] Assembly Bill 2901 (Thomas), 1963 General Session

advise the Controller of all such amounts received. All such amounts more than two years delinquent shall be promptly reported by the commissioner to the Controller and the Controller shall thereafter be responsible for the collection thereof.

The question might well be raised again as to whether it might not be feasible to have one agency responsible for the examination of the tax rate, the assessment and the collection of the tax The only theoretical problem that arises in connection with this proposal is the question of whether a regulatory agency should be the agency that also assesses and collects taxes due from the firms that it regulates and supervises. There is no strong argument against it doing so in the literature In several states the Insurance Commissioner has very wide powers and discretion insofar as the control, supervision, and direction of all insurance business in the state is concerned, and insofar as the determination, assessment, and collection of the insurance tax is concerned Checks for the insurance tax are in many states made payable to the State Treasurer or Department of Taxation or Revenue, but oftentimes, other than one of these, no state agency is concerned with the tax [43] In some cases taxes are paid to the State Tax Commission [44]

The proposed bill required insurance companies to file premium tax returns on or before April 1 The Insurance Commissioner would then prepare a roll or list of amounts to be assessed by the Board of Equalization and propose the assessments to the Board of Equalization on or before May 15 The Board of Equalization would be required to assess the tax in accordance with the list and transmit notices of its individual assessments to each insurer before June 1 The annual tax would then be payable to the Insurance Commissioner on or before June 15

It must be noted that Assembly Bill 2901 preceded the enactment in 1963 of the quarterly prepayment system, which added three more dates to the insurers' tax reporting time table Insurance companies will be making quarterly installment payments as of June 15, September 15, December 15, and March 15 for their business in the preceding calendar quarters The annual return will continue to be made June 15 together with any adjustment due for the previous business year and not included within the prepayment installments To add an additional date to the time table insurers must follow seems unduly complicating

As to the proposal that each insurer be notified of his assessment, it should be noted that most of the assessments are made in the same amounts as are self-reported by insurers Notices of adjustments upward or downward are presently given There seems no point in having the Board of Equalization required to notify insurers of an assessment in the same amount as was reported due by the insurer

As to the roll system, i e, having the Board of Equalization assess in accordance with a list or a roll, as proposed for the premium tax in Assembly Bill 2901, this system was abandoned by the Legislature in the amendments to the insurance tax law adopted in 1961 No reason is apparent why it should be brought back

[43] See State of New York, Insurance Department, *Fees and Taxes Charged Insurance Companies Under the Laws of New York, together with abstracts of fees, and other requirements of other states*, 1964.
[44] *Ibid.*, p. 3.

Assembly Bill 2901 also proposed to delete the existing 10-percent penalty for delinquent tax payments and substitute a sliding scale depending upon the amount of the tax This provision would have the effect of reducing penalties but might a better solution to the penalty problem not be keeping the existing 10-percent penalty for delinquent tax payments but providing, as is done in the case of the sales tax, that where there is sufficient cause for the delinquency, the penalty could be waived

The minimum penalty provision for the late filing of retaliatory tax information returns was also reduced by the proposed bill The present minimum penalty is $50 per day, while the proposed penalty was $100 for each 15-day period or fraction thereof No change was made in the maximum penalty of $500 The proposed change was apparently designed to relieve the problem of the penalty being unduly harsh in a few cases This section [45] has a very minor revenue effect and no strong argument against it can be found

In summary the bill proposed that the Insurance Commissioner be responsible for collecting the premiums tax Having him entirely responsible for the assessment and collection of the tax might well be considered.

No advantage appears to accrue from the proposed sending of a roll of taxes due from the Insurance Commissioner to the Board of Equalization for assessment Nor does there seem to be any advantage attached to adding another date on which insurers must file premiums tax returns, nor in notifying insurers of their assessments when taxes have been computed correctly and in the same amount as was assessed.

Substituting a sliding scale of penalties in place of the existing 10-percent penalty in order to mitigate the harshness of the penalty provision may not be the best solution to the problem of making the penalty more appropriately lenient Waiving the penalty in exceptional cases where sufficient cause for delinquency appears to exist, might be a better solution.

Reducing the penalty for the late filing of retaliatory tax information returns does not pose any serious problem

The proposed changes are indicative of the fact that the collection procedure is in need of further simplification.

[45] Revenue and Taxation Code, Section 12282

CHAPTER VI

SUMMARY AND CONCLUSIONS

The gross premiums tax on insurance companies is an excise tax. Insurance is a commodity and the only portion of insurance that can be properly defined as being savings is that part of life insurance premiums which adds to cash reserves of insurance policies

The gross premiums tax in California evolved into its present form over a period of years beginning in 1862 when the first tax of this nature was placed on foreign insurance companies The principal office deduction dates back to 1911 The gross premiums tax rate has remained at the same level since 1948 except for the reduction in the tax on pension or profit-sharing plans which became effective in 1962 and the temporary reduction from 2 35 percent to 2 33 percent for the years 1964–67 to compensate for the actuation of the prepayment plan in 1964

Consumers bear the full burden of the insurance premiums tax except in those cases where the tax has been increased subsequent to the writing of policies, and premium rates cannot be changed until the policy is renewed or a new policy is written. Since nonlife insurance policies are renewed or replaced, generally, within five years after they are written, this exception does not apply to a large number of policies

The gross premiums tax is no more inequitable than any other excise tax. Because more insurance is bought by higher than lower income groups, this tax tends to be progressive California insurers, except for those that do not benefit from the principal office deduction, seem to be treated equitably under the provisions of the existing law The tax rate in California is higher than in some other states, and it is higher than the rate in New York, the only other state that provides a close parallel for comparison with California (California and New York are the two highest ranking insurance states in the United States and are far and above all other states both in insurance policies outstanding and insurance being written), but it is not appreciably higher, and it is lower than the average tax rates on fire and casualty insurers in all 50 states

Insurers' sales volume and profits do not suffer to any significant extent because of the gross premiums tax, nor does the tax appreciably affect California insurers' competitive position as compared with insurers of other states to any appreciable extent

The gross premiums tax is the fifth highest revenue source for the state of California It yields more in this state than it does in any other state in the United States The revenue from this tax source can be increased if the principal office deduction is eliminated.

There is no way to justify the principal office deduction on economic grounds It is a deduction of real property taxes paid, which all other firms owning real property also pay and for which they receive no

deduction, from an excise tax It cannot be justified purely on the grounds that it is necessary to attract insurers to locate in California, because insurers are attracted primarily by the fact that there is insurance to be written in California and maintaining a principal or home office in California gives them an advantage in obtaining this business and processing it economically It certainly is not needed to encourage the building of office buildings by insurers (judging by the vacancy rate for office space in California)

The elimination of the principal office deduction will have little or no effect on insurance rates and little or no effect on insurers' profits from the writing of insurance

As to the retaliatory provisions contained in the Constitution and the Insurance Code, they have been effective in the prevention of the raising of the premiums tax rate in California and in other states However, as long as the majority of other states have retaliatory provisions, California insurers would have justifiable complaints if there were no retaliation against the insurers of states which retaliate against California

Nonetheless, philosphically, retaliation does not seem to be a positive doctrine upon which legislation should be based

The most feasible of alternatives to the premiums tax is an income tax However, only four states have an income tax that applies to insurers This, however, should not preclude further study of this method of taxation for insurers, since insurers' profits are not taxed by the state There are no insurmountable difficulties to the working out of the mechanics or the imposition of an income tax, especially if the federal pattern of the taxation of insurance companies is followed, and the tax is simply a percentage of the federal tax

The collection procedure for the premiums tax is unduly complicated Further consideration should be given to having the Insurance Commissioner be responsible for its assessment and collection, or alternatively, treating it in the same way as the sales tax insofar as its collection procedure is concerned, but the second alternative would probably only be feasible if and when a Department of Revenue and Taxation were established.

APPENDIX

FIGURE A-1

Tax Rates on Insurance Premiums *

Fifty States and the District of Columbia

State	Life (Excluding annuities)		Fire		Casualty		Remarks
	Domestic (percent)	Foreign (percent)	Domestic (percent)	Foreign (percent)	Domestic (percent)	Foreign (percent)	
Alabama[1]	50	3 00	50	2 50	50	3 00	
Alaska	1 50	3 00	1 50	3 00	1 50	3 00	All "unlicensed" insurers pay 3 percent tax
Arizona	1 00	2 00	1 00	2 00	1 00	2 00	2 5 percent on motor vehicles—additional 1½ percent tax on insurers of vehicles for Highway Patrol Pension Fund, no tax until sixth year of operation
Arkansas[2]	1 00	3 00	1 00	2 50	1 00	3 00	2-percent tax on independent insurers
CALIFORNIA[3]	2 33	2 33	2 33	2 33	2 33	2 33	Tax on pension and profit sharing plans changing to 1 percent in 1965, tax rate reverts to 2 35 percent after 1967
Colorado[4]	2 25	2 25	2 25	2 25	2 25	2 25	
Connecticut	2 50	1 75	2 75	2 00	2 75	2 00	Domestic insurers pay tax on part of interest and dividends until 1971
Delaware	1 75	1 75	†5 25	†5 25	1 75	1 75	3 5-percent additional tax on fire insurance companies
Florida[5]	----	2 00	----	†2 75	----	2 00	2 75-percent additional tax on Fire Insurance Premiums
Georgia[6]	2 25	2 25	†3 25	†3 25	2 75	2 25	2-percent tax imposed by City of Savannah, 1-percent additional tax by state on fire insurance companies
Hawaii	1 50	2 50	2 25	3 25	2 25	3 25	
Idaho[7]	3 00	3 00	3 00	3 00	3 00	3 00	
Illinois	----	2 00	50	2 50	----	2 00	0 5 percent is additional Fire Marshal's tax (but can deduct 2-percent additional tax paid to local cities on fire insurance premiums
Indiana	3 00	2 00	†3 50	†2 50	3 00	2 00	0 5 percent Fire Marshal's tax (certain deductions are allowed—remainder is taxed at 2 percent)
Iowa	2.00	2 00	2 00	2 00	2 00	2 00	
Kansas	----	2 00	†2 75	†4 75	----	2 00	2 75-percent additional Fire Marshal's tax, gross premiums tax—2 percent or retaliatory tax, whichever is greater
Kentucky	2 00	2 00	2 00	2 00	2 00	2 00	0 75 percent additional on fire insurance premiums, 2 percent or retaliatory tax, whichever is greater
Louisiana[10]	2 00	2 00	4 00[9]	†6 00	2 00[8]	2.00[8]	1-percent tax on boiler and plate glass insurance, 1-percent Fire Marshal's tax, 3-percent tax on miscellaneous risks, 5-percent tax on unauthorized insurers

Tax Rates on Insurance Premiums *—Continued

Fifty States and the District of Columbia

State	Life (Excluding annuities)		Fire		Casualty		Remarks
	Domestic (percent)	Foreign (percent)	Domestic (percent)	Foreign (percent)	Domestic (percent)	Foreign (percent)	
Maine	1 00	2 00	† 50	† 50	1 00	2 00	0 5-percent additional tax on fire insurers (when necessary)
Maryland[11]	2 00	2 00	2 00[27]	†2 00	2 00	2 00	One-fifteenth of 1 percent tax on deposits on perpetual fire policies—domestic mutual fire insurance companies exempt
Massachusetts	2 00[12]	2 00	2 00	2 00	2 00	2 00	
Michigan	See [13]	2 00	See [13]	3 00	See [13]	2 00	2-percent tax on casualty does not include auto insurance which is taxed at 3 percent
Minnesota[28]	2 00	2 00	†4 50	†4 50	2 00	2 00	2-percent additional tax on fire insurers by certain cities, 0 5 percent Fire Marshal's tax on fire insurance companies
Mississippi	See [14]	3 00	See [14]	3 00	See [14]	3 00	One-fifth of 1 percent Fire Marshal's tax
Missouri	2 00	2 00	2 00	2 00	2 00	2 00	All insurers may take credit against the premiums tax for income, franchise, and personal property taxes, and valuation, registration, and examination fees paid state
Montana[21]	2 00	2 00	†2 25	†2 25	2 00	2 00	One-fourth of 1 percent Fire Marshal's tax, 2 25-percent rate for calendar years 1963–64
Nebraska	60	2 00	† 85	2 50	60	2 00	One-half of 1 percent Fire Marshal's tax except domestic mutual fire insurance companies who pay one-fourth of 1 percent of gross premiums
Nevada	2 00	2.00	2 00	2 00	2 00	2 00	2-percent annual license may be deducted from gross premiums tax
New Hampshire	2 00	2 00	2 00	2 00	2 00	2 00	
New Jersey[23]	2 00	2 00	2 00	2 00	2.00	2 00	Unauthorized insurers 3 percent; additional motor vehicles tax 1 percent, can offset franchise and personal property taxes
New Mexico[25]	2 50	2.50	2 50	2 50	2 50	2 50	
New York	1 75	1 75	†2 00	†4 00	2 00	1 00	New York City may impose additional taxes
North Carolina	1 50	2 50	†2 50	†3 50	1 00 (or income tax whichever more)	2.50	Also in addition fire insurance companies pay annual Fireman's Relief Fund tax of 1½ percent
North Dakota	2 50	2 50	†3 00	†3 00	2 50	2 50	0 5-percent Fire Marshal's tax, domestic and mutual domestic companies excepted, but still pay one-half of 1 percent Fire Marshal's tax

Ohio	See [17]	2 50	†3 00	†3 00	See [17]	2 50	One-half of 1 percent Fire Marshal's tax on fire insurance companies
Oklahoma[21]	----	4 00	----	†4 31	----	4 00	Five-sixteenths of 1 percent Fire Marshal's tax on fire insurance companies, also 6-percent tax on unauthorized insurers
Oregon	----	2 25	50	†2 75	50	2 25	One-half of 1 percent of gross premiums received on fire, auto fire, and theft—foreign and domestic
Pennsylvania	2 00	2 00	2 00	2 00	2 00	2 00	2 percent—or retaliatory tax if greater
Rhode Island	2 00	2 00	2 00	2 00	2 00	2 00	One-tenth of 1 percent of Philadelphia premiums, foreign insurers largely exempt, additional tax on insurance brokers
South Carolina[18]	2 00	3 00	†3 00	†4 10	2 00	3 00	1 1 percent inspection fee (municipalities may levy additional tax)
South Dakota	50	2 50	†1 00	†3 00	50	2 50	One-half of 1 percent additional tax on fire companies, unlicensed insurers at 1½ times foreign insurers rates or 4 percent, whichever is greater
Tennessee[24]	1 75	2 00	†2 00	†2 50	2 00	2 00	One-half of 1 percent of all fire insurance companies
Texas[25]	1 10	3 30	†4 05	†4 05	1 30	3 50	
Utah	2 25	2 25	2 25	2 25	2 25	2 25	Property tax credit may be taken
Vermont	2 00	2 00	2 00	2 00	2 00	2 00	Foreign mutual fire insurance companies insuring only factories or mills, 2 percent of gross premiums covering risks within the state less unabsorbed portion of premium deposits, domestic insurers are taxed 2 percent of premiums covering risks in other states in which no such tax is collected
Virginia	2 25	2 25	2 75	2 75	2 75	2 75	
Washington	1 00	2 00	1 50	2 00	1 50	2 00	
West Virginia	3 00	3 00	†4 00	†4 00	3 00	3 00	One-half of 1 percent on all insurance companies other than life, one-half of 1 percent on fire, 1 percent additional temporary tax on all gross premiums
Wisconsin	3 50	2 00	1 25	⅔ of 1%	2 00	2 00	2 percent Fire Marshal's tax on fire insurance companies
Wyoming[19]	1 50	2 50	1 50	2 50	1 50	2 50	5 percent on companies not authorized to do business in Wyoming
District of Columbia	2 00	2 00	2 00	2 00	2 00	2 00	

SOURCE *State Tax Guide*, Commerce Clearing House, Chicago, *Abstract of Fees and Taxes*, New York Insurance Commission, and the insurance tax laws of the 50 States and the District of Columbia

[1] In Alabama foreign fire and marine companies have taxes reduced if invest in state Domestic companies get Principal Office Deduction Note also that municipalities may impose 4-percent tax on gross premiums, but counties cannot

[3] After 1963 (January 1) if company invests 50 percent of their reserves in certain Arkansas property, tax rates are reduced by one-half of 1 percent

[5] California has Principal Office Deduction

[4] A domestic company maintaining a principal office in Colorado and having 30 percent or more of its assets invested in the state is taxed at 1 percent

[5] Foreign insurers maintaining a regional home office in Florida are entitled to credits against tax of (1) 50 percent of tax due and (2) an amount equal to the full amount of ad valorem taxes paid during the next preceding year on property occupied and on property used in connection with the regional home office, except that tax may not be reduced to less than 20 percent of the original amount

[6] Georgia's tax on direct gross premiums is reduced to 1 25 percent if 25 percent of company's assets are in Georgia, and to 0 50 percent if 75 percent of company's assets are invested with the state

[7] Idaho reduces gross premiums tax from 3 percent to 1 percent for domestic companies with 25 percent of their gross assets invested *within the state*, but domestic companies must pay tax on risks outside of state if not taxed by another state

[8] "License tax" 2 percent on premiums of $7,000, 1 7 percent on premiums in excess of $7,000—for life, health and accident, and annuities

[9] "License tax" 3 percent on premiums of $6,000, 2 percent on premiums in excess of $6,000 for fire and marine

[10] Taxes reduced to one-third of amount if one-sixth of total assets are invested in *specified securities* Note that in Louisiana municipalities may impose additional taxes

[11] Domestic companies allowed credit for franchise taxes paid and every life insurance company with home office in Maryland is allowed a credit for fees paid to Insurance Commissioner for valuing risks policies if credit not greater than 15 percent of total

[12] Massachusetts taxes on life insurance companies now mainly 2 *percent of gross premiums* less returns and dividends, but if retaliatory tax is greater, then pay that

[13] Tax on all domestic insurance companies in Michigan is *one-half of* 1 percent of paid-up capital, surplus and unassigned funds $10,000 minimum to $50,000 maximum

[14] *Difference* between ad valorem taxes up to $20,000 and one-half of the tax on foreign companies doing same business

[15] Assets of $15,000,000 or more—flat sum plus percentage of taxable premiums—*assets of less than* $15,000 000—1¾ percent of taxable premiums also domestic stock has a local tax equivalent to property tax rate of preceding year of 2 percent of previous year—whichever lower

[16] Tax *reduced to three-fourths* of 1 percent if at least 30 percent of assets are in New Mexico investments

[17] Domestic companies taxed either on (1) two-tenths of 1 percent of capital and surplus if capital is divided into shares, otherwise surplus only or (2) two-tenths of 1 percent of 8½ times the gross premiums—whichever is less—minimum $25

[18] 2 percent on foreign insurance companies may be reduced to 2 percent "by proper investments" 2 percent on domestic insurers—not to exceed 5 percent of net income computed under the Income Tax Law with the additional deduction of required additions to reserves—domestic *insurance corporations* have license fee The basic tax of 2 percent on domestic insurers may be reduced to 1¾ percent, 1½ percent, 1¼ percent, or 1 percent by investments in South Carolina securities

[19] *Domestic company's gross* premiums tax reduced to 1 percent if 75 percent of the company's assets are in Wyoming *securities*—reduced to ½ percent if 50 percent of its assets are invested in Wyoming securities

[20] Note that in Minnesota insurance companies are also subject to income taxes, since Section 290 06 allows a credit against income taxes paid by insurance companies for the gross premiums tax paid and is considered controlling

[21] If an insurer has 50 percent or more of its paid-in capital stock invested in Montana securities, the insurer may deduct whatever tax it may have already paid to the state and its political subdivisions during the calendar year for which the premiums tax is levied

[22] *If* taxable premiums exceed 12½ percent of total premiums collected by company, then only 12½ percent of total premiums of company are taxed

[23] Credits for investment in Oklahoma real estate or securities are permitted, which will reduce the premiums tax credits received range from 2 percent to 30 percent (at which point there is no tax) of admitted assets in Oklahoma

[24] Insurance *corporations*, except life, fraternal, benefit, health, accident, and nonprofit hospital service, which have invested in Tennessee securities between 70 and 80 percent of the amount invested in the state in which the greatest percentage of their assets are invested, may reduce their gross premiums tax by 25 percent 80 to 90 percent will reduce gross premiums tax by 50 percent and will reduce gross premiums tax by 75 percent if greater than 90 percent

[25] Foreign life, health, and accident—3 2 percent unless the investments in Texas securities fall within one of the following categories of percentages of the amount such companies have invested in similar securities in the state in which they have the highest percentage of admitted assets invested

70-80 percent	3 025 percent
80-85 percent	2 75 percent
85-90 percent	2 2 percent
90-100 percent	1 925 percent

75-80 percent	3 025 percent
80-85 percent	2 75 percent
85-88 percent	2 2 percent
88-90 percent	2 05 percent
90 or more	1 1 percent
(other insurance companies taxed at 3 85 percent)	

[26] Exempt from state taxation if qualified under Federal Internal Revenue Code, Section 103

[27] No tax on domestic mutual fire insurers

* All data *correct* to January 1 1954

† This rate includes additional tax on fire insurance premiums for the support of local fire districts

NOTE In 40 states base for insurance tax is gross premium less returns and in *many* cases dividends and reinsurance premiums

Average tax rate for *domestic life insurers* for 40 states and the District of Columbia is 1 91 percent Average tax rate for foreign life insurers for 50 states and the District of Columbia is 2 38 percent Average tax rate for domestic fire insurers for 42 states and the District of Columbia is 2 34 percent Average tax rate for foreign fire insurers for 50 states and the District of Columbia is 2 74 percent Average tax rate for domestic casualty insurers for 42 states and the District of Columbia is 1 93 percent Average tax rate for foreign casualty insurers for 50 states and the District of Columbia is 2 31 percent

Blank (...) indicates no rate found

FIGURE A-2

Tax Base for Premiums Tax*

Fifty States and the District of Columbia

State	Tax base†
Alabama	Direct premiums, less returns
Alaska	Less returns and reinsurance
Arizona	Less reinsurance, returns, dividends, and cancellations
Arkansas	Less dividends and returns
CALIFORNIA	Less reinsurance, returns and dividends
Colorado	Less reinsurance and returns
Connecticut	Tax on net direct premiums
Delaware	Less dividends, returns, and reinsurance
Florida	Less reinsurance and returns—domestic companies cannot deduct reinsurance
Georgia	Less returns and cancellation
Hawaii	Less returns and reinsurance
Idaho	Less returns, dividends, coupons, cancellations, and reinsurance
Illinois	Less returns and dividends
Indiana	Less dividends and reinsurance and returns (or retaliatory tax if greater)
Iowa	Less returns and dividends
Kansas	Less returns, dividends, and reinsurance
Kentucky	Less returns and reinsurance
Louisiana	Less returns and dividends
Maine	Less returns and dividends
Maryland	Less returns and dividends
Massachusetts	Less returns and dividends
Michigan	Less returns and reinsurance
Minnesota	Less returns
Mississippi	Less reinsurance, dividends, returns, and cancellations [a]
Missouri	Less returns and dividends
Montana	Less returns
Nebraska	Less returns and dividends
Nevada	Less returns and reinsurance
New Hampshire	Less returns and dividends
New Jersey	Less statutory percentage of franchise and property tax paid
New Mexico	Less returns, dividends, and reinsurance
New York	Less returns, dividends and reinsurance
North Carolina	Less returns and reinsurance
North Dakota	Less returns and reinsurance
Ohio	Less returns
Oklahoma	Less cancellations, dividends, and membership fees
Oregon	Less returns, dividends, and reinsurance
Pennsylvania	Less returns, reinsurance, and dividends
Rhode Island	Less returns, dividends, and reinsurance
South Carolina	Less returns, dividends, and premiums on annuities
South Dakota	Less returns and dividends
Tennessee	Less returns
Texas	Less returns, reinsurance, and dividends
Utah	Less returns, reinsurance, and dividends
Vermont	Less returns, reinsurance, and dividends
Virginia	Less returns and reinsurance
Washington	Less reinsurance
West Virginia	Less returns
Wisconsin	Less cancellations
Wyoming	Less returns, reinsurance, and dividends
District of Columbia	On net premiums

* All data correct to January 1 1964

† Base in every case is gross premiums less indicated deductions unless otherwise noted

SOURCE *State Tax Guide*, Commerce Clearing House, Chicago, *Abstract of Fees and Taxes*, New York Insurance Commission, and the insurance tax laws of the 50 states and the District of Columbia

FIGURE A-3

"In Lieu of" Feature in Insurance Tax Laws *

Fifty States and the District of Columbia

State	"In lieu of" feature	Premiums tax is "in lieu of"
Alabama	No†	
Alaska	No†	
Arizona	Yes	All other taxes except property and license fees
Arkansas	Yes	All other taxes on gross receipts, municipal licenses, and privilege taxes
CALIFORNIA	Yes	Other licenses and taxes except real estate, trust, and motor vehicle
Colorado	Yes	All other taxes except state, city, and county property taxes
Connecticut	Yes	All other taxes on income, franchises, and intangible assets
Delaware	Yes	All county and municipal fees and taxes except property taxes
Florida	Yes	Locally imposed income taxes
Georgia	No†	
Hawaii	Yes	All taxes, licenses, fees, except real property taxes and other specific exceptions
Idaho	Yes	All other taxes on premiums, other income, property, or other assets
Illinois	Yes	All license, privilege, or occupation taxes
Indiana	Yes	All other taxes, except property and retaliatory taxes
Iowa	No†	
Kansas	No†	
Kentucky	No†	
Louisiana	Yes	Franchise and capital stock taxes
Maine	Yes	Domestic companies' premiums tax is in lieu of all other taxes except *ad valorem* tax on real estate
Maryland	Yes	
Massachusetts	No†	
Michigan	Yes	Domestic all other privilege or franchise fees except taxes on property, foreign in lieu of all other taxes, except taxes on real estate, Michigan securities, and tangible personal property held for investment in Michigan
Minnesota	Yes	All other taxes except those on real property
Mississippi	No†	
Missouri	Yes	Domestic all other taxes except real and tangible personal property income, franchise, and license taxes, but these may be offset, foreign in lieu of all other taxes, except real and tangible personal property taxes
Montana	Yes	All other taxes except property taxes
Nebraska	Yes	Taxes on intangibles
Nevada	No†	
New Hampshire	No†	
New Jersey	No†	
New Mexico	Yes	All other taxes except taxes on property
New York	No†	
North Carolina	Yes	All other taxes except license taxes, Fireman's Relief Fund levies, property taxes, and sales and use taxes
North Dakota	Yes	Corporation income tax and *ad valorem* property tax
Ohio	Yes	Domestic annual franchise tax in lieu of all other taxes except property
Oklahoma	Yes	Foreign all other taxes except *ad valorem*
Oregon	Yes	All other taxes, except taxes on real and personal property
Pennsylvania	No†	
Rhode Island	No†	
South Carolina	No†	
South Dakota	Yes	All other taxes, state and local, except additional tax on fire insurance corporations and real and personal property taxes
Tennessee	Yes	All other taxes except property privilege tax on agents' license fees, franchise, and excise income taxes
Texas	Yes	All other taxes, except unemployment compensation and filing fees, and additional fire marshal's tax
Utah	Yes	All other state and local taxes
Vermont	No†	

FIGURE A-3—Continued

"In Lieu of" Feature in Insurance Tax Laws*—Continued
Fifty States and the District of Columbia

State	"In lieu of" feature	Premiums tax is "in lieu of"
Virginia	Yes	All other taxes except tax on real estate and tangible personal property
Washington	Yes	All other taxes except property and excise and use taxes on property
West Virginia	No†	
Wisconsin	No†	
Wyoming	Yes	All other taxes except property and license fees
District of Columbia	Yes	All other taxes except real estate, and fees and charges

* All data correct to January 1, 1964
† No citation found
Note 32 states including California, and the District of Columbia, have an "in lieu of" feature in their insurance tax laws
SOURCE *State Tax Guide*, Commerce Clearing House, Chicago, *Abstract of Fees and Taxes*, New York Insurance Commission, and the insurance tax laws of the 50 states and the District of Columbia

FIGURE A-4

Existence of Retaliatory Provisions in the Insurance Tax Laws*

Fifty States and the District of Columbia

State	Retaliatory provision (comment)
Alabama	No
Alaska	No
Arizona	Yes
Arkansas	Yes (unless Arkansas company owns 15 percent of foreign company)
CALIFORNA	Yes
Colorado	Yes
Connecticut	Yes
Delaware	Yes
Florida	Yes (unless Florida company owns 15 percent of the foreign company)
Georgia	Yes
Hawaii	No
Idaho	No
Illinois	Yes
Indiana	Yes
Iowa	Yes
Kansas	Yes (if greater than present state tax)
Kentucky	Yes (if greater than present state tax)
Louisiana	Yes (termed "reciprocal taxes")
Maine	Yes
Maryland	Yes
Massachusetts	Yes
Michigan	Yes
Minnesota	Yes
Mississippi	No
Missouri	Yes (termed "reciprocal taxes")
Montana	Yes (termed "reciprocal taxes")
Nebraska	Yes (termed "reciprocal taxes")
Nevada	Yes
New Hampshire	Yes (termed "reciprocal taxes")
New Jersey	Yes
New Mexico	No
New York	Yes
North Carolina	Yes
North Dakota	Yes (termed "reciprocal taxes")
Ohio	Yes
Oklahoma	Yes
Oregon	Yes
Pennsylvania	Yes (2 percent—or retaliatory tax if greater)
Rhode Island	Yes (subject to retaliatory tax if greater than gross premiums tax less returns and dividends)
South Carolina	Yes
South Dakota	Yes
Tennessee	Yes (termed "reciprocal taxes")
Texas	Yes (unless Texas company owns 15 percent of the foreign company)
Utah	Yes
Vermont	Yes
Virginia	Yes
Washington	Yes
West Virginia	Yes
Wisconsin	Yes
Wyoming	Yes
District of Columbia	Yes

* All data correct to January 1, 1961

Note 44 states, including California, and the District of Columbia, have retaliatory provisions

SOURCE Insurance tax laws of the 50 states and the District of Columbia

FIGURE A-5

Yield From Taxes on Insurance Companies*

Fifty States and the District of Columbia

State	Fiscal period (or data for year ending)	Total revenue from tax	Percent of total state revenue
Alabama	September 30, 1962	$8,704,393	2 919
Alaska	June 30, 1963	1,211,005	3 009
Arizona	June 30, 1963	4,922,637	2 387
Arkansas	June 30, 1963	4,923,350	2 621
CALIFORNIA	June 30, 1963	72,276,000	3 096
Colorado	June 30, 1963	7,725,776	3 362
Connecticut	June 30, 1963	17,766,700	5 304
Delaware	June 30, 1963	2,230,889	2 297
Florida	June 30, 1963	14,363,401	2 468
Georgia	June 30, 1963	13,865,927	3 206
Hawaii	June 30, 1963	2,673,698	1 635
Idaho	June 30, 1963	2,951,028	3 939
Illinois	June 30, 1963	33,006,984	3 055
Indiana	June 30, 1963	10,513,782	2 402
Iowa	June 30, 1963	9,092,185	3 167
Kansas	June 30, 1963	7,322,128	3 110
Kentucky	June 30, 1963	8,616,851	2 575
Louisiana	June 30, 1963	11,143,040	2 201
Maine	June 30, 1963	2,860,220	3 008
Maryland	June 30, 1963	11,051,651	2 201
Massachusetts (including license fees)	June 30, 1963	22,426,457	3 888
Michigan	June 30, 1963	25,521,006	2 242
Minnesota	June 30, 1963	11,910,789	2 716
Mississippi (including filing fees)	June 30, 1963	7,055,933	3 213
Missouri	June 30, 1963	15,354,714	3 744
Montana	June 30, 1963	2,673,261	3 684
Nebraska	June 30, 1963	4,530,059	4 492
Nevada	June 30, 1963	1,399,655	2 051
New Hampshire	June 30, 1963	2,244,145	4 719
New Jersey	June 30, 1963	21,741,230	4 651
New Mexico	June 30, 1963	3,500,226	2 397
New York	March 31, 1963	77,032,924	3 120
North Carolina	June 30, 1963	16,014,432	2 770
North Dakota	June 30, 1963	1,837,438	2 724
Ohio	June 30, 1963	33,832,132	3 660
Oklahoma	June 30, 1963	14,900,000	4 559
Oregon	June 30, 1963	6,572,686	2 955
Pennsylvania	June 30, 1963	35,124,352	2 788
Rhode Island	June 30, 1963	3,089,143	2 936
South Carolina	June 30, 1963	7,538,571	2 889
South Dakota	June 30, 1963	2,390 937	3 752
Tennessee	June 30, 1963	12,192,546	3 599
Texas	August 31, 1963	37,042,887	3 591
Utah	June 30, 1963	3,009,173	2 477
Vermont (including license taxes on brokers and agents)	June 30, 1963	1,349,726	2 628
Virginia	June 30, 1963	14,705,967	3 611
Washington	June 30, 1963	9,218,503	1 680
West Virginia	June 30, 1963	6,967,286	3 103
Wisconsin	June 30, 1963	11,217,628	1 894
Wyoming	June 30, 1963	1,327,409	3 023
District of Columbia	June 30, 1963	3,428,140	1 659

* All data correct to January 1, 1964
Average yield 3 052 percent

Note California's yield, 3 096 percent, is 0 042 percent higher than the average

SOURCE *State Tax Guide*, Commerce Clearing House, Chicago

FIGURE A-6

Tax Rates on Annuities*

Fifty States and the District of Columbia

State	Annuities		State	Annuities	
	Domestic (percent)	Foreign (percent)		Domestic (percent)	Foreign (percent)
Alabama	50	1 00	Nevada	2 00	2 00
Alaska	1 50	3 00	New Hampshire 1962	1 50	1 50
Arizona	1 00	2 00	1963	1 00	1 00
Arkansas	----	----	1964	50	50
CALIFORNIA	2 33	2 33	1965	No tax	No tax
Colorado	2 25	2 25	New Jersey	1 00	1 00
Connecticut (phasing out to 0)	25	2 00	New Mexico	2 50	2 50
Delaware	1 75	1 75	New York	2 00	----
Florida	----	1 00	North Carolina	1 50	2 50
Georgia	2 25	2 25	North Dakota	2 50	2 50
Hawaii	2 25	3 75	Ohio	----	----
Idaho	3 00	3 00	Oklahoma	----	4 00
Illinois	----	3 00	Oregon	----	2 25
Indiana	3 00	2 00	Pennsylvania	2 00	2 00
Iowa	2 00	2 00	Rhode Island	2 00	2 00
Kansas	----	2 00	South Carolina	2 00	3 00
Kentucky	2 00	2 00	South Dakota	50	1 25
Louisiana†	2 00	2 00	Tennessee	1 50	1 50
Maine	1 00	2 00	Texas	3 85	3 85
Maryland	1 00	1 00	Utah	2 25	2 25
Massachusetts	2 00	2 00	Vermont	2 00	2 00
Michigan	----	----	Virginia	2 75	2 75
Minnesota	2 00	2 00	Washington	2 00	2 00
Mississippi	1 00	5 00	West Virginia	3 00	1 00
Missouri	----	----	Wisconsin	2 00	----
Montana	----	----	Wyoming	2 50	1 00
Nebraska	60	2 00	District of Columbia	2 00	2 00

* All data correct to January 1, 1964

† See footnote "8," Figure A-1

Note Average tax rate on annuities for domestic insurers for 39 states and the District of Columbia is 1 91 percent
Average tax rate on annuities for foreign insurers for 42 states and the District of Columbia is 2 17 percent

SOURCE *State Tax Guide*, Commerce Clearing House, Chicago, *Abstract of Fees and Taxes*, New York Insurance Commission, and the insurance tax laws of the 50 states and the District of Columbia

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ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

CALIFORNIA EXCISE TAXES ON CIGARETTES, ALCOHOLIC BEVERAGES, AND HORSERACING

A Major Tax Study

PART 9

Published by the
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PUBLISHER'S NOTE

This study by Dr. Ellis Austin presents the results of an investigation of certain commodity taxes in California. He covers the taxation of tobacco products, alcoholic beverages and horseracing. He studies not only the importance of these taxes as revenue producers but also attempts to determine their economic impact and equity implications.

His basic philosophy is that the Legislature should not use taxation as a method of telling people how to spend their money. However, many economists support the theory that the Legislature may wish to discourage consumption of harmful commodities by making them more expensive through taxation He is also concerned with the apparent fact that these taxes are regressive in that they hit the lower income groups with a greater relative impact than the higher income groups

It should be noted that Dr Austin's references to the economic impact of the sales tax refers to the national pattern rather than the sales tax in California

In addition, Dr Austin's findings relate to excise taxes "standing alone " If these taxes are included in a "package" which contains progressive taxes, the total impact of the "package" may negate the regressive nature of excise taxes

Both critics and defenders of Dr. Austin's work will find much food for thought in this well-organized study It provides a provocative and stimulating basis for discussion of the issues involved.

The recommendations in this report are those of the researcher and should not be construed as representing the views or decisions of the committee. The committee recommendations will be made in due course.

ABOUT THE AUTHOR

Ellis T. Austin is a professor of business administration at Fresno State College. He is a graduate of Western Washington College of Education, where he received his teacher's certificate, and of the University of Washington. He received his Ph D from Michigan State University in 1955

Dr Austin taught at the University of Washington, the University of Idaho, Michigan State, and the University of Pittsburgh before coming to Fresno State in 1958 He has participated actively in campus and civic affairs in each community where he has taught; in the fall of 1960, for example, he gave 15 one-hour lectures on local television in Fresno and he has spoken before, or written for, many local groups.

Professor Austin has received fellowships for special study each summer since 1960. These programs have taken him to New York University, the University of Chicago, Harvard University, and more recently to UCLA for the Ford Foundation Regional Seminar in Economics—Public Finance and Fiscal Policy

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CALIFORNIA EXCISE TAXES ON CIGARETTES, ALCOHOLIC BEVERAGES, AND HORSERACING

by

DR. ELLIS T. AUSTIN

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CHAPTER I

INTRODUCTION

"Tax the vices, they have the broadest shoulders"—Napoleon This statement, even today, clearly reflects the thinking of most governments toward the taxation of commodities, especially the vices. In the United States, commodity taxation by the states received its greatest stimulus during the depression This was a time when the states were in dire need of funds It was also the time that the sale of alcoholic beverages was legalized, and some states (e g , California) legalized on-track wagering on horseracing Given the need and the opportunity, the states were quick to make the most of it. Where else could taxes be raised with so little public protest?

This movement into the taxation of the vices has continued up to the present time All states tax alcoholic beverages, all but two tax cigarettes, and 27 tax horseracing Virtually all that remains is for tax rates to continue to rise, and this appears to be a certainty

This paper investigates the taxation of tobacco products, alcoholic beverages, and horseracing with respect to equity, economic impact, and revenue. If it differs from previous studies, it is mainly that more recognition is given to equity and economic considerations than is usually the case Nonetheless, imbalance persists, revenue (with special emphasis on limiting factors) still receives the most attention

CHAPTER II

EQUITY

DEFINITION

One of the foremost considerations of any tax program is that it must be equitable Briefly, this means that everyone must bear his fair share of the tax burden in accordance with his ability to pay Furthermore, it is generally considered equitable for taxes, as a proportion of income, to increase as income increases Such a tax is called progressive, and is best illustrated by the federal income tax Proportional taxes take the same percentage of all incomes. Regressive taxes, which take proportionately more as income declines, are generally considered inequitable because of the relatively greater burden they place on the lower income groups

SHIFTING AND INCIDENCE

General Statement

Before a tax can be judged progressive, proportional, or regressive, it must be determined who bears the burden (incidence) of the tax. This becomes a problem. since the tax may not be paid by the firm or individual from whom it is collected—it may be shifted forward or backward In the case of taxes on consumption, it is generally intended that the consumer bear the tax. Since these taxes, however, are collected from the seller, he must shift them forward through higher prices on the taxed commodities Whether a tax, once imposed, can be shifted forward or not depends upon the relative elasticities of supply and demand On the demand side, the more inelastic the demand, the weaker the consumers' defense against the tax and the more likely the tax to be shifted forward. For with an inelastic demand an increase in price would only slightly reduce the quantity taken (not at all, if the demand were completely inelastic), so little pressure would be put on the seller to assume very much of the tax in order to maintain his sales volume. Under inelastic demand conditions, revenue from sales will increase as prices increase Given a very elastic demand, however, an increase in price would greatly reduce the quantity taken and the seller's sales and net income would be seriously impaired On the seller's or supply side, the greater the elasticity, the greater the defense against the tax and the smaller the part of it he will bear. The tax will be either shifted forward to the consumers or backward to the suppliers. Supply is elastic under competitive conditions where the return is just adequate to justify the existing amount of productive facilities Thus if the seller were to bear the tax (all, or in part), the reduced return would cause some producers to find it unprofitable to continue, and their dropping out would reduce the supply until costs of production were again covered In summary, conditions that are conducive to forward shifting of taxes are an inelastic demand (weak consumer defense against the tax) and an elastic supply (strong seller defense against the tax).

Selected Commodities—Tobacco Products, Alcoholic Beverages, and Horseracing

In the case of the commodities under consideration—tobacco products, alcoholic beverages, and gambling (horseracing), demand is considered inelastic by most authorities. For example, Harold M. Groves contends,

> . the tobacco tax has appeal the world over because the demand for tobacco is highly inelastic This permits the taxmakers to hang a fantastic tax on an otherwise cheap product and keep the consumer coming back for more Tobacco consumption falls in the area of compensatory psychology. One "needs a smoke" largely to favor himself in moments of boredom and fatigue [1]

The Report of the Senate Interim Committee on State and Local Taxation (1951) reported findings by the U S Treasury which indicated a high degree of inelasticity with respect to price and income for both tobacco products and alcoholic beverages [2] Undoubtedly, gambling would demonstrate similar characteristics One author states,

> As a matter of fact, the strongest motive of all mankind, after the more sordid necessities are provided for, is excitement. For this reason, gambling will continue—even should all cardplaying be declared illegal and all racecourses ploughed up [3]

The elasticities of these commodities will be considered in greater detail under the appropriate revenue sections. At this point, it appears safe to conclude that demand for these commodities is highly inelastic and that taxes levied on them are largely shifted to the consumer

SUMPTUARY TAXATION

Commodities may be selected for taxation for sumptuary reasons. If so, the objective is to control consumption—essentially, to reduce it. It is argued that in the absence of a tax, output and use of the commodity in question would be beyond the level regarded as optimum by society That is consumption of such a commodity results in real costs to society not reflected in costs to producers and therefore not reflected in prices paid by consumers In such a situation, the imposition of a tax is needed to raise the price of the commodity and reduce its consumption

Since smoking, drinking, and gambling are widely held to be vices, it is easy to understand the use of the sumptuary argument as the rationale for their taxation. This defense is subject to criticism on several grounds For one thing, consumption of these commodities will be curtailed only if demand for them is elastic, which has been argued above to be untrue Such curtailment as does occur would likely be at the lower income levels where the increased prices would be an im-

[1] Harold M. Groves, *Financing Government* (sixth edition; New York: Holt, Rinehart and Winston, 1964), p 279

[2] California Legislature, *State and Local Taxes in California A Comparative Analysis* Report of the Senate Interim Committee on State and Local Taxation, Part III (Sacramento: California Legislature, April 1951), p 344

[3] John Richard O'Hare, *The Socio-Economic Aspects of Horse Racing* (Doctoral dissertation, Washington: The Catholic University of America Press, 1945), p. 65

portant consideration But reduction of consumption on the basis of income levels is hardly justifiable Even more damaging to the sumptuary argument is its conflict with revenue goals For if consumption is reduced, revenue is reduced—complete sumptuary success would result in no revenue This whole problem is most neatly pointed out by the classic statement of the late Henry C Simons

> Many liberal persons defend levies like the tobacco tax on the curious grounds that tobacco is not a necessity—that poor people may or can avoid the burden by not consuming the commodity. This position invites two comments First, it is hardly accurate to say that no burden is involved in getting along without the commodity Second, it seems a little absurd to go around arguing that poor people could or ought to do without tobacco, especially if it is taxed, in the face of the facts that they simply do not do anything of the kind, that the commodity was selected for taxation because they are not expected to do so, and that the government would not get much revenue if they did The plain fact, to one not confused by moralistic distinctions between necessities and luxuries, is simply that taxes like the tobacco taxes are the most effective means available for draining government revenues out from the very bottom of the income scale The usual textbook discussions on these points hardly deserve less lampooning than their implied definition of luxuries (and semiluxuries!) as commodities which poor people ought to do without and won't. [4]

This statement would apply with equal force to alcoholic beverages and gambling (horseracing)

REGRESSIVITY

Consumption Taxes

Taxes based on consumption are widely held to be regressive. Their regressivity arises out of the fact that lower income groups spend a larger proportion of their income for goods and services upon which the tax is placed and, consequently, the tax takes a larger proportion of low than of high incomes Thus, consumption taxes are considered to fail the equity test

Taxes may be placed on consumption in general or on selected commodities and services. The retail sales tax illustrates the general consumption tax Such a tax is highly regressive One author states that the typical sales tax would collect about twice as much per thousand dollars of income at the $1,000-$2,000 income level than it would at the $10,000 and over income level [5] Also, the larger the size of the family, the more that family pays under the sales tax, while the reverse is true under an income tax In order to reduce the regressivity of the sales tax, items are sometimes excluded upon which the lower income groups spend heavily, e g , food

[4] Henry C Simons, *Personal Income Taxation* (Chicago The University of Chicago Press, 1938), p 39

[5] Groves, *op cit*, p 291 However, in California, with food exempt from the tax, the sales tax loses the regressiveness attributed to other states See, *The Sales Tax* by Harold M Somers, published by the Assembly Committee on Revenue and Taxation as Vol 4 in the major tax study in 1964

Selected Commodities—Tobacco Products, Alcoholic Beverages, and Horseracing

Taxes on selected commodities are also referred to as excises, selective sales taxes, and sumptuary taxes Typically, such excise taxes are found to be regressive. A recent study indicated that federal excises took 4 percent of income in the under $2,000 income class and 1 8 percent of income in the $15,000 and over income class Tobacco products, alcoholic beverages, and wagering account for over 40 percent of federal excise tax revenue The same study found that state excises comprised almost entirely of these commodities, took 4.8 percent and 2 1 percent of the income in these respective groups [6]

By almost any standards, tobacco products, alcoholic beverages, and gambling are heavily taxed They are among the few items selected for special taxation—most items are not specially taxed. Also, they are taxed generally at higher rates than other items selected Most luxuries, for example, are taxed at 10 percent at the federal level.

Some selected illustrations may help indicate the tax burden these commodities bear Cigarettes are currently taxed at 8 cents per package by the federal government, the California tax is 3 cents per package Thus a one-pack-a-day smoker in California pays about $40 annually for the privilege These taxes comprise about 44 percent of the retail price of 25 cents per package The tax rate on distilled spirits is even higher The Licensed Beverage Industries estimates that total federal, state, and local taxes amount to 58 2 percent of the average retail price, i e, of the average retail price of $4 64 per fifth of distilled spirits, total taxes amount to $2 70.[7] Horseracing (gambling) is taxed at somewhat lower rates Presuming the state's share of the turnover (total amount wagered) to measure the extent of the tax, this form of gambling is taxed by the horseracing states at an average rate of slightly less than 10 percent [8] However, horseracing is the only form of amusement that pays 20 percent federal admissions tax. All other amusements bear only a 10 percent admissions tax.

Different Treatment Within Classifications

Tobacco Products Inequities can arise because of the different treatment accorded the various items within each category. In the case of tobacco products, of the 47 states taxing cigarettes in 1962, all but 11 taxed cigarettes only Consequently, the cigarette smoker is penalized in comparison with users of other tobacco products. Other tobacco products are generally classified as cigars, smoking tobacco, chewing tobacco, and snuff Smoking tobacco, chewing tobacco, and snuff are habitually consumed by those in the lower income groups so, except for federal taxes, little regressivity occurs here Taxation of these products would, of course, be highly regressive Cigars, however, are a popular item for higher income groups, therefore, their

[6] George A Bishop, "The Tax Burden by Income Class, 1958," *National Tax Journal* (March 1961), p 54

[7] Licensed Beverage Industries, *Facts About the Licensed Beverage Industries, 1963* (New York Licensed Beverage Industries, Inc, 1963), p 24

[8] Karl Marx, "Tobacco, Alcoholic Beverages, and Pari-Mutuel Taxes," Chapter 21 of the State of Illinois *Report of the Commission on Revenue* (Springfield Frye Printing Company, 1963), p 752

taxation might be progressive It has been suggested that the reason they are not taxed is that most politicians have a fondness for cigars.[9] Federal taxation of tobacco products is not as discriminatory as state taxation; it discriminates only in favor of pipe and chewing tobacco, which pay less than half the ad valorem rate on cigarettes and cigars.

Alcoholic Beverages. A similar situation exists in the taxation of alcoholic beverages; here distilled spirits are taxed heavily in comparison with other alcoholic beverages. In California, a recent study put the total of federal-plus-state excise taxation to be 51.5 percent of a typical "A" blend of 86.8 proof whiskey in 1959.[10] Beer is taxed in California at a rate of 4 cents a gallon. At this rate, a case of 24 12-ounce containers would be taxed 9 cents. The federal tax is 29 cents a gallon or 65 3 cents for a similar case. This makes the total federal-plus-state tax approximately 74 cents. For a case of beer retailing at $4 50 a case, the tax would be about 17 percent, considerably less than the rate on distilled spirits. Wine is taxed according to alcoholic content. The federal tax is 17 cents a gallon for wine with an alcoholic content of less than 14 percent, and 67 cents a gallon on wine with an alcoholic content of 14–21 percent. California wines in these classifications are taxed 1 cent and 2 cents, respectively. For a fifth of wine of under 14 percent alcohol, total excise tax would be 3.6 cents (federal 3.4 cents, plus 0 2 cents state tax). Thus the excise tax would be only 3.6 percent per fifth of wine retailing for $1 (exclusive of sales taxes). This wide range in the rate of taxation of distilled spirits, beer, and wine is highly inequitable, for it means that some users of alcoholic beverages will be taxed much more heavily than others, depending upon their tastes.

Horseracing. Even horseracing experiences some discriminatory taxation within classifications. In most racing states, harness racing is given preferential treatment over thoroughbred racing Ten of the 13 states, practicing both forms of racing, tax harness racing at lower rates. However, in some of the states that use progressive rates, the top rate applied is higher for harness racing.[11]

Ad Valorem Versus Specific Taxation

Inequity also enters into the taxation of the "vices" through the use of specific taxation rather than ad valorem taxation. Specific taxes are levied on the basis of quantity, ad valorem taxes on the basis of value With only minor exceptions, e g , cigars, specific taxation is used. The taxation of beer may be used to demonstrate the manner in which specific taxes add to regressivity of excise taxes. The total excise tax on a case of 24 12-ounce containers of beer was found above to be 74 cents For a case of beer retailing at $4 50, the tax would be about 17 percent of this price, whereas it would amount to about 21 percent of a case of beer retailing for $3 50. For distilled spirits the disparity is even greater. The average rate of taxation was stated above by the Licensed Beverage Industries to be about 58 percent of the average retail price per fifth of distilled spirits The average total

[9] Groves, *op cit*, p 280.
[10] Marx *op cit*, p 726.
[11] National Association of State Racing Commissioners, *Statistical Reports on Horse Racing in the United States for the Year of 1963* (Lexington The National Association of State Racing Commissioners, February 1964) Table No 2.

excise tax load used was $2 70 per fifth For a cheap whiskey, selling for $3 50, taxes would constitute 77 percent of the retail price. For cigarettes, the same situation obtains but to a lesser extent Since lower income groups are probably the major purchasers of lower priced (lower quality) items, specific taxation adds to the regressivity of excise taxation.

Other Considerations

Besides bearing a proportionately larger share of the excise taxes on the selected commodities—tobacco products, alcoholic beverages, and horseracing—than do the higher income groups, the lower income groups have other burdens to endure. Because moonshine is priced under legitimate whiskey, low income receivers are the moonshiner's best customers As a consequence, they may suffer serious illness, blindness, and even death The Licensed Beverage Industries reports that the Internal Revenue Service found that 93 percent of a large sample of illicit whiskey contained appreciable amounts of lead—a major cause of illness and death Although difficult to determine, the Licensed Beverage Industries estimates 200 deaths in the last decade were caused by moonshine [12]

Finally, it should be noted that when a low income receiver spends money for smoking, drinking, and gambling, he may do so at the sacrifice of other expenditures which are essential to his health and well-being The heavy taxing of these commodities and services then reduces the low income receiver's ability to meet his needs For upper income groups, such considerations are of minor consequence.

[12] Licensed Beverage Industries, *Moonshine, A $600,000,000 Tax Fraud on the American Taxpayers* (New York. Licensed Beverage Industries, Inc, 1963), p 16.

CHAPTER III

ECONOMIC IMPACT

GENERAL CONSIDERATIONS

Allocation of Resources and Consumer Welfare

Under a perfectly competitive price system, the consumer has complete freedom of choice The exercise of this choice results in an expenditure pattern which directs the allocation of resources in such a manner that an optimum allocation is attained Since each consumer spends his income (aside from saving) on the goods and services which will bring the greatest satisfaction, he maximizes his welfare, that is, his real income is maximized Similar behavior on the part of all consumers consequently maximizes society's real income However, exception to this conclusion can be taken if it can be argued that the price system ignores some of the real costs to society and consequently the consumption of some goods and services is higher than society deems desirable This is the basis of the sumptuary argument previously discussed Given such a possibility, optimum allocation of resources will be attained only through control of consumption and redirection of resources in line with social judgment

One method of curtailing consumption of a commodity and reducing the amount of resources devoted to its production is to tax it The imposition of this extra burden on the selected commodity must either raise its price or lower the returns to resources engaged in its production Assuming the price of the commodity to be increased—i e , the tax shifted forward—some persons will buy less of it than before and buy untaxed goods and services instead If so, their real income is lower, since they have a less desirable combination of goods than before the levying of the tax If consumption of the taxed commodity is maintained at a higher price, a lesser amount of funds will be available for purchase of other commodities and again real income is lower The extent to which consumption of the taxed commodity would be affected would depend upon the elasticity of demand The more inelastic the demand, the more consumption of the taxed commodity would be maintained—but only at the expense of less consumption of the untaxed goods and services If the tax cannot be shifted forward to the consumer, it must be borne by the supply factors Lower returns to these factors will discourage production of the taxed commodity and reduce the amount of resources devoted to its manufacture In addition, the costs of tax collection which are borne by the supply factors will further serve to reduce returns and thereby reduce production Because of these considerations, the taxation of selected commodities under usual conditions (less than totally inelastic demand) will tend to lessen the amount of resources allocated to their production

Reduced legal production of the taxed commodity may be accompanied by increased interest in such illegal activities as smuggling and

moonshining The taxation of a commodity adds to its costs of production, but tax costs need to be covered only by legal businesses Consequently, the taxation of a commodity creates an opportunity for illicit gains The greater the tax, the wider the spread between nontax production costs and selling prices When this spread is wide, substantial amounts of resources may be directed toward illicit production An outstanding example of such a situation is moonshining The typical quart of moonshine retails for $4, out of which production costs are 26 cents (profits excepted) [1] Production of moonshine was estimated to be 46,000,000 gallons in 1962 and profits were estimated at $688 3 million [2] Unquestionably, the amount of capital invested in this illegal activity is large

It should be pointed out, however, that even though excise taxes have been severely criticized on the above grounds, all taxes to some extent distort production For example, income taxes, which presumably leave the consumer free to choose from undistorted consumer prices, may very well affect the allocation of resources through altering the relative desirability of work and leisure Also, nonincome considerations, such as prestige, become increasingly significant in choosing occupations But it should be noted excise taxes have these effects as well as their other distortive impact on allocation of resources

Business Cycle Aspects

Among the virtues of the progressive income tax is the stabilizing influence it exerts upon the business cycle When income declines, it takes proportionately less out of income and thus helps to maintain consumption When income is rising, it takes proportionately more and thereby restricts spending growth and inflationary pressures Hence the wide acclaim for the automatic stabilizing influence of the progressive income tax It follows that regressive taxes—i e, commodity taxes—react perversely to changes in business conditions As income declines, these taxes take a proportionately larger part of income and leave the income receiver less able to spend for the products of business When income is rising, they take proportionately less, thereby adding to inflationary pressures As one author comments, "Unless rates are deliberately changed as income changes, such tax systems are anticompensatory, they tend to boom the boom and depress the depression' " [3]

Taxes levied on tobacco products, alcoholic beverages, and gambling (horseracing) are among the worst offenders for fiscal perversity First, as a group, they are the most regressive of all taxes, therefore, they have the highest degree of fiscal perversity In addition, these commodities are generally taxed on a specific basis rather than an ad valorem basis, which compounds their anticompensatory nature Since specific taxes are levied on a quantity basis, the tax remains the same regardless of quality differences and price level changes Thus as incomes and prices rise, revenues from specific taxes rise

[1] Licensed Beverage Industries, *Moonshine A $660,000,000 Tax Fraud on the American Taxpayers* (New York Licensed Beverage Industries, Inc, 1963), p 18
[2] *Ibid*, pp 10, 18
[3] Philip E Taylor, *The Economics of Public Finance* (revised edition, New York The Macmillan Company, 1953), p 573

less proportionately than ad valorem taxes and, therefore, are not as effective in restraining inflation as other forms of taxation. The reverse is true in times of price and income declines Specific taxes then bear more heavily on income than ad valorem taxes and consequently reinforce this decline.

Commodity taxation may contribute to inflation in another way. If the tax is shifted forward to the consumer through a price increase, less of the product will typically be sold This cutback of output means unemployed resources—land, labor, and capital. If governmental authorities respond to this situation with measures designed to alleviate it, e g., easy money policy or increased government spending, such efforts will work toward reemployment of these resources at the new higher price level.

From the point of view of the taxing state, revenues from commodity taxation tend to be maintained better during economic declines than revenue from income taxes. On the other hand, during periods of rising business activity, the state will share less in this growth under commodity taxation than under income taxation.

SELECTED COMMODITIES

Tobacco Products

One of the major ways that taxation of tobacco products in California may impair the growth of the tobacco industry is through sales lost to other states If taxation raises the prices of California tobacco products to higher levels than other states, tobacco users may transfer their purchases to the lower-priced (lower-taxed) products of other states. Sales may be lost to the lower-tax states through commuter purchases, through mail order purchases (but not cigarettes because of the Jenkins Act), and through bootlegging The extent of the sales loss will depend largely on price differences and the accessibility of the low-price products

If California were to increase its cigarette tax to 8 cents per package, it would create a large price difference with two of its border states Oregon has no tax on cigarettes and Arizona taxes only 2 cents per package. There would be little difference with Nevada, whose current rate is 7 cents per package Lower prices in Oregon and Arizona would likely encourage purchases in those states by California border residents The recent experience of New York illustrates clearly the extent that one state can lose sales to another when conditions are favorable to tax evasion When New York imposed a 15 percent tax on tobacco products, sales of cigars fell on the average 30 percent At the same time, sales in adjoining states were up 2 percent to 5 percent. Within New York, sales losses varied according to ease of access to tax-free products; for instance, sales in Manhattan were down more than in upstate New York One cigar dealer located near the Hudson tubes had a sales loss of 80 percent (lost to New Jersey) [4]

[4] Clarence M Weiner, "Why the Cigar and Tobacco Products Taxes Were Repealed by New York State and Michigan Effective July 1, 1961," (New York Cigar Manufacturers Association of America, Inc, February 1, 1962). [Pages not numbered.] (Lithographed.)

California's geography would limit sales losses to the lower-priced products, but would not eliminate them Legitimate sales would also be lost to bootlegged cigarettes

The costs of collection of the tax will reduce returns and investment in the tobacco industry to the extent that these taxes are borne by the industry The State of California grants a discount of not more than 2 percent on stamps purchased as an allowance for costs of collection. A 1960 California study reports that distributors were complaining that these allowances did not cover costs In one month, distributors reported costs that ranged from 2 15 percent to 7 22 percent [5] In other states, surveys have found allowances for costs inadequate for the small distributors but profitable for the larger firms For example, a New Jersey survey indicated that the 3 percent allowance exceeded the costs of collection of 35 large firms by 18 3 percent to 44 9 percent, while small wholesalers had losses of 15 5 percent and small vending machine operators had losses of 23 5 percent [6] This data suggests that many firms in California's tobacco industry are carrying a part of the tax collection costs, especially the smaller firms

Another factor restricting the growth of California's tobacco industry is the additional financial cost which results from the capital requirements needed because of the tax Additional funds are needed for stamp inventory, additional merchandise inventory (needed because of the stamping process), and additional accounts receivable (resulting from higher prices). Stamps can be purchased from the state on credit, provided a bond can be posted; if not, they must be paid for in cash so that, in effect, the tax is prepaid In either case. however, additional cost to the firm is involved—the cost of the bond or the financial cost of funds needed for the prepayment of the tax Even with the 3-cent-per-package tax, the State Board of Equalization estimates that approximately 40 percent of the tobacco distributors do not have bonding requirements.[7] Higher bonding requirements due to higher taxes would mean that even fewer would qualify. The additional funds needed for larger merchandise inventory and accounts receivable may be substantial The California Association of Tobacco Distributors, Inc , estimates the capital required because of the 3-cent tax for the small distributor (300 cases per week) to be $18,000 If the tax were increased to 8 cents per package, $48,000 would be required, a $30,000 increase [8] Raising these additional funds would be extremely difficult for many distributors Some are already paying nearly 10 percent for bank funds To raise funds by increasing accounts payable through lost discounts is an even higher cost source Mr Joseph J. Mittler, President of the California Association of Tobacco Distributors, Inc , claims that this extra burden would cause the medium and smaller houses to disappear [9] These considerations indicate that an increase in cigarette taxes would reduce the flow of capital into the tobacco industry.

[5] California Legislative Analyst, "Reporting Versus Stamp Method of Cigarette Tax Administration," Report to the Assembly Interim Committee on Revenue and Taxation January 4, 1960, p 57 (Xerox copy)

[6] Commonwealth of Massachusetts, "Vendor Allowance for Collecting Alcoholic Beverage Excise," *Senate Report* No 712 [No publisher shown] (December 26, 1960), pp 42–52

[7] Letter from Joseph J. Mittler, President, California Association of Tobacco Distributors, Inc , March 9, 1964

[8] *Ibid.*

[9] Letter from Joseph J. Mittler, President, California Association of Tobacco Distributors, Inc., June 30, 1964.

Besides limiting the growth of the tobacco industy, additional taxes would likely change the structure of the industry, there would be increased concentration of the industry into fewer and larger firms The evidence above indicates that smaller firms bear a greater burden from the additional costs that result from taxation than do the larger firms As a result, many smaller firms will leave the industry, which has already experienced a strong movement toward greater concentration In 1940, Southern California had approximately 15 major grocery houses and 30 tobacco distributors, last June there were only three major wholesale groceries, and about seven tobacco distributors [10] Distributors have been eliminated either through closure or through merger Additional taxation will hasten this process through elimination of more small distributors As a consequence, there will be a greater concentration and lessening of competition in the tobacco industry

Alcoholic Beverages

The alcoholic beverage industry in California has grown remarkably since its establishment during the depression In 1935, industry payroll and earnings amounted to $26,458,000, by 1962, this figure reached $623,054 000 [11] National growth almost parallels this—payroll increased from $37 billion to $322 billion in the same period [12]

This growth has taken place despite the heavy tax burden placed on the industry The distilled spirits segment of the alcoholic beverage industry is far more heavily taxed than either the beer or wine segments Beer and wine are so lightly taxed that their rate of growth must be mainly explained in terms of nontax factors e g consumer tastes Growth in the distilled spirits sector has been heavily penalized by its tax load The high prices necessitated by these taxes have caused legitimate businessmen to lose sales to illicit production, as discussed and illustrated in detail above and in Chapter V

Horseracing

The horseracing industry in California has experienced a marked change in profitability since the legalizing of on-track wagering The first two decades were extremely profitable In this period, the six private tracks earned total profits of $49,930,000 on an original investment of $5,700,000, and paid stockholders $30,422,000 in dividends [13] In the immediate postwar years, some instances of phenomenal earnings occurred For example, in one year Bay Meadows earned 212 percent on its net worth [14] Since then, profits have been trending downward From 1945 to 1952, profits as a percent of net worth declined from 52 4 percent to 19 7 percent [15] From 1952 to 1960, profits continued downward—falling 33 percent This decline occurred despite the 34 percent increase in track gross revenues in this period Increasing expenses

[10] *Ibid*
[11] Licensed Beverage Industries, "Some Aspects of the Economic Contributions of the Alcoholic Beverage Industry" (New York Licensed Beverage Industries, Inc., 1963) [Pages not numbered] (Lithographed)
[12] *Economic Report of the President 1963*, (Washington GPO, 1964), p 221
[13] California Legislature, *Taxation of Horse Racing in California*, Report of Subcommittee of the Assembly Interim Committee on Revenue and Taxation (Sacramento State Printing Office, June 10, 1953), pp 15–16
[14] *Ibid*, p 31
[15] *Ibid*

plus an increasing share of the parmutuel pool going to the state account for this seeming discrepancy [16] Furthermore, horseracing profits tend to vary considerably from year to year These factors have prompted a Stanford Research Institute study to describe the California horseracing industry as a slow-growth industry, which is subject to high degrees of fluctuation in the demand for its product and to inflexible expenses—all of which combine to make horseracing in California a high-risk business [17]

Horseracing in California is a regulated industry The state grants a monopoly to the tracks and protects them from new entrants In return, the state shares in the proceeds and is, in effect, a partner in the business Intra-industry competition exists mainly in the allocation of racing days between northern and southern tracks and between private associations and the fairs When racing dates overlap, competition for top horses results In the past few years, inter-industry competition from other forms of entertainment has been increasing Baseball, basketball, ice hockey and other spectator sports have become increasingly available

Because the state is the controlling shareholder in the horseracing business, it can direct the destiny of horseracing in California Through changing its share of the revenues from the industry, it affects the returns to the owners and their willingness to invest capital in the industry Low returns discourage, and high returns encourage, capital investment Attempts to increase state revenues through increased tax levies may prove abortive if the capital investment in the industry declines and the quality of racing is impaired, thereby lowering attendance and wagering at the tracks Optimization of horseracing collections to the state would require setting tax rates which would provide returns sufficient to attract capital to the industry How much capital should be attracted into the horseracing industry depends primarily upon the state's philosophy as to the need and desirability of horseracing

A further problem exists in that southern tracks are more profitable than northern tracks In economic theory, unprofitable ventures wither away—as they should, if optimum allocation of resources is to be obtained In this case, however, the tax rates chosen by the state help to determine profitability Should the state apply different rates to northern tracks as opposed to southern tracks? In effect, this would amount to southern tracks subsidizing the northern tracks Again, the answer depends on the social goals of the state

Through its regulations and disposition of revenues, the state also affects the allocation of resources A large part of the rationale for legalizing wagering on horseracing was that it would stimulate the breeding of quality horses To implement this objective, the current law calls for 10 percent of the purses won by California-bred horses to be distributed to the breeders of those horses In 1963, there were 2,863 California-bred winners and total awards of $523,558 [18] Undoubtedly, these awards have encouraged the breeding of high-quality horses

[16] Stanford Research Institute, *An Economic Appraisal of the Outlook for Horse Racing in California* (Menlo Park Stanford Research Institute, March 1961), p 69
[17] *Ibid*, pp 84, 88, 89
[18] *Horse Racing in California*, Annual Report of Operations, 1963, California Horse Racing Board (Sacramento State Printing Office, 1963), p 5

The state currently earmarks $750,000 of its horseracing revenues to the Wildlife Restoration Fund. The effect may be for more funds to be allocated in this way than if this fund had to compete with other demands upon the state's General Fund

CHAPTER IV

REVENUE FROM TOBACCO PRODUCTS

CIGARETTES

Importance of Revenue

The state of California was one of the very latest states to adopt a cigarette tax Its tax did not become effective until July 1, 1959, and by this time, 45 states were already levying cigarette excises [1] When Colorado imposed a tax on cigarettes effective July 1, 1964, it brought the total taxing states to 48 The only two states that do not currently tax cigarettes are Oregon and North Carolina

California's cigarette tax proved a substantial revenue producer from the start In its first fiscal year, 1959–60, the yield was $64,805,000 In the short period the tax has been in effect, these revenues have steadily increased They reached an estimated $72,150,000 for fiscal 1963–64 [2] In addition to these collections, the state derives revenue from the 3 percent general sales tax on cigarettes The Tobacco Tax Council estimates this yield to be $21,700,000 for 1963 [3]

Despite the size and growth of California's cigarette tax collections, the relative importance of these revenues has declined In fiscal 1959–60, they represented 3 1 percent of total state revenues; for fiscal 1963–64, the comparable figure is 2 6 percent [4] Tobacco revenues are relatively more important to other taxing states, on the average, their proportion of total state revenue is twice as large as California's [5]

California is one of the leading states in cigarette tax collections; in fiscal 1963 it ranked fourth among the taxing states. In that year its revenues were $70,829,000 Other major revenue states were: New York, $124,687,000; Texas, $89,706,000, and Pennsylvania, $86,704,000. Substantial revenues are also derived from this tax by a number of other states, but for many states the amounts are comparatively small Wyoming's yield, at $1,731,000, is the smallest [6]

California's tax rate, 3 cents per package, is one of the lowest in the nation Only two states have lower rates—Arizona, 2 cents per package, and Kentucky, 2½ cents per package Washington, D C., also is lower with a 2-cent rate In addition to an ever-increasing number of states adopting cigarette taxes, the tax rates applied by these states have been surging upward In 1950, the most commonly applied rate and also the midpoint of the range of the taxing states was 3-cents per package By May 1964, the most common rate was 8 cents, and the

[1] Tobacco Tax Council, *Cigarette Taxes in the United States, Vol XII, 1963* (Richmond, Virginia Tobacco Tax Council, 1963), p 8

[2] California Legislature, *State of California Budget for the Fiscal Year July 1, 1964 to June 30, 1965* (Sacramento State Printing Office), p A-20

[3] Tobacco Tax Council, "Reasons Why California Cigaret Tax Rate Should Not Be Increased" (Richmond, Virginia Tobacco Tax Council, July 1964) (Mimeographed)

[4] California Legislature, *op cit*, pp A-19, A-20

[5] California Legislature, *California's Tax Structure 1964* A Major Tax Study, Part I. Assembly Interim Committee on Revenue and Taxation (Sacramento State Printing Office, January 1964), p 21

[6] Tobacco Tax Council, *Cigarette Taxes in the United States*, pp. 12, 15.

middle rate applied was 6 cents.[7] This means that since 1950 many states have doubled or more than doubled their tax rates on cigarettes (See Table IV-1 for comparative state tax rates for 1950 and 1964.)

How can California's high revenue yield be reconciled with its low tax rate? Part of the explanation lies in the state's large population. In addition its per capita consumption is high. In fiscal 1963, per capita consumption was 146 packs, 11 above the national average. The State Board of Equalization reports: "The high per-capita income of Cali-

TABLE IV-1

STATE CIGARETTE TAX RATES

(per pack of 20 cigarettes)

DECEMBER 1964

No tax	2¢	2½¢	3¢	3.9¢
North Carolina Oregon	Arizona District of Columbia	Kentucky	California Colorado New Hampshire Virginia	Hawaii
4¢	**5¢**	**6¢**	**7¢**	**8¢**
Illinois Indiana Missouri Wyoming	Delaware Iowa New York Ohio South Carolina	Alabama Arkansas Connecticut Kansas Maine Maryland Massachusetts Nebraska South Dakota West Virginia	Idaho Michigan Nevada North Dakota Oklahoma Tennessee Washington	Alaska Florida Georgia Louisiana Minnesota Montana New Jersey New Mexico Pennsylvania Rhode Island Texas Utah Vermont Wisconsin
9¢				
Mississippi				

JANUARY 1950

No tax	1¢	2¢	2.5¢	3¢
California Colorado Maryland Missouri North Carolina Oregon Virginia Wyoming	West Virginia	Arizona Delaware Iowa Kentucky Montana Ohio Utah	New Hampshire	Alabama Connecticut Idaho Illinois Indiana Kansas Michigan Nebraska Nevada New Jersey New York Rhode Island South Carolina South Dakota Tennessee Texas Wisconsin
4¢	**5¢**	**8¢**		
Arkansas Maine Minnesota Mississippi New Mexico Pennsylvania Vermont Washington	Florida Georgia Massachusetts North Dakota Oklahoma	Louisiana		

SOURCES (1964) Federation of Tax Administrators, *Tax Administrators News*, September, 1964, and subsequent issues, (1950) California, Senate Interim Committee on State and Local Taxation, *State and Local Taxes in California A Comparative Analysis*, p. A-405

[7] See Table IV-1

formans and the large number of tourists visiting the state account for most of this difference "[8]

Revenue Potential

California is still taxing cigarettes at its original rate of 3 cents per package, however, there have been proposals to raise this rate AB 84 (amended) (Marks and Garrigus) California Legislature 1964 First Extraordinary Session proposes an 8-cent tax per package, and AB 157 (Henson) California Legislature 1964 First Extraordinary Session proposes a 7-cent tax per package Assuming no change in sales from the levying of these higher tax rates on cigarettes, the state would have revenues for fiscal 1963–64 for these different rates as given in Table IV-2

Qualifications

The above estimates of additional revenue from higher tax rates on cigarettes depend upon a completely inelastic demand, i e, sales do not

TABLE IV-2

ESTIMATED CIGARETTE TAX COLLECTIONS FOR FISCAL 1963–64 FOR SELECTED TAX RATES

Rate	Estimated total revenue	Estimated additional revenue
3¢ current rate	$72,150,000	----------
7¢ AB 157 (Henson)	$168,350,000	$96,200,000
8¢ AB 84 (Marks and Garrigus)	$192,100,000	$120,250,000

SOURCE California Legislature, *State of California Budget for the Fiscal Year July 1 1964 to June 30, 1965* (Sacramento State Printing Office), p A-30

decline even though the tax is fully reflected in the retail price Many authorities do contend that the demand for cigarettes is extremely inelastic, in fact, they hold that this is the very reason they are so heavily taxed There is considerable data available which supports this position A recent tax study found the demand for cigarettes to be highly inelastic, that changes in cigarette tax rates resulted in almost proportionate changes in revenues For example, between 1958 and 1959, both Massachusetts and Mississippi raised their rates from 5 cents to 6 cents per package, a 20-percent increase The average cigarette revenue for these two states increased by 24 1 percent in the year following the rate increase, while the remaining 41 states which did not significantly change their tax rates on cigarettes had an average increase in cigarette collections of only 9 97 percent This result was quite typical for other states when their cigarette tax rates were increased On the rare occasions when cigarette tax rates have been reduced, cigarette tax collections have fallen, again confirming the inelasticity of demand To illustrate, Kentucky reduced its rate from 3 cents to 2 5 cents on July 1, 1960 In the ensuing year, its cigarette

[8] State of California, *Annual Report of the State Board of Equalization 1962–63* (Sacramento State Printing Office, 1963), p 28

tax collections were down 10.1 percent [9] This empirical data supports the inelastic demand hypothesis for cigarettes

There are, however, some factors on the horizon which might reduce the inelasticity of demand for cigarettes in the future One factor is the rising price of cigarettes. As prices increase, demand tends to become more elastic, and prices of cigarettes have been moving upward in response to the ever-increasing taxation Furthermore, it appears that tax increases will likely continue at most governmental levels. Beside recent widespread state increases in cigarette tax rates, a 5-cent increase per pack in the federal rate has lately been proposed,[10] and some cities have also adopted cigarette taxes (for example, Los Angeles). A 5-cent increase at each governmental level would mean a potential 15-cent increase in the price of a package of cigarettes Undoubtedly, an increase of such magnitude in the price of cigarettes would bear heavily on cigarette sales.

Although most evidence indicates a high degree of inelasticity of demand for cigarettes, there is also some evidence that cigarette sales are affected by price changes (demand may still be inelastic) For example, when California adopted its cigarette tax, cigarette sales fell over 20 percent in the ensuing 12 months [11] In its May 1964 Monthly Report, the Tobacco Tax Council stated that the number of cigarette packages taxed for that month was down 12 1 percent from May 1963. While the health scare undoubtedly accounts for much of this decline, part may be due to tax increases. Fifteen states raised their taxes during this period Their average decline in packages taxed was about 16 percent—noticeably greater than the 9½-percent average decline for the states whose tax rates remained unchanged Some suffered severe declines, e g., Nebraska raised its tax from 4 cents to 6 cents per pack and the number of packages taxed fell 47 8 percent [12] This evidence suggests that cigarette sales may be reduced through increased taxation.

Cigarette smokers may react to increased prices of cigarettes in a number of ways which would reduce the number of cigarette packages taxed While few may stop smoking cigarettes, some may reduce the number they smoke Others will switch to other tobacco products Small cigars, for example, may be an excellent substitute for many cigarette smokers. Still others will seek out the lower-taxed or tax-free cigarettes The Tobacco Tax Council, in its argument against a tax increase on cigarettes in California, contends that border residents will increase their out-of-state purchases [13] Finally, the wider margin provided by high taxes will serve as a stimulus to bootlegging and further decrease the number of packages taxed.

Another element which might impair cigarette sales and taxes in the future is the possible link between cigarette smoking and cancer The government's health report, which came out in January 1964, appears

[9] Karl Marx, "Tobacco, Alcoholic Beverages, and Pari-Mutuel Taxes" Chapter 21 of the State of Illinois *Report of the Comission on Revenue* (Springfield Frye Printing Company, 1963), pp 707–709

[10] United States Congress, Senate, *Congressional Record* for January 27, 1964 (Washington Government Printing Office), p 1056

[11] Tobacco Tax Council, "Reasons Why California Cigaret Tax Rate Should Not Be Increased"

[12] Tobacco Tax Council, "Monthly State Cigaret Tax Report"

[13] Tobacco Tax Council, "Reasons Why California Cigaret Tax Rate Should Not Be Increased."

to have sharply reduced sales While the National Tax Association reports that cigarette stamp sales were up in June 1964 from June of the prior year, this is the first year-to-year increase for monthly stamp sales since the government report was published In the past, cigarette sales have rebounded from health scares and have then continued trending upward Whether the June increase in stamp sales is a revival of this upward trend is difficult to say The National Tax Association warns of possible misinterpretation of the June upturn It notes that the June 1963 sales were abnormally low, since many stamps had been purchased in advance in anticipation of tax increases scheduled to go into effect [14] Because many people are convinced that smoking is dangerous to health, educational programs are being promoted whose goals are to discourage and prevent cigarette smoking In the long run, such programs may have a telling effect on the smoking habits of Americans At any rate, health considerations, plus ever-rising cigarette prices, may serve to limit the future ability of governments to garner additional revenue from the taxation of cigarettes

TAX COLLECTION METHODS

States taxing cigarettes have two procedures available for collection of the tax One is the reporting (sometimes called invoice or inventory) method Under this plan, the taxpayer reports to the taxing authorities specific information as to his invoices, inventories, and sales, and pays his taxes according to these records The tax is thus self-assessed, and is paid in a manner similar to California's sales tax Another method is the use of indicia (i e, stamps or meter impressions) While variations exist in the implementation of this plan, its essence is that the tax is paid by the taxpayer through the purchase of stamps or meter impressions from the proper state officials or state-authorized agencies.

Of the cigarette-taxing states, only four rely on the reporting method, they are Alaska, Hawaii, Massachusetts, and Michigan. All the other states, including California, use some form of indicia

Potential Savings of Reporting Method

The stamp plan is a costly method of tax collection In addition to general administrative costs, it requires the purchasing and affixing of stamps Although the affixing is done by the distributor, discounts are usually given to the distributor by the state, presumably to compensate for the costs incurred Since costs of stamping can be avoided under a reporting system, a state using this system may realize substantial savings To illustrate the potential savings available to the state of California, estimates based on AB 1374 (Petris) (as amended in Assembly April 5, 1963) 1963 General Session are given in Table IV-3 From this table it can be seen that the reporting method would have provided a saving to the state of $1,818,700 for the fiscal year 1963–64 This saving would continue into the indefinite future and increase as cigarette sales increase However, because of certain nonrecurring adjustments and the revenue lag caused by the change-over from a prepayment to a postpayment plan, there would be a one-

[14] *The Wall Street Journal*, July 15, 1964, p. 2.

time negative effect on revenue to the state in fiscal 1963–64 of $1,880,000, even after the above savings are taken into account [15]

TABLE IV-3

COMPARISON OF THE 1963–64 COSTS OF ADMINISTERING THE CIGARETTE TAX STAMP VS. REPORTING METHODS

(in thousands)

	Stamp method	(AB 1374 amended) reporting method
Cigarette Stamps	$325 7	----
Bank of America Contract	16 0	----
Distributor Discounts	1,500 0	*$23 0
Administration Costs	135 1	135 1
Total	$1,976 8	$158 1
Savings	----	1,818 7

*Nonrecurring overlap
SOURCE Letter from A Alan Post, Legislative Analyst, California State Legislature, April 2, 1963, p 7

Qualifications

How much of the nearly $2,000,000 per year savings the state would realize would depend upon two factors Costs of enforcement in lieu of stamps, and the extent of tax evasion On the first point, it is the view of the State Board of Equalization that the cost of effective investigation and audit procedures would be " no more than a third of the current cost of the stamp method Possibly it might be substantially less " [16] In Massachusetts, also, opposition to the use of stamps has come mainly from state officials, who believe the method not worth the additional cost [17]

The major criticism of the reporting method of cigarette-tax collection is that tax evasion might more than offset the savings from elimination of the stamping process However, a 1960 report prepared by the California Legislative Analyst concluded that the reporting system could be successfully employed in California provided that (1) the program is strictly enforced, (2) sufficiently severe penalties are imposed on tax evasion, and (3) cooperation of the major segment of the cigarette industry is obtained To begin with, the report notes the long and successful experience the state has had in the use of the reporting method in collection of sales taxes and alcoholic beverage taxes Furthermore, the study points to a number of factors which contribute to the difficulty of cigarette tax evasion For one thing, the state's geography limits access to tax-free cigarettes Most of its population live in coastal areas and only 2 percent near its borders Consequently, tax evasion through individual consumer purchases would be small The Jenkins Act (1949 federal enactment) effectively rules

[15] Letter from A Alan Post, Legislative Analyst, California State Legislature, April 2, 1963, pp 7, 8

[16] Letter from Dixwell L Pierce, Secretary, State Board of Equalization, April 23, 1963, p 3

[17] Commonwealth of Massachusetts, "Vendor Allowance for Collecting Alcoholic Beverage Excise," *Senate Report* No 712 [No publisher shown] (December 26, 1960), pp 45–46

out interstate shipments of cigarettes, since this act requires the shipper to send a copy of the invoice to the tax administrator in the consumer's state where the use tax would apply Tax avoidance through the use of military outlets is thought to be small and exists under both systems Of greatest concern is bootlegging Even here, the report holds that low profit margins would discourage bootlegging, the profit potential is apparently quite small especially when bootlegging's many problems are considered Among them are the difficulty of finding volume outlets, fines, jail sentences, and confiscation of cargoes In addition, auditing of distributors' records, plus excellent facilities for highway inspection of truck cargoes, should further discourage bootlegging and also foil some of the bootlegging attempted [18]

Two states, Massachusetts and Michigan, have had a long experience with the reporting method of cigarette tax collection, and officials in both states express satisfaction with it A legislative report from Massachusetts states, "Those persons most actively associated with the application of the cigarette excise in Massachusetts state that the reporting system is successful" [19] The cigarette tax administrator in the state of Michigan ardently supports the reporting system He notes that industry members are also pleased with the system and says, "Frankly, at present we know of not one wholesaler who is dissatisfied with the return (reporting) system and who would prefer stamps In fact, many wholesalers are outspoken in praise of the system" [20] Many industry members in both Massachusetts and California have also strongly supported the reporting system [21, 22]

On the other hand, the use of indicia in cigarette tax administration has many strong advocates In Massachusetts, a number of tax officials have recommended the stamp plan for the collection of cigarette taxes Furthermore, the National Association of Tobacco Distributors contends Massachusetts would add $3 million to its revenue through the use of stamps [23] A recent survey of tax officials in all cigarette-taxing states found strong sentiment in favor of the use of indicia (over 90 percent) in the replies (74 percent) [24] A fairly typical reply, perhaps a little stronger than average, is that of a Maryland tax official

> We feel strongly that tax indicia is an absolute necessity for the proper administration of a cigarette tax law We use heat-applied decal stamps, which we consider superior to metered impressions Cigarettes are such a universal item and move so quickly that the lack of indicia would be an open invitation to bootlegging [25]

[18] California Legislative Analyst, "Reporting Versus Stamp Method of Cigarette Tax Administration," Report to the Assembly Interim Committee on Revenue and Taxation January 4, 1960, pp 2–4, 48–66 (Xerox copy)
[19] Commonwealth of Massachusetts, *op cit*, p 45
[20] Letter from David W Parker, Director, Cigarette and Miscellaneous Taxes, State of Michigan, April 1 1963 p 2
[21] Commonwealth of Massachusetts *op cit*, p 46
[22] Mimeographed sheet [No title, date, or publisher shown]
[23] Commonwealth of Massachusetts, *op cit* p 46
[24] Phil Piche (ed) *The Tobacco Record* (San Francisco The Tobacco Industry Publishing Company, Inc, April 1963) Vol 52, No 4, pp 1, 3, 8, 12
[25] *Ibid*, p 3

And John D. Kelly, Executive Director, California Association of Tobacco Distributors, Inc, firmly believes that unless stamps are used, bootlegging will become rampant [26]

TAXATION OF OTHER TOBACCO PRODUCTS

Importance of Revenue

For the most part, the taxation of other tobacco products has not been an important source of revenue to either the federal government or the states. In the early period of federal taxation, which started during the Civil War, these revenues were important; since then, cigarette revenues have steadily increased in importance and revenues from other tobacco products now only comprise a minor part of federal tobacco revenues In 1963, the federal government received 96 7 percent of its tobacco collections from cigarettes [27] For the states, cigarettes have always been the major part of their tobacco tax collections Cigarettes were first taxed in 1921 by one state, other tobacco products were first taxed in 1923 by two states. For all tobacco-taxing states, cigarette revenues have never been less than 87.4 percent (in 1927) of total tobacco collections In 1963, cigarette revenue as a percent of total state tobacco revenue was 98 2 percent [28] It should be noted, however, that largely responsible for the very low yield from other tobacco products is the fact that most tobacco-taxing states do not tax other tobacco products Currently, only 16 states tax other tobacco products, and California is not one of them.[29] (For federal and state tobacco collections for 1963, see Table IV-4)

There is a wide range of taxing practices among the states which do tax other tobacco products. For one thing, the products selected for taxation vary. While most states tax all other tobacco products, some tax cigars only, others select two or three products, and North Dakota taxes only snuff and smoking tobacco Also, considerable differences exist as to the type of tax and the range of rates Five states rely solely on ad valorem taxes; eight use specific rates, and three apply specific rates to cigars and ad valorem rates to other selected tobacco products The range of rates is most aptly illustrated by ad valorem rates Minnesota applies a 10-percent rate on the wholesale price of all tobacco products; the comparable rate for Washington is 25 percent An examination of specific rates would also reveal a wide spread (For selected state tax rates on other tobacco products, see Table IV-5.)

The federal government uses specific rates, although the rate on some classifications of cigars is bracketed according to the retail price For cigars weighing less than 3 pounds per thousand, the tax is $0 75, for cigars weighing over 3 pounds per thousand, the rate per thousand increases from $2 50 to $20 as the retail price increases. All other tobacco products are taxed at $0 10 per pound [30]

Undoubtedly, the lack of enthusiasm on the part of the states for taxing other tobacco products lies in the difficulty of securing com-

[26] Personal interview, July 9, 1964
[27] Tobacco Tax Council, *Cigarette Taxes in the United States*, p. 6.
[28] *Ibid*, p 9.
[29] *Ibid*, p 8
[30] California Legislative Analyst, "Considerations Involved in the Taxation of Tobacco Products Other Than Cigarettes," December 30, 1953, p. 1 (Xerox copy)

TABLE IV-4

FEDERAL AND STATE TOBACCO COLLECTIONS YEAR ENDING JUNE 30, 1963

	Collections	Percentage
Federal Excises		
Cigarettes	$2,010,524,000	96 7
Other tobacco products	68,713,000	3 3
Total	$2,079,237,000	100 0
State Excises		
Cigarettes	$1,175,701,000	98 2
Other tobacco products	21,257,000	1 8
Total	$1,196,958,000	100 0

SOURCE Tobacco Tax Council, *Cigarette Taxes in the United States*, p 5

TABLE IV-5

TAX RATES ON OTHER TOBACCO PRODUCTS[1] FOR SELECTED STATES AS OF JANUARY 1, 1964

State	Cigars (per 1,000)	Smoking tobacco	Chewing tobacco and snuff
Alabama	$1 00–$20 25	[2]	75¢ per oz [3, 4]
Arizona	1 00– 10 00	1¢ per oz	.25¢ per oz [5]
Hawaii		20% of wholesale price	
Louisiana	1 20– 40 00	[6]	--
Minnesota		10% of wholesale price	
Mississippi	1 00– 22 40	--	--
North Dakota	--	10%—wholesale price	2¢ per oz.[4, 7]
Oklahoma	3 50– 20 00	25% of factory price	20% of factory price[8]
Tennessee	1 00– 13 50	5% of retail price	
Texas	1 00– 15 00	25% of factory list price[9]	
Washington		25% of wholesale price	

[1] In addition to these rates, there are special taxes on wholesalers and retailers
[2] Range from 2¢ on package of 1½ ounces or less to 11¢ for 3 to 4 ounces plus 3¢ for each additional ounce or fraction thereof
[3] Applies to chewing tobacco only, snuff taxed at rates ranging from 1½¢ on package of ½ ounces or less to 4¢ on first 6 ounces plus 1¢ for each additional ounce
[4] Rate applies to haze and any fraction thereof
[5] Applies to chewing tobacco only, snuff taxed at 1¢ per ounce
[6] Rates range from 1¢ on first 5¢ of selling price to 4¢ on first 15¢ plus 1½¢ additional for each additional 5¢ of selling price
[7] Applies to snuff only Rate for chewing tobacco 10 percent of wholesale price
[8] Does not apply to snuff
[9] Does not apply to snuff
SOURCE Advisory Commission on Intergovernmental Relations, *Tax Overlapping in the United States*, July 1964, pp 187–188

pliance to such taxes For many states, the additional revenue is not worth the additional cost Evasion of the tax could arise through out-of-state purchases It could also occur through illicit in-state sales if marking of tobacco products is essential to the collection of the tax, and this marking is too difficult and expensive to be carried out effectively

The Jenkins Act, which protects the state against tax evasion through purchasing cigarettes by mail from nontax sources, does not apply to other tobacco products Consequently, the tax could be avoided by purchasing these products by mail Some tax leakage will likely occur in

this way, especially on high-quality tobacco products for which there is some tendency to order by mail However, evasion through direct out-of-state purchases by individuals is likely to be small California's geography, with so few of its people living near the border, would seriously restrict such purchases

Another problem lies in the choice of the collection method Other tobacco products do not lend themselves to stamping as easily as cigarettes They come in a variety of weights and sizes, making the placing of stamps or metered impressions an expensive process This expense can be eliminated if the reporting method is used but, as discussed above, there might be more tax evasion There are still more problems If specific taxes are used, serious auditing problems arise, if ad valorem taxes are used, a problem arises because of price instability Wholesale and retail prices are especially unstable Factory list prices appear to offer the most stable tax base for cigars and other tobacco products After a consideration of all these problems, the California Legislative Analyst concluded that California is better situated than most states to tax other tobacco products and that it could probably successfully tax them He further recommended an ad valorem tax based on factory list prices and the reporting method of tax collection [31]

A recent tax study found that most of the states taxing other tobacco products are not unduly concerned with the problem of compliance Although both the stamp and reporting methods are employed, a majority of the states use the stamp method Alabama and Oklahoma are cited as examples of states that are very successful in taxing other tobacco products Alabama applies a specific tax to tobacco products, Oklahoma applies a specific tax to cigars, but taxes smoking and chewing tobacco on an ad valorem basis Both states use stamps to ensure compliance On the other hand, Washington was reported to have a minimum of trouble in collecting its tobacco tax even though it uses the reporting method and employs an ad valorem tax based on wholesale prices One state, New York, did have such a compliance problem that it discontinued the tax It should be noted, however, that New York is unique in its location near large urban centers which provide an easy source of tax-free tobacco products On the basis of these and other findings, the tax study recommended that Illinois tax other tobacco products It further recommended a specific tax for cigars, an ad valorem tax for chewing tobacco, smoking tobacco, and snuff, and that the stamp method should be used to assure compliance [32]

Revenue Potential

It is difficult to estimate the revenue that California might receive from the taxation of other tobacco products However, in 1955, when California was considering a tax on tobacco and cigarettes, the Department of Finance estimated that a tax of 20 percent of the retail price of tobacco products other than cigarettes would yield $8,288,000 [33] A current estimate might be made on a per capita basis In 1961, the

[31] *Ibid* pp 7–8
[32] Marx *op cit*, pp 716–721
[33] California Legislative Analyst, "Considerations Involved in the Taxation of Tobacco Products Other Than Cigarettes," pp 5–6

per capita net revenue for all 18 states taxing other tobacco products was $0.47, for the four states using a 20-percent ad valorem tax on wholesale prices, the average was $0.51.[34] If the latter figure is used in calculating the revenue potential, California would have received revenue of $9,014,250 from this source in fiscal 1963–64.[35]

Besides the problem of compliance discussed above, the elasticity of demand for other tobacco products is an important consideration in judging the revenue potential from their taxation. Such evidence as is available suggests that this demand is quite elastic. There appears to be a direct relationship between tax rates on other tobacco products and tax revenues, i.e., revenues increase in proportion to tax increases. For example, when Alabama raised its rates on other tobacco products by 50 percent in 1959, revenue increased by more than this amount. Very similar results were experienced in Oklahoma where overall rates were increased by almost 50 percent in 1961. In the ensuing year, revenue from taxes on other tobacco products went up by approximately the same amount as the tax increase.[36] Such data suggests that the demand for other tobacco products is highly elastic, therefore, the yield from taxation of other tobacco products will be determined to a large extent by the level of the tax rate chosen.

[34] Marx, *op. cit.*, pp. 712, 714.

[35] California's population for fiscal 1963–64 is estimated to be 17,675,000. Derived from California Legislature, *State of California Budget for the Fiscal Year July 1, 1964 to June 30, 1965* (Sacramento: State Printing Office), p. A-19.

[36] Marx, *op. cit.*, pp. 715–716.

CHAPTER V

REVENUE FROM ALCOHOLIC BEVERAGES

IMPORTANCE OF REVENUE

All states tax sales of alcoholic beverages They receive revenue from this taxation in one of two ways One approach is for the state to exercise the sole right to the purchasing and selling of alcoholic beverages. Such states are called monopoly (or control) states In these states, revenues take the form of profits (markups) Although practices vary from state to state, usually the state exercises a monopoly on the sale of packaged bottled distilled spirits The sale of wine and beer by the package and by the drink, and also distilled spirits by the drink, may then be handled by licensed retailers Currently, there are 17 control states In the remaining 33 states, alcoholic beverages at both the wholesale and retail level are distributed by private enterprise. These states are called license states and they derive their revenue through licenses and excise taxation California is a license state

California has taxed the sale of alcoholic beverages since their sale was first legalized in the early thirties This taxation has been the source of considerable revenue to the state and still continues to be a reasonably important part of total revenue For fiscal 1963–64, revenues from the taxation of alcoholic beverages (license fees plus excise taxes) were estimated to be $74 8 million, or 2 5 percent of total state revenues for that period [1] This $74 8 million does not include sales taxes, which would substantially increase total revenues realized by the state from the sale of alcoholic beverages

LICENSING

In the state of California, the Department of Alcoholic Beverages Control has the exclusive power to license the manufacture, importation, and sale of alcoholic beverages Licensing is generally held to be regulatory by the practicing states, even though revenues frequently exceed cost of policing and of administration This is especially true of California—liquor license revenues were over $13 million in 1961 Only New York surpassed this with license revenue of $24 million for the same period Most states received less than $1 million from this source [2]

Revenues to California from liquor licenses over the years have not demonstrated a strong growth pattern From fiscal 1945–46 through fiscal 1963–64, these revenues increased from $8,980,000 to an estimated $14,121,000, an increase of 59 percent This compares with an

[1] California Legislature, *State of California Budget For the Fiscal Year July 1, 1964 to June 30, 1965* (Sacramento State Printing Office), p A-20

[2] California State Senate, *A Study of the Feasibility of Increasing State and Local Government Revenues from Selected Taxes*, Report of the Senate Fact Finding Committee on Revenue and Taxation, Prepared by William K Schmelzle and the Planning Research Corporation (Sacramento State Printing Office, April 1963), p 63

increase of slightly over 500 percent for total state revenues in the same period [3] Projections also suggest continued slow growth for license revenues [4] In the future, revenue will come principally from renewals and recently authorized special fees These special fees will partly offset the decline in revenues resulting from the expiration of authority to issue intercounty transfers, which expired on June 1, 1963.[5] Very few original licenses are currently available (42 on-sale and 5 off-sale) [6] Licenses are issued on a population basis and more become available as the population grows, but recent legislation raised the number of persons per license, thereby slowing the growth of original licenses [7]

Licensing is held to be regulatory, therefore it cannot be looked upon as a means of raising revenue Since California's license revenue is already higher than costs of administration, further increases in license fees would require a change in the philosophy which created the Department of Alcoholic Beverage Control and thereby divorced control from revenue (For a further discussion of Alcoholic Beverage Control Department fees and licenses See Alice J Vandermuelen, *Fees and Licenses,* published by the Assembly Interim Committee on Revenue and Taxation, July, 1964)

EXCISE TAXES

California received an estimated $60,730,000 in fiscal 1963–64 from the excise taxation of alcoholic beverages [8] This is an increase of 3 percent from the prior year as compared with an increase in total state revenues of 13 percent Although revenues from taxation of alcoholic beverages over the years have increased quite steadily, they have fallen far short of matching the overall growth in the total state revenue

In comparison with other states, California stands second only to New York in receipts from taxation of the sale of alcoholic beverages. In fiscal 1961, New York's receipts were $58,384,000, while receipts in California were $51,002,000 Several other states also realize considerable revenue from this source Among the leaders for fiscal 1961 were· Pennsylvania, $48,969,000, Florida, $47,147,000; and Illinois, $40,612,000 Revenues ranged on down to a low of $612,000 for Wyoming [9]

At the present time, excise tax rates in California are as follows·

Distilled spirits	$1 50 per gallon
Beer	$1 24 per barrel, or 4 cents per gallon
Wine	
Fourteen percent alcohol or less	1 cent per gallon
Over 14 percent alcohol	2 cents per gallon
Sparkling wine	30 cents per gallon

and federal excise tax rates on alcoholic beverages are as follows:

Distilled spirits	$10 50 on each proof gallon
Beer	$9 00 per barrel of 31 gallons

[3] California Legislature, *op. cit*, p A-19
[4] *Ibid*, p A-16
[5] *Ibid*
[6] California State Senate, *op cit*, pp 65–66
[7] *Ibid*, p 59
[8] California Legislature, *op. cit*, p A-20
[9] California State Senate, *op. cit*, p. 67.

Wines
Still wines—rates per wine gallon
Fourteen percent alcohol or less ..... 17 cents
Over 14 percent to 21 percent alcohol ..... 67 cents
Over 21 percent to 24 percent alcohol $2 25
Champagne and other sparkling wines ..... $3 40 per wine gallon
Artificially carbonated wines ..... $2 40 per wine gallon [10]

Distilled Spirits

Importance of Revenue The bulk of the revenue from the taxation of alcoholic beverage sales comes from distilled spirits For fiscal 1963–64, the estimated yield in California was $49,300,000, which was 81 percent of the total revenues from the excise taxation of alcoholic beverages Distilled spirits revenues grew only sluggishly during the first postwar decade Although slow growth still persists (2 percent in the past year), these revenues spurted sharply when the tax on distilled spirits was increased on July 1, 1955, from $0 80 to $1 50 per wine gallon Revenues rose from $16 198,000 to $33,970,000, more than double, in the first fiscal year following the price increase [11] The new tax ranks California virtually in the middle of the 33 license states, with 17 states levying higher rates Specific rates range from a low of 75 cents per gallon for South Dakota to a high of $4 per gallon for Alaska, while Hawaii charges 16 percent of the wholesale price [12] (See Table V-1 for excise tax rates on distilled spirits in selected states)

Only New York received greater revenue from the taxation of distilled spirits than California In 1960, leading states were New York, $45,297,000, California, $41,184 000, Illinois, $23,441,000, and Florida, $20,163,000 [13]

California is consistently a high consumer of distilled spirits In 1961, its per capita consumption was 1 78 gallons, while the national per capita rate was 1 34 gallons [14]

Revenue Potential For purposes of illustration, assume the state raises its tax rate on distilled spirits to $2 per wine gallon, an increase of 33⅓ percent With no change in consumption, revenue would also increase by this amount For fiscal 1963–64, this higher tax would have resulted in additional revenue of $16,433,333

Qualifications The success of a tax rate increase on a commodity depends upon the elasticity of demand for that commodity In the estimate above, it was assumed to be completely inelastic Consequently, sales would be maintained even though the tax is fully reflected in the price However, the true nature of the demand for distilled spirits is questionable A recent tax study investigating this matter could come to no positive conclusions about the elasticity of demand for distilled spirits The authorities cited in the study were divided in their opinions, some held this demand to be inelastic, others thought it to be elastic [15]

[10] California Assembly Interim Committee on Revenue and Taxation, *California's Tax Structure 1961* A major tax study, Part I, p 60
[11] California Legislature, *op cit* p A-20
[12] California State Senate, *op cit*, pp 68–69
[13] Karl Marx, "Tobacco, Alcoholic Beverages, and Pari-Mutuel Taxes," Chapter 21 of the State of Illinois *Report of the Commission on Revenue* (Springfield Frye Printing Company, 1963), p 728
[14] California State Senate, *op cit*, pp 68, 71
[15] Marx, *op cit*, pp 731–32

TABLE V-1

TAX RATES ON DISTILLED SPIRITS FOR STATES WITH LICENSING SYSTEMS, AS OF JANUARY 1—1953 THROUGH 1964

(dollars per gallon)

States	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Alaska	n a	n a	n a	n a	n a	n a	n a	3 50		4 00		4 00
Arizona	1 20										1 44	1 44
Arkansas	2 50											2 50
California	80			1 50								1 50
Colorado	1 60							1 80				1 80
Connecticut	1 00									2 00		2 00
Delaware	1 00	1 15										1 15
District of Columbia	75		1 00		1 25						1 50	1 50
Florida	2 17											2 50
Georgia	1 00											1 00
Hawaii	[1]					[2]						[2]
Illinois	1 00					1 02		1 52				1 52
Indiana	2 08											2 08
Kansas	1 00									1 20		1 20
Kentucky	1 28											1 28
Louisiana	1 58				1 68							1 68
Maryland	1 25			1 50								1 50
Massachusetts	2 25											2 25
Minnesota	2 75							2 875				2 875
Missouri	80									1 20		1 20
Nebraska	1 20											1 60
Nevada	80									1 40		1 40
New Jersey	1 50											1 80
New Mexico	1 30											1 50
New York	1 50											1 50
North Dakota	2 50											2 50
Oklahoma	—	—	—	—	—	—	—	2 40				2 40
Rhode Island	1 50						2 00					2 00
South Carolina	2 72											2 72
South Dakota	75											1 25
Tennessee	2 00											2 50
Texas	1 408							1 68				1 68
Wisconsin	2 00											2 25

NOTE A blank space (.....) indicates no rate change since previous rate shown A dash (—) indicates no tax was in effect as of January 1
SOURCE Advisory Commission on Intergovernmental Relations *Tax Overlapping in the United States*, July 1964, p 198

n a —Data not available
[1] 12% of wholesale price
[2] 16% of wholesale price

The Licensed Beverage Industries, however, marshals considerable evidence that sales of distilled spirits are affected, in some cases sharply, by taxation It notes that many states have turned to increased taxes on distilled spirits as a means of raising revenues on the theory that they have little effect on liquor sales "But almost inevitably, when state liquor taxes or control-state markups have been raised, these increases have resulted in decreasing sales—or at least in limiting them "[16] One recent example cited in this report is the case of Pennsylvania When its tax rates were raised from 10 percent to 15 percent of sales (50-percent increase), on June 1, 1963, taxable liquor sales dropped at the rate of $1 million dollars a month. The tax was referred to as "price-tag prohibition "[17] As further evidence this report points out that, in seven of the private license states where taxes are highest, 1962 sales were below their 1946 levels, while sales in all other states exceeded their 1946 levels[18] There is much additional data presented which also indicates that sales are curtailed by taxes In most cases, the major effect on revenue was slow growth rather than absolute declines[19]

One of the factors affecting the elasticity of demand is the availability of substitutes For some, beer and wine are substitutes for distilled spirits, therefore, an increase in the tax on distilled spirits will cause some distilled spirits users to switch to beer or wine For those who do not consider these beverages to be substitutes, moonshine might suffice. The high level of moonshine production suggests that many do consider it to be a substitute for legal distilled spirits, its production was estimated to be 46,000,000 gallons in 1962[20] At this time, however, it appears that moonshine production is not significant in California In 1962, there were 18,561 stills seized by authorities in the United States, of which only 12 were in California. However, as taxes on distilled spirits increase, moonshiners' margins increase, and illicit liquor production is stimulated Indications are that states formerly free of such production are now experiencing an increase in such activity The Licensed Beverage Industries reports,

> during the past year reports of moonshine activities have come from states where little such action has been noted before. These include Maine, Vermont, Massachusetts, Connecticut, Rhode Island, Delaware, Wisconsin, and Minnesota in the East and Midwest, and Idaho, Oregon and Washington in the Far West[21]

Fair Trade Versus Free Trade A conceivable course of action, which would likely yield substantial revenue to the state (and at the same time benefit the consumer), would be to sell distilled spirits on a competitive basis This would mean issuing more licenses and the elimination of so-called "fair-trade" pricing. Since prices in fair-trade states tend to be substantially higher than in free-trade states, large price reductions are possible. Such price reductions would provide a

[16] Licensed Beverage Industries, *Facts About the Licensed Beverage Industries, 1963* (New York Licensed Beverage Industries, Inc , 1963), p 27
[17] *Ibid*
[18] *Ibid* , p 29.
[19] *Ibid* , pp 27–30
[20] Licensed Beverage Industries, *Moonshine, A $600,000,000 Tax Fraud on the American Taxpayers* (New York: Licensed Beverage Industries, Inc , 1963), p 10
[21] *Ibid* , p. 5.

strong stimulus to sales. The following price illustrations are suggestive of the price cut potential once free trade is initiated New York enforces distillers' minimum prices, and a fifth of Seagram's VO sells for $6 95 Other prices for the same item are $7 14 in Philadelphia, which is located in a monopoly state, $6 50 in California, and $4 99 in free-trade Washington, D.C [22] California's price in this case is 30 percent higher than Washington, D C \ An examination of other brands would reveal similar, and in some cases even larger, price differences. An opportunity to observe the impact on prices, sales, and state revenues, when free trade replaces fair trade, will soon be available In New York, legislation repealing price controls and providing for the issuance of more licenses went into effect on October 31, 1964. It is expected to bring lower liquor prices One New York dealer commented, "A fifth of good stuff might now go down about 60 cents "[23]

Governor Edmund G Brown recently declared his opposition to the high prices in the liquor industry He had reference both to prices of distilled spirits and liquor licenses The price of a license, which might be $40,000 to $50,000, he considered to be outrageous He noted that California is one of the few states which by law protects the price of whiskey for the industry, and he added, "The result is that we pay more money than they do in other states "[24]

How much would revenue to the state be increased by free trade? It is difficult to say, but on an assumption of a 10-percent increase in sales, revenues would increase by an equivalent amount if tax rates remain unchanged On this basis, the additional revenue to the state for fiscal 1963–64 would be approximately $5,000,000 Such an estimate might prove quite conservative

Beer

Importance of Revenue Revenue to California from the taxation of beer was estimated to be $10,545,000 for fiscal 1963–64 [25] This is a relatively small part (about 17 percent) of state revenue from the excise taxation of all alcoholic beverage sales In 1960, California ranked 10th highest for revenue collections from beer sales among 41 states for which data was available [26] Some of the leading states for this year were Ohio, $24,409,000, Florida, Pennsylvania, and Texas, about $20,000,000 each At the same time, California received $9,069,000 This relatively low yield is primarily a reflection for the state's low tax rate At this time, almost every state whose revenue was greater than California's had higher tax rates For example, Ohio's rate at 8 cents is twice California's Only one state, New York, had higher revenue with a lower rate Its rate, 3¼ cents per gallon, brought revenue of $10,626,000, just slightly higher than California.[27] (See Table V-2 for beer excise tax rates for selected states)

Besides its low tax rate, California's low per capita consumption further holds down beer excise revenues. California's apparent per capita consumption of beer was below the national average for the

[22] "New York Pops Cork on Liquor," *Business Week* (May 2, 1964), p 66
[23] *Ibid*
[24] *The Fresno* [California] *Bee*, June 24, 1964, p 10-C.
[25] State Legislature, *op cit*, p A-16.
[26] Marx, *op cit*, pp. 737–738.
[27] *Ibid*, pp 737–739

years 1950 through 1961, the gap narrows, however, toward the end of this period.[28] Recent indications are that the state's per capita consumption of beer is turning upward. The State Budget for fiscal 1963–64 projects an increase of about 0.3 gallon per person. This would put consumption at 2.5 gallons per adult civilian.[29]

TABLE V-2

STATE TAX RATES ON BEER, JANUARY 1, 1964[1]

(per barrel)

Less than $1	$1 to $2	$2 to $3	$3 to $4	$4 to $6
Maryland Missouri Wyoming	California Colorado Illinois Montana Nebraska Nevada New Jersey New York Oregon Rhode Island[3] Washington Wisconsin District of Columbia	Arizona Connecticut Delaware Indiana[2] Iowa Kentucky Massachusetts[4] New Mexico Ohio Pennsylvania	Kansas[5] Minnesota New Hampshire Tennessee[3]	Arkansas Idaho Texas Utah Virginia West Virginia
Total—3	13	10	4	6

$6 to $8	$8 to $10	$10 to $12	$12 to $14	16 percent of wholesale price
Alaska Maine[6] Michigan North Dakota[7] Vermont	Florida Georgia South Dakota	Louisiana North Carolina Oklahoma	Alabama Mississippi South Carolina	Hawaii
Total—5	3	3	3	1

[1] Montana, Virginia, Washington, and West Virginia tax light beer only, and Kansas and Oklahoma tax strong beer only. The rates for Minnesota, North Dakota, South Dakota, and Utah included in the table are those applicable to strong beer.
[2] Includes, in addition to excise taxes of $6 per gallon, an enforcement tax of ¾ of 1¢ per gallon.
[3] The tax on sales of beer at wholesale is 17 percent of the wholesale price.
[4] In addition, every corporation, association or organization which is licensed by any city or town to sell alcoholic beverages, except certain corporations and certain veterans' organizations, are taxed on the gross receipts from the sale of alcoholic beverages at the rate of one-fourth of 1 percent, plus 23 percent surtax.
[5] Malt beverages imported into the state are taxed on the basis of reciprocity. The current rate, as fixed by the Liquor Control Commission is $1 per barrel.
[6] The tax on malt liquors manufactured in the state is 5½¢ per gallon.
[7] Includes additional taxes scheduled to expire on July 1, 1967.
SOURCE: Advisory Committee on Intergovernmental Relations, *Tax Overlapping in the United States 1964*, July 1964, p. 199.

Revenue Potential. For purposes of illustration, assume that California doubles its tax rate on beer from 4 cents to 8 cents per gallon. Also, assume sales to continue as before. Under these conditions, revenues from beer would double. For the fiscal year 1963–64, the additional revenue would have been $10,545,000, an amount just equal to the current revenue.

Qualifications. The additional revenue illustrated is contingent upon demand being completely inelastic. While the true nature of demand

[28] California State Senate, *op. cit.*, pp. 70–71.
[29] California Legislature, *op. cit.*, p. A-16.

for beer is difficult to determine, some evidence is provided by two recent state tax rate increases When Connecticut doubled its taxes on beer, revenues a year later were up sharply The new rates, effective July 1, 1961, were $2 a barrel and 6¾ cents for beer in small containers Revenues for May 1962, the year following the tax rise, were $265,796 63, more than double the revenue of $120,081 96 for May 1961 [30] The Illinois experience was quite similar In 1959, beer taxes were raised 50 percent, from 4 cents to 6 cents per gallon In the ensuing year, revenues rose 38 percent, from $7,308,000 to $10,081,000 [31] In this case, however, the revenue rise was not quite proportional to the tax rise These two experiences suggest that the demand for beer is highly, but not completely, inelastic On the other hand, there is some evidence that beer consumption is sensitive to price changes The recent national upsurge in beer sales is partly credited to the effective use of price cuts by some of the leading brewers Although other things, such as better packaging and demographic factors, were partly responsible for increased beer consumption, sales and revenues of the firms employing price cuts were up far more than the national average [32]

An illustration may serve as a basis for judging the impact of taxes on beer sales in California The current tax on a case of beer amounts to 9 cents Doubling the tax would mean, of course, a potential 9-cent price increase Even if the retail price were raised the full 9 cents, it is doubtful that sales would be much affected when one considers that beer retails at about $5 a case, depending upon the brand

Wine

Importance of Revenue California's revenue from the taxation of wine was estimated to be $885,000 for fiscal 1963–64 [33] This is an extremely small part (1 5 percent) of total state revenue from the excise taxation of alcoholic beverages The state's low tax rate on wine is undoubtedly responsible for this low yield At 1 cent per gallon for light wines and 2 cents per gallon for fortified wines, its rates are the lowest in the nation The next lowest rate applied among the states for light wine is 10 cents, and rates range as high as $1 and $2 per gallon for light wines and fortified wines, respectively [34] In spite of California's low rates, only 9 of the 31 license states had higher excise revenue from wine in 1960 Some leading states in that year, with their revenues, are as follows: Florida, $5 808,000, Illinois, $4,130,000; New York, $2,655,000, Massachusetts, $1,705,000, and California, $767 000 [35] (See Table V-3 for wine excise tax rates for selected states)

The reason that California stands as high as it does in wine tax revenue among the states is that California is by far the largest consumer of wine In 1961, its apparent consumption was 35,295,000 gallons of wine The next highest state was New York, whose consumption for that year was 24,892,000 gallons Wine consumption is significantly

[30] State of Connecticut, *Comparative Statement of Alcoholic Beverage Sales for the Months of May 1962 and May 1961 as Indicated by Revenues of June 1962 and June 1961*, Release No 301 (Hartford C & A Division, Tax Department, State of Connecticut, July 3, 1962)
[31] Marx, *op cit*, p 739
[32] *The Wall Street Journal*, June 11, 1964, p 1
[33] California Legislature, *op cit*, p A-16
[34] California State Senate, *op cit*, p 73
[35] Marx, *op cit*, p 742

TABLE V-3

WINE EXCISE TAX RATES IN SELECTED STATES—1958, 1964

State	1958	1964
California:		
Still wines not over 14%	$0 01 gal	$0 01 gal.
Still wines over 14%	02 gal.	.02 gal.
Champagne and sparkling wines	30 gal	.30 gal
Connecticut		
Still wines not over 21%	.10 gal.	20 gal.
Still wines over 21% and sparkling wines	25 gal	50 gal.
Illinois*		
14% or less	15 gal	23 gal.
Over 14%	40 gal	60 gal
Massachusetts*		
Still wines 3%-6%	30 gal	30 gal
Still wines 6%-24%	60 gal	60 gal.
Sparkling wines	40 gal.	40 gal
Michigan		
Manufactured from products grown outside state	50 gal.	50 gal.
Manufactured in Michigan from grapes grown in Michigan	04 gal	04 gal
(A monopoly state)		
New Jersey.		
Still wines	10 gal	10 gal.
Vermouth	15 gal.	15 gal.
Sparkling wines	40 gal	40 gal.
New York		
Still wines	10 gal	10 gal
Artificial sparkling wines	20 gal	20 gal.
Sparkling wines (natural)	40 gal	40 gal
North Carolina		
Fortified wines	70 gal	70 gal.
Unfortified wines	60 gal	60 gal
(State and/or county monopoly)		
Ohio		
7% to 14%	.12 gal	12 gal.
14% to 21% (A monopoly state)	30 gal.	30 gal.
Vermouth	60 gal	60 gal.
Sparkling, carbonated, and champagne	1 00 gal	1 00 gal.
Texas		
Not more than 14%	11 gal	132 gal
More than 14% but not more than 24%	22 gal	264 gal
More than 24%	N A	66 gal.
Sparkling	27½ gal	33 gal
Wisconsin		
14% or less	10 gal.	168 gal
Over 14%	.20 gal	3375 gal.

N A Information Not Available

SOURCE *Tax Study State of Connecticut*, by A E Buehler, March 1963, and Commerce Clearing House, *State Tax Guide*, as of September 1964.

lower in all the remaining states, with many of these states apparently consuming less than 1,000,000 gallons Even on a per capita basis, California's annual rate of 2 15 gallons is the highest among the states, and is exceeded only by Washinton, D.C , whose rate is 2 96. The national rate is less than one gallon per capita.[36]

[36] California State Senate, *op cit.*, pp. 68, 70–71.

Revenue Potential To illustrate the revenue potential of increased wine taxes, assume the following schedule · 10 cents per gallon for wine with alcoholic content not over 14 percent; 20 cents per gallon for wine with alcoholic content from 14 percent to 21 percent, and 60 cents for sparkling wines With these rates, California would still be a low-rate state With no change in sales, the revenue from the new rates based on the estimates for fiscal 1963–64 would be as follows dry wine, $3,310,000; sweet wine, $1,990,000, and sparkling wine, $710,000 [37] Total revenue would be $6.010.000, an increase of $5,125,000

Qualifications Whether or not the above revenue would be realized would depend upon the impact of the higher tax on wine sales. A strong argument could be made that wine sales would be virtually unaffected by the imposition of the tax. The hypothetical schedule of new tax rates, even though considerably higher than the current rates, would still amount to a very small part of the retail price For example, the new rate on dry wine is 10 cents per gallon or 2 cents per fifth Even if the full amount of the tax were reflected in the price, it is doubtful that an increase of 2 cents per fifth would curtail sales very much, if at all While rates for other types of wine are higher, again there would likely be little change in sales. While the hypothetical new tax on sparkling wines is 6 cents per fifth and might increase the price by that amount, this increase becomes relatively insignificant when one considers that sparkling wines are generally much higher priced than other wines

Some insight into the impact on revenue when tax rates on wine are increased may be gained from Connecticut's recent experience Effective July 1, 1961, its rates were doubled on all wines The newly scheduled rates were 20 cents for wines under 21 percent alcoholic content and 50 cents for wines over 21 percent and for sparkling wines In May 1962, the year following the tax increase, wine revenues were 81 4 percent higher than for May 1961 Thus the increase in revenue nearly matched the increase in tax rate While sales were not unaffected, they were not down heavily (about 8 percent).[38] Since California's rates are much lower than Connecticut's, even before the latter's tax rate increase, California's wine sales would likely be even less affected by a rise in its tax rates The results in Connecticut, plus the illustrations above on the price impact of tax increases, suggest that California would realize revenue increases nearly proportionate to tax rate increases until considerably higher tax levels are reached.

[37] California Legislature *op cit.*, p A-16
[38] State of Connecticut, *loc cit*

CHAPTER VI

REVENUE FROM HORSERACING

IMPORTANCE OF REVENUE

California has a long history of horseracing It flourished at the turn of the century, but wagering on horseracing was declared illegal in 1909 due to abuses and corrupt practices In 1933, wagering on horseracing was again made legal, provided it is carried on at the track As a safeguard against corruptness, the California Horse Racing Board, acting for the State of California, has complete supervision and jurisdiction over all racing activities in the state

In its first fiscal year of operation, 1933–34, the state received total revenue from horseracing of $259,657 Since then, horseracing revenues have risen sharply, but there have been some dips along the way One dip occurred during the war years when revenue to the state, which was almost $4 million in fiscal 1940–41, fell to about $1 million in fiscal 1942–43 Revenue boomed to almost $23 million in fiscal 1945–46, then dropped to about $14 million in the fiscal year 1949–50 Since that time, revenues to the state have trended almost steadily upward, reaching $42,577,236 in 1963 [1] Of the 27 horseracing states, this revenue was second only to New York, which experienced revenue of $124,117,709 in 1963, while New Jersey was third with revenue of $27,210,978 Some of the racing states receive less than $1 million from this source [2]

The relative importance of horseracing revenue to the state of California can be seen by relating it to total state revenue In fiscal 1962–63, California received 1 7 percent of its total revenue from horseracing In calendar 1962, parimutuel taxes were 1 4 percent of total state revenue The average for other states using this tax was 2 0 percent [3]

The upward trend in state racing revenue is the consequence of both increased wagering by the public and the fact that the state has been taking an increasing share of that wagering Total wagering by the public on thoroughbred racing increased from $333 718,000 in 1954 to $430,066,000 in 1963 [4] In the same period, the state increased its share of this parimutuel pool from 5 3 percent to 6 5 percent and, in addition, increased its share of the breakage from 42 percent to 77 6 percent [5] While state racing revenues have thus been increasing, the racing

[1] *Horse Racing in California,* Annual Report of Operations, 1963, California Horse Racing Board (Sacramento State Printing Office, 1963), p 2

[2] National Association of State Racing Commissioners, *Statistical Reports on Horse Racing in the United States for the Year 1963* (Lexington The National Association of State Racing Commissioners, February 1964), Table No 1

[3] California Legislature, *California's Tax Structure 1964* A Major Tax Study, Part I Assembly Interim Committee on Revenue and Taxation (Sacramento State Printing Office, January 1964), pp 20–21

[4] *Horse Racing in California, loc cit*

[5] California State Senate, *A Study of the Feasibility of Increasing State and Local Government Revenues from Selected Taxes,* Report of the Senate Fact Finding Committee on Revenue and Taxation, prepared by William K Schmeizle and the Planning Research Corporation (Sacramento State Printing Office, April 1963), p 49

associations have been suffering declining incomes From 1952 to 1961, profits for the six racing associations dropped from $7 2 million to $4 8 million.[6] A study by the Stanford Research Institute reports

> The state has been the principal beneficiary from the increase in public expenditures on parimutuel wagering over the 1952–61 period, having taken an ever-increasing share of these expenditures as license fees The racing associations, on the other hand, appear to have suffered the principal brunt of the increasing share of the public's expenditures on parimutuel wagering flowing to the State of California [7]

SOURCES OF REVENUE

In the horseracing states, revenues come from a number of sources· parimutuel taxes, breakage, unclaimed tickets, admissions taxes, license fees, and fines The parimutuel tax is a percentage tax, levied on the total amount wagered The total amount wagered is the parimutuel pool and is commonly called the turnover or handle The amount deducted from the turnover is the takeout, and this takeout, in turn, is divided between the state and the track If the takeout is 15 percent, 85 percent is the amount returned to the winning tickets Suppose the state's share of the handle is 6 percent, then the track will receive 9 percent Breakage is the odd cents of the computed winnings that are not returned to the winners In order to expedite the payments to the winners, amounts are figured to the lowest breakage Thus, if breakage is 10 cents, and a winning ticket comes to $8 88 the winner would receive $8 80 The remaining 8 cents may go to the track, to the state, or be divided between them according to the schedule of the particular state involved

In California, parimutuel taxes plus breakage account for 99 percent of state racing revenues [8] For the most part, this is true of other states, however, in some states admissions taxes and license fees provide substantial income The major states in which these sources of revenue are important are New York and Illinois In 1961, New York received $379,000 from license fees and $2 509,000 from admissions taxes, for Illinois, the comparable figures were $657,000 and $533,000 [9] California has no admissions taxes and its license fees are insignificant

Revenues can also be classified by type of racing thoroughbred, quarter horse, or harness Of these thoroughbred racing is by far the most important, it is the only type that is carried out by all the racing states California, which conducts all three types, received revenues in 1963 as follows thoroughbred racing $30,920,186 83, quarter horse racing, $2 360,784 02, and harness racing, $3,445,181 08 [10]

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[6] Stanford Research Institute, *An Economic Appraisal of the Outlook for Horse Racing in California* (Menlo Park Stanford Research Institute, March 1961), p 67

[7] *Ibid*., p XI

[8] California State Senate, *op cit* p 4

[9] Karl Marx, "Tobacco, Alcoholic Beverages, and Pari-Mutuel Taxes," Chapter 21 of the State of Illinois *Report of the Commission on Revenue* (Springfield Frye Printing Company, 1960), p 757

[10] *Horse Racing in California op cit*., p 7

PARIMUTUEL TAXES AND BREAKAGE

Comparison With Other States

Originally, the takeout in California was 12 percent, out of which the state took 4 percent with the remaining 8 percent going to the tracks At this time, breakage was on a 10-cent basis, and went entirely to the tracks. Since then, several statutory changes have been made, which have both increased the state's share of the takeout and the amount of the takeout. In addition, the state now shares in the breakage Under current law, 1959 enactment, the taxation of the parimutuel pool is as follows Total takeout increased from 13 percent to 14 percent A graduated scale places the state's return at 5 percent on the first $10 million, 6 percent on the next $10 million, 7 percent on over $20 million to $75 million, 7 5 percent on over $75 million to $125 million, and 8 percent on all over $125 million Correspondingly, the track's share declines from 9 percent to 8 percent to 7 percent to 6 5 percent to 6 percent, respectively. The state's share of the breaks is 50 percent of the first $24 million handle and 100 percent thereafter

California's 14-percent takeout applied to thoroughbred racing pools is slightly less than that withheld by most states A 15-percent takeout is the most common rate used Only one state, Vermont, has a takeout as high as 18 percent, and only one state, Delaware, has a rate as low as 12 percent Although California applies the 14-percent takeout to all types of racing, several states use different rates for harness racing and quarter horse racing [11] (See Table VI-1) For the most part, where different rates exist, they favor harness racing and quarter horse racing Once the takeout is determined, the state's share varies according to the particular scheme in use Over half of the states take a straight percentage of the parimutuel pool; the rest of the states have graduated scales, with the state's share increasing as the size of the turnover increases [12] In 1961, average parimutuel tax rates for the six highest revenue states in order of their revenue, from highest to lowest, were as follows New York, 9 9 percent, California, 6.7 percent, New Jersey, 7 6 percent, Illinois, 5 8 percent; Florida, 8.0 percent, and Maryland, 5 0 percent [13]

The amount of breakage retained by the states runs the full range from none to 100 percent. About half the racing states take none, most of the rest take 50 percent, although the amount in some states varies according to the location of the track and by the type of racing California's rate has recently been about 75 percent, which is topped by only two states taking 100 percent [14]

[11] National Association of State Racing Commissioners, *op cit*, Table No. 3.
[12] *Ibid*
[13] Marx, *op cit*, p 752
[14] National Association of State Racing Commissioners, *op cit*, Table No. 3

TABLE VI-1

BREAKDOWN SHEET OF PARIMUTUEL TAKEOUT AND BREAKAGE FOR THE YEAR 1963—SELECTED STATES

State	Total takeout permitted			Parimutuel tax to state			Breaks to			Disposition of breaks to state			Disposition of breaks to associations		
	*Thb	*Harn	*Q H	Thb	Harn.	Q H.	Thb.	Harn.	Q.H.	Thb	Harn	Q H	Thb.	Harn	Q H
California	14%	14%	14%	5–8%	5–8%	5–8%	10¢	10¢	10¢	50% first $24 million or less† all over $24 million.			----	----	----
Delaware	12%	16%	----	4½%	3½%	----	10¢	5¢	----	50%	----	----	50%	100%	----
Florida	15%	15%	----	8%	8%	----	5¢	5¢	----	100%	100%	----	----	----	----
Illinois	15%	15%	----	6%	5½%	----	10¢	10¢	----	50%	----	----	50%	100%	----
Chicago area	14%														
Maine	17%	17%	17%	7%	7%	7%	10¢	10¢	10¢	50%	50%	50%	50%	50%	50%
New York‡	15%	15%	----	10% 9% 10–4%	5–11%	----	5¢	5¢	----	60% 50%	50%	----	40% 50%	50%	----
Vermont	18%	----	----	3–12%	----	----	10¢	----	----	50%	----	----	50%	----	----

*Thb = thoroughbred, Harn = harness, Q H = quarter horse and farm.
† Of the first $24 million, 50 percent goes to state, 50 percent to associations, all over $24 million goes to state.
‡ For variance in tax to state and breakage, see next page
SOURCE *Statistical Reports on Horse Racing in the United States for the Year 1963* (Lexington: The National Association of State Racing Commissioners, February 1964), Tables 3, 4

TABLE VI-2

BRIEF SUMMARY OF TAX METHOD OF SELECTED STATES SHOWN IN TABLE VI-1

State	*Summary of Tax Method*
California	Total takeout permitted 14%. State receives 5% of first 10 million dollars handled, 6% of next 10 million, 7% over 20 million to 75 million, 7½% over 75 million to 125 million, 8% over 125 million dollars wagered, occupational license fees. Breaks to 10¢, of which state receives 50% of first 24 million dollars and 100% of all over 24 million wagered
Delaware	Unclaimed parimutuel tickets revert to state after one year. Harness. Total takeout permitted 16%, 3½% to state and 12½% to association, 10¢ on admissions, breaks to 5¢, all to association, $750 per season license
Florida	Thoroughbred. Total takeout permitted 15% divided as follows: 7% to association, 3% and admission taxes to be divided equally between each county after racing commission expenses are deducted, 5% to state for old age benefit. However, any association having an average daily parimutuel pool of less than $400,000 per day for the preceding racing season may operate on a fixed daily license fee and, in lieu of the 3% and 5% tax rate, shall pay ¾ of 3% and ¾ of 5%. Breaks to 5¢ all to state for old age benefit. Seven extra days of racing allowed for benefit of charities and scholarships
Illinois	Thoroughbred. Total takeout permitted 14% (Chicago area), 15% (downstate) of which state receives 4% and 2% of the total mutuel handle, plus ½ of the breakage, breakage 10¢, daily license fee $1,000, with application, $100, for each racing day granted and ¼ of 1% of daily mutuel handle; tax on admissions 20 cents; horsemen's license fees. (State tax is reduced from 6% to 4% on mutuel wagering when total handle does not exceed $300,000 on any one day.) As of April 1st of each year, proceeds from uncashed parimutuel tickets sold during the previous year are payable to the state of Illinois for the Illinois Veterans Rehabilitation Fund of the State Treasury. Harness. Of the total 15% takeout permitted, 9½% goes to association and 5½% to state. Five percent of the amount received by the state goes into the Agricultural Premium Fund and ½% of the amount received by the state goes into the Illinois Fund for Illinois Sired Colts, divided between 6 races (2 races for 2-year-olds, 2 races for 3-year-olds, 1 free-for-all pace and 1 free-for-all trot for 4-year-olds and over)—plus $6,000 reserved for investigator relative to eligibility of horses entered in these named races
Maine	Thoroughbred. Total takeout permitted 17%. State General Fund 6%, Agricultural Stipend Fund 1%, association 10% (½ of General Fund's 6% returned to track for costs of operation, maintenance and repair), license fee $5,000, breakage to 10 cents, all to association. Harness. Total take-out permitted 17%. State General Fund 6%, Agricultural Stipend Fund 1%, association 10%. Breakage to 10 cents, all to association. License fee $10 for each six days of racing. Bond up to $50,000 required for license. One-sixth of state commission is returned to association for purposes of supplementing purse money
New York	Thoroughbred. Total takeout permitted 15%, with the state receiving from Saratoga 9%, and from Aqueduct 10% of total mutuel handle. From Finger Lakes the state receives 10% on first $175,000, 8% next $125,000, 7% next $100,000, 6% over $400,000 to $500,000, 5% to $600,000 and 4% all over $600,000. Breakage 5 cents, divided equally between state and track at Saratoga and Finger Lakes, at Aqueduct 60% of breakage goes to state and 40% to track. Franchise fees of $1,000 per racing day paid by nonprofit racing associations. Harness. Total takeout permitted 15%. Of total daily pool, state

TABLE VI-2—Continued

BRIEF SUMMARY OF TAX METHOD OF SELECTED STATES SHOWN IN TABLE VI-1

State	*Summary of Tax Method*
	receives 5% not exceeding $175,000; 7%—$175,000 01 to $300,000, 8%—$300,000 01 to $400,000; 9%—$400,000 01 to $500,000, 10%—$500,000 01 to $600,000; 11% all over $600,000; plus 50% of the amount of the breaks (breaks to 5 cents) paid by track to state tax commission until the total payments to state tax commission to construction account of each track shall be eliminated
Vermont	Total takeout permitted 18% State receives 3% first $100,000, 4%—$100,001 to $150,000, 6%—$150,001 to $200,000; 10%—$200,001 to $300,000, 12%—$300,001 and over Operating fees set by selectmen with approval of racing commission (Effective June 24, 1963, to April 1, 1964) After April 1, 1964, state receives 8% of which 2% allocated to Agricultural Stipend Fund Breakage 10 cents, half to state and half to track

SOURCE *Statistical Reports on Horse Racing in the United States for the Year 1963* (Lexington The National Association of State Racing Commissioners, February 1964), Tables 3, 4

Revenue Potential

Increase in California's Share of the Takeout One possibility for increasing state revenues from racing is to increase the state's share of the takeout This is the content of AB 2919 (C Wilson), which would increase the state's share of the takeout by 1 percent in all brackets, while correspondingly reducing the track's share, thereby keeping total takeout the same On the assumption that no other changes occur, mainly that wagering continues as before, the additional revenue to the state from such a proposal would have been $5,614,101 in 1963, or 1 percent of the total parimutuel pool of $561,410,107.

Increase in Total Takeout Another possible source of revenue to the state would be to increase the total takeout with the increase going to the state Increasing the takeout from 14 percent to 15 percent would have resulted in revenue to the state in 1963 of $5,614,101; that is, 1 percent of the parimutuel pool as given above.

Increase in State's Share of the Breakage. Breakage also comes out of the total parimutuel pool Although California is currently taking slightly over 75 percent of the breakage, it could claim 100 percent. In 1963, breakage going to track operators amounted to $1,581,213 State revenue would be increased by this amount if all breakage were to be retained by the state

Qualifications

The revenue estimates above assume that total wagering at the tracks will be unaffected by the additional taxes Since additional taxes amount to a price increase for betting, total wagering would decline unless demand were totally inelastic Thus if the total takeout is increased, a smaller percentage of the parimutuel pool is returned to the bettors which, in effect, means the price of wagering has increased. Although increasing the state's share of existing takeout and of the

breakage does not reduce the amount returned to bettors, it may result in reduced quality of racing—the equivalent of an increase in price

How heavy an impact such additional taxes would have on wagering at the tracks is not subject to absolute determination; however, some evidence of the influence of taxes on wagering may be provided There have been some instances where increasing the takeout has produced negative effects. For example, when New York increased its takeout from 10 percent to 15 percent in 1946, drastic declines were experienced in the parimutuel pool for several years During the same period, states which did not increase their takeout had increases in the parimutuel pool at first, which were followed by only moderate declines.[15] A 1956 study was conducted especially to find out the effect of a one percentage point increase in the commission (takeout) on wagering in New York State. It found that a 1-percent increase in commission would result in a 6-percent drop in the handle, even with no change in attendance It further concludes

> If the commission goes up one point, all other factors remaining the same, and results in a 6-percent drop in handle, the projected handle would be $352,500,000 A 16-percent commission on this handle would yield a take of $56,400,000 On the other hand, a 15-percent commission on $375,000,000 would yield $56,250,000—only $150,000 less. To the extent that attendance is also adversely affected by a commission increase, total income produced by a 16-percent commission would be less than that produced by a 15-percent commission.[16]

In the case of California, there is good reason to believe that additional taxing of the parimutuel pool may produce much less in revenue than the above estimates suggest Such additional taxation would make it even more difficult for the racing industry, which is already suffering economic difficulties, to maintain the quality of racing in California A recent study points out:

> The net profits of the thoroughbred racing associations from conducting horseracing meets in California have declined significantly over the past decade in terms of both actual dollars and as a share of the total revenue from thoroughbred racing. Net profits before federal and state income taxes of these associations as a group declined nearly 33 percent between 1952 and 1960, notwithstanding an increase in total revenue of nearly 34 percent over the same period. Before-tax profits declined as a share of total revenue from about 14 5 percent in 1952 to about 7 3 percent in 1960.[17]

Should additional taxation push track revenues down even more, the tracks would find it increasingly difficult to maintain their plants and equipment. Furthermore, there would be reduced ability to offer attractive purses. Overall, the quality of racing offered the public would deteriorate and cause a drop in both attendance and wagering at the tracks Concomitantly, state revenues would suffer

[15] California State Senate, *op cit*, pp 44–45

[16] "The Relationship of Increase in Pari-Mutuel Commission to Wagering Per Capita, Attendance Per Racing Day, and Handle at Thoroughbred Race Tracks in New York State," (New York. S D Leidesdorf and Co, November 1, 1956), p. 14. (Xerox copy)

[17] Stanford Research Institute, *op. cit*, p xii.

OTHER SOURCES OF REVENUE

License Fees

California charges no daily track license fee—its parimutuel tax was originally intended as a license fee Some states, however, levy both a track license fee and a parimutuel tax. New York, a leading example, has a $1,000-a-day license fee, in addition to its parimutuel tax In 1963, such a tax in California would have resulted in revenue of $379,000. Total racing days for the year were 379 (291 for the private associations and 88 for the fairs). Such additional taxes would likely have to be borne by the betting public and racegoers, even though collected and paid for by the track to the state Consequently, such a revenue estimate would be subject to all the limitations discussed above, which arise out of additional taxation of the parimutuel pool.

The occupational license fees now collected by California and other states are too small to be considered for revenue purposes. They are primarily a means of regulating and controlling horseracing. For 1963, the state collected $50,311 from all individual licenses issued.

(For a futher discussion of license fees, see Alice J. Vandermuelen, *Fees and Licenses,* published by the Assembly Interim Committee on Revenue and Taxation, July, 1964.)

Admissions Taxes

California is 1 of 14 racing states which charge no admissions taxes. In some states, these taxes raise considerable revenue. For example, the two leading states, New York and Illinois, received $2,509,000 and $533,000, respectively, from this source in 1961.[18] Since the federal admissions tax in California in 1963 amounted to $1,493,113 (20 percent of paid admissions), a 15-percent state tax would amount to approximately $1,125,000; a 10-percent tax would be about $750,000. These estimates, again, assume no decrease in attendance with the additional tax Since these taxes increase the cost of watching horseracing and of wagering, some decrease in attendance is likely. When one considers that total admissions taxes in California now average about 30 percent (20 percent federal tax, plus approximately 10 percent average city tax), an additional 10 percent or 15 percent tax would produce a total tax load which might seriously reduce track attendance Thus admissions taxes are subject to the same restraints as discussed under the additional taxation of the parimutuel pool

Number of Racing Days

Another possible source of income would be to increase the number of racing days The 1963 Senate Fact Finding Committee study illustrates the expected income that could be gained by increasing the number of racing days at the southern tracks, where population density and availability of personal income might warrant such a consideration.[19] Using the same hypothetical example as in the Senate study, but updating the average daily handle to 1963 figures, would result in the following revenue to the state·

[18] Marx, *op cit*, p 753
[19] California State Senate, *op cit*, p. 57.

From Hollywood Park	
17 added days at $2,602,491 (1963 average daily handle)	$45,772,347
Parimutuel taxes at 8 percent	3,661,787
From Santa Anita	
17 added days at $2,547,314 (1963 average daily handle)	43,304,338
Parimutuel taxes at 8 percent	3,464,346
From Del Mar	
8 added days at $985,325 (1963 average daily handle)	7,882,600
Parimutuel taxes at 7 percent	630,608
Total increased parimutuel pool	$96,959,285
Total increased revenue to state	7,756,741

The above revenue estimates assume that the average daily handle will be maintained over the added racing days. Such an assumption is open to question. Increasing the number of racing days may simply result in bettors spreading available funds over more days, with a consequent drop in the average daily handle. Some support for the concept of a limited amount of funds available can be gained by turning to a recent study on California horseracing, which found a relatively limited customer market in the Los Angeles area consisting of a "hard core" of racegoers. Thus, it contended, thoroughbred racing at Los Alamitos would have to rely on customers already attending other meets.[20] If the market is as limited as this study implies, the average daily handle would undoubtedly suffer from the added days of racing.

Night Racing

State revenues might be increased by legalizing night racing. The 1963 Senate Fact Finding Committee suggests a possible increase in state revenues of $41,000,000 from this source. A major question to consider is whether this amount would be a net increase. Night racing may very well widen the market for bettors and racegoers, on the other hand, night racing would likely compete with other racing to some extent and thus subtract from other racing revenues.

Off-track Betting

The city of New York has been seriously considering legalizing off-track betting for some time. Interest has been so high that WCBS-TV of CBS undertook a public survey on the matter of legalizing off-track betting. It found that betting was not a moral problem with New Yorkers—three out of four favored off-track betting.[21] On the matter of morality, Abraham D. Beame, comptroller of the city, said:

> We have been told that off-track betting is immoral. Can it be moral for the state to collect $106 million from betting at the tracks, and immoral to gain revenue from off-track betting? Is it immoral to deprive the underworld of its main source of revenue—the money it uses to support dope traffic, prostitution and other nefarious enterprises?[22]

[20] Stanford Research Institute, *op. cit.*, p. xvi.
[21] International Research Associates, *New Yorkers Consider Off-Track Betting.* Prepared for WCBS-TV by Helen Dinerman, Gary A. Steiner, Project Director (New York: International Research Associates, Inc., November 30, 1963), p. 1.
[22] Marx, *op. cit.*, p. 756.

Aside from the question of morality, objections might be raised against off-track betting on the grounds that it might impoverish those in the lower income groups and consequently deprive some families of necessities Such a problem already exists to some extent in the availability of on-track betting Also bookies currently provide gambling opportunities and, furthermore, pay no tax to the state

There are two major arguments for the legalizing of off-track betting One has already been mentioned—legalizing off-track betting would put the bookie out of business and thereby deprive the organized underworld of one of their most lucrative sources of funds Crime and corruption would be sharply curtailed as a result The other argument is that the revenue potential to the states legalizing off-track betting would be substantial According to one estimate, the state of New York would receive over $200,000,000 yearly from legalized off-track betting; for Illinois the amount would be $50,000,000 [23] Both these estimates are slightly more than double the total racing revenues currently received by these states On the same basis, California could expect to receive over $85,000,000 from legalized off-track betting Such an amount completely dwarfs the potential revenue increases from all other sources—with the possible exception of night racing.

In support of the contention that legalized off-track betting would provide substantial revenue to the state is the widening of the market for betting that would occur The study previously referred to found that racegoers were a hard core group that traveled only short distances to the track. For example, at Hollywood Park, 93 percent of the racegoers traveled less than 50 miles [24] Off-track betting could reach those in population centers removed from the tracks, as well as those who now patronize the bookie, regardless of proximity to the tracks

State Fairs

In the year 1963, the Fair and Exposition Fund amounted to $22,506,715 28 [25] This was almost 53 percent of the total racing revenue to the state of $42.577,231 41 These funds are derived through a 4-percent license fee on all parimutuel wagering, which comes out of the state's share of the takeout, plus the total revenue from individual license fees By taking this amount off the top of the revenues generated by horseracing to the state and earmarking it for the fairs, the amount spent for fairs is undoubtedly in excess of what would be spent if the fairs had to compete for funds out of the general fund [26] To the extent that expenditures would be reduced under this procedure, savings would result which could be considered the equivalent of additional revenues Even a 10-percent reduction in such expenditures would have resulted in savings in excess of $2,000,000 to the state in 1963.

---

[23] *Ibid.*, pp 756–57.
[24] Stanford Research Institute, *op cit.*, p 103
[25] Horse Racing in California, *op cit.*, p 2
[26] California State Senate, *op cit.*, p 54

CHAPTER VII

SUMMARY

Virtually all available evidence indicates that taxation of the commodities under consideration—tobacco products, alcoholic beverages, and horseracing — is an extremely inequitable, if not the most inequitable, type of taxation. This taxation bears most heavily upon the lower income groups. It takes proportionately more of their income, and as a consequence, it reduces their ability to purchase other needed commodities.

Besides failing the test of equity, these taxes have other undesirable social consequences. They reduce the overall social well-being from its optimum, that is, society's real income is reduced. This is the consequence of the distortive effects these taxes have on prices Prices of the taxed commodities tend to be higher than in the absence of the tax and therefore the tax curtails their consumption Resources which would have been used in their production are now diverted to other forms of production less desirable to the consumer. In some cases, the tax-caused production may be illicit production such as moonshining, which, in turn, finances syndicated mobsterism

The sumptuary rationale provides the basis for such taxation Its major tenet is that the costs involved in the normal productive process do not cover the real costs to society The tax is needed to raise the price of the commodity to its true social cost In levying such taxes, the legislators are substituting their judgment for that of the individual. Thus the legislators decide what is good for the individual and deny him freedom of choice among goods whose prices are undistorted by taxation Commodities may be taxed out of existence (pricetag prohibition) even though their production and sale is legal.

Taxes on the commodities studied have a further weakness; they have a destabilizing economic impact As income rises, they rise at a slower rate; as income declines, they fall less rapidly. Thus they tend to reduce consumption during recession and fail to reduce consumption during inflation As quoted in Chapter III, they tend to "boom the boom and depress the depression " They do, however, tend to preserve the state's income during economic declines but, on the other hand, they reduce the state's share of income growth during inflation, which has been the chronic postwar condition.

Only on one point do these taxes score well; they are excellent revenue producers However, there is some question whether the ability to produce revenue should be the sole criterion for taxation If so, legislators would do well to consider taxing medicine and church attendance Imagine the public protest! Smoking, drinking, and gambling are evils, so it is all right to tax them An individual may pursue his vice just as long as he is willing to pay the tax penalty. In fact, the state hopes and expects him to do just this, otherwise it would receive no revenue. It is interesting to note in the 1964 United States con-

gressional investigation into excise taxation that, in spite of the extremely high levels of federal taxation on tobacco products and alcoholic beverages, opinion was virtually unanimous that these excises should be maintained. Opinion was almost equally as strong that excises on furs and jewelry, much lower taxed items, should be reduced. Our mores apparently largely determine our tax structure.

In the past, governments have been able to raise additional revenue from taxation of the vices through the simple expedient of raising the tax rates applied. There are some indications, however, that such a procedure may be unsuccessful, if not abortive, in the future. The recent health report and data on cigarette sales warn against overly optimistic revenue expectations from additional cigarette taxation. The taxation of alcoholic beverages and horseracing may also be reaching its limit. Officials in the distilled spirits industry commonly describe its taxation as "confiscatory" and officials in the horseracing industry feel that taxation in their industry has reached the "point of diminishing returns." In short, these industries are already so heavily taxed that any further tax increases will likely provide limited additional revenue. New avenues, such as legalized off-track wagering, may prove more fruitful.

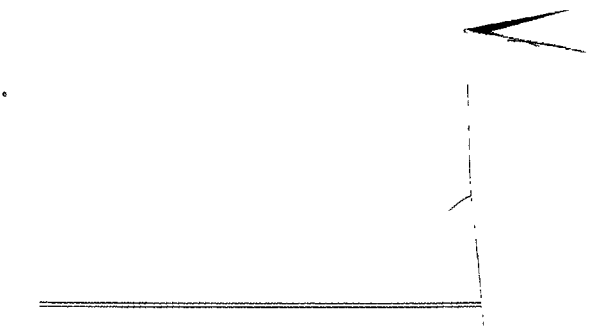
APPENDIX

FINANCIAL DATA RELATIVE TO CALIFORNIA HORSE RACING ASSOCIATIONS

Name of licensee	Los Angeles Turf Club	Hollywood Turf Club	California Jockey Club	Pacific Turf Club	Tanforan Racing Assn	Del Mar Turf Club	California Horse Racing Assn.	Western Harness Racing Assn.	Los Alamitos Race Course
End of fiscal period	Oct. 31st	Mar. 31st	Dec 31st	Dec 31st	Dec 31st	May 31st	Dec 31st	Sept. 30th	Dec. 31st
1957									
Gross income	$11,223,268 17	$11,101,030 10	$4,115,592 67	$3,372,359 05	$1,715,407.58	*$3,622,079 43	$1,219,172 00	$3,652,133 61	$1,829,952 47
Profit before income tax	2,890,949 56	3,197,321 72	776,401 57	468,366 39	495,887 80	57,958 33	19,372 00	663,639 53	171,054 84
Reserve for income tax	1,380,000 00	1,665,722 34	373,583 26	235,200 00	252,361 66	24,700 00	6,985 00	330,000 00	86,568.52
Net profit	1,330,949 56	1,531,499 18	402,818 31	233,166 39	243,526 14	33,258 33	13,187 00	333,639 53	84 486 32
State revenue	6,229,675.49	7,236,962 24	2,139,301 46	1,509,513 04	384,432 80	1,949,939 62	478,943 00	1,942,979 82	674,710 05
1958									
Gross income	11,716,025 52	11,766,235 22	3,126,745 80	3,856,634.59	3,158,937 07	*3,996,404 19	1,523,831 00	3,870,371 50	1,905,899 18
Profit before income tax	2,930 014 16	3,190,604 54	449,831 53	705,761 05	778 815 20	58,499 06	38,392 00	345,403.17	236,505 30
Reserve for income tax	1,450,000 00	1,668,000 00	231,478 10	364,400 00	401,885 74	23,400 00	----------	172,000 00	114,655 46
Net profit	1,480,014 16	1,522,604 54	218,355 43	341,361 05	376,929 46	35,099 06	38,392 00	173,403 17	121,939 84
State revenue	6,585,263 04	6,895,721 21	1,280,909 54	1,846,365 87	1,455,735 21	1,804,090 74	592,795 86	1,804,328 89	701,348 00
1959									
Gross income	12,325,841 40	11,507,664.72	3,143,697 75	3,060,100 28	3,620,380 81	*3,889,136 58	1,539,224 00	3,875,949 33	2,409,188 26
Profit before income tax	3,132,711 35	2,908,800 81	541,391 16	368,212 52	859,743 85	52,770 74	27,172 00	482,920 23	467,518 25
Reserve for income tax	1,581,000 00	1 520,000 00	276,089 52	182,000 00	440,487 85	22,300 00	----------	245,000 00	237,979 94
Net profit	1,551,711 35	1,388,800 81	265,301 64	186,212 52	419,256 00	30,570 74	27,172 00	237,920 23	229,538 31
State revenue	6,889,975 39	8,186,653 37	1,820,023 12	1,730,935 64	1,760,751 02	2,562,792.12	595,521 34	2,408,498 44	1,110,307 52
1960									
Gross income	12,174,826 67	12,040,695 74	3,921,327 76	2,953,368 52	2,723,185 87	*4,045,273 53	1,426,912 64	4,150,471.48	2,397,511.66
Profit before income tax	3,231,131 47	2,925,549 57	780,026 44	302,241 91	—73,153 64	39,786 64	—1,596 11	597,596 39	314,249.47
Reserve for income tax	1,335,000 00	1,507,701 00	380,145 26	145,350 00	----------	15,812 86	----------	290,000 00	159,984.53
Net profit	1,896,131.47	1,417,848 57	400,881 18	156,891 91	—73,153 64	23,973 78	—1,596 11	307,596 39	154,264.94
State revenue	8,611,213 93	9,298,746 37	2,484,381 61	1,664,173 70	1,579,443 64	2,421,491 05	745,896 57	2,597,435 46	1,433,761 10

1961									
Gross income	12,558,604 00	11,522,101 68	3,130,463 32	4,003,424 89	2,870,155 50	*3,941,743 95	1,536,585 97	3,705,892 00	2,786,633 00
Profit before income tax	3,335,124 00	2,331,281 33	278,928 99	736,538 26	35,944 46	44,465 98	21,911 02	371,695 00	360,556 00
Reserve for income tax	1,450,000 00	1,193,020 70	127,822 10	373,004 43	----------	19,500 00	----------	170,000 00	184,022.00
Net profit	1,885,124 00	1,138,260 63	151,106 89	363,533 83	35,944 46	24,965 98	21,911 02	201,695 00	175,628 00
State revenue	9,071,036 53	9,619,532 51	1,780,879 82	2,508,316 09	1,716,949 10	2,655,536 93	825,735 30	2,583,271 00	1,569,060 00
1962									
Gross income	12,433,498 00	12,115,085 51	3,374,931 77	3,111,805 27	3,711,575 02	4,102,584 00	1,565,698 24	4,041,208 00	2,957,199 00
Profit before income tax	3,031,878 00	2,686,547 80	882,914 10	113,632 53	471,133 40	50,988 00	7,107.10	421,638 00	323,324 00
Reserve for income tax	1,364,000 00	1,379,939 07	312,603 75	53,823 49	241,488 64	21,000 00	----------	196,000 00	176,429 00
Net profit	1,667,878 00	1,306,608 73	571,064 94	59,809 04	229,644 76	29,988 00	7,107 10	225,638 00	147,395 00
State revenue	8,740,030 00	9,935,928 24	1,913,370 86	1,754,064 67	2,445,905 19	2,835,775 00	834,239 63	2,893,198 00	1,732,823 00
1963									
Gross income	12,981,349 19	12,618,184 00	4,018,822 47	3,387,495 32	3,032,987 83	4,349,856 00	1,526,308 18	4,200,810 00	3,071,945 00
Profit before income tax	2,755,452 16	2,982,078 00	752,837 85	407,725 87	194,776 31	48,291 00	11,206 61	459,413 00	427,810 00
Reserve for income tax	1,451,755 00	1,527,447 00	383,753 80	200,353 00	†	20,000 00	----------	210,000 00	210,368 00
Net profit	1,303,697 16	1,424,631 00	369,084 05	207,372 87	194,776 31	28,291 00	11,206 61	249,413 00	203,442 00
State revenue	10,600,853 00	10,883,637 00	2,576,164 24	2,033,363 37	1,844,262 73	2,774,251 00	805,447 56	3,066,875.00	1,799,888 00

* Operated under name of operating company for these years
† Due to abandonment of fixed assets there is an anticipated tax refund of $348,423 67
SOURCE The above information abstracted from annual reports filed by the racing associations with the California Horse Racing Board.



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TAXATION OF CORPORATE INCOME IN CALIFORNIA

A Major Tax Study

PART 10

Published by the
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DECEMBER 1964

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PUBLISHER'S NOTE

This is the 10th in a series of reports published this year by the Assembly Committee on Revenue and Taxation The recommendations in this report are those of the authors and should not be construed as representing the views or decisions of the committee The committee recommendations will be made in due course

TAXATION OF CORPORATE INCOME IN CALIFORNIA

by

HAROLD M. SOMERS

and

DAVID R. DOERR

Assisted by

JOSEPH J. LAUNIE

With a contribution by

FELIX WAHRHAFTIG

December 1964

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I. INTRODUCTORY NOTE

This study describes California's system of taxing corporation income and makes suggestions for improvement The rates of taxation imposed in this state (Chapter II) and other states (Chapter III) are outlined, the possibility of passing the tax on to others is evaluated (Chapter IV) and several special problems are considered (Chapter V), particularly, conformity with federal taxation (A), the existence of tax-exempt organizations (B), the prepayment provisions (C), and, of course, the taxation of multistate corporations (D) The last will undoubtedly remain a problem for some years and merits careful attention

II. TAXATION OF CORPORATION NET INCOME IN CALIFORNIA

California is one of 38 states imposing net income taxes on corporations Every bank and corporation doing business in this state with certain exceptions[1] is subject to a franchise tax of 5 5 percent of net income or $100, whichever is greater Banks are also subject to a special tax rate not to exceed 4 percent in lieu of personal property taxation The bank tax is discussed in depth in a report on the subject by Mrs Yvette Gurley issued by the Assembly Committee on Revenue and Taxation as part of a volume entitled "Taxation of Property in California" (December 1964) Corporations which derive income in California but are not subject to the franchise tax are taxed under the corporation income tax also at 5 5 percent of net income As shown in Table I, in 1964 California realized $311 million in revenue from corporation income and franchise taxes

The franchise tax, which is a privilege tax "measured" by net income, was enacted by the Legislature in 1929 following the adoption of a constitutional amendment by the electorate At the time of adoption, the amendment contained a 4 percent limit on the corporation tax rate and a provision that a tax could be imposed under the provisions of the amendment only by two-thirds vote of each house of the Legislature The rate limit was subsequently removed but the two-thirds vote requirement has remained. The franchise tax is a prepaid tax It is paid in advance for the privilege of doing business in California in the ensuing year. In 1963, the Legislature provided for accelerated collections of the bank and corporation franchise tax

The corporation income tax was enacted in 1937 to remove an inequity in the taxation of interstate corporations which were not taxable under the Franchise Tax Act As this tax is an income tax rather than a franchise tax, corporations subject to it are not required to pay a minimum tax nor are they required to include in income interest from United States obligations.

The corporation income tax is of minor importance in the state's revenue structure In 1962–63, corporation income tax collections amounted to only $1,889,335, compared with the total of $311,250,827 collected by the Franchise Tax Board in bank and corporation franchise and corporation income taxes[2] A law passed by Congress in 1959 (P.L 86–272) reduced the number of corporations subject to the state corporation income tax law. The federal law prohibits a state from imposing a tax on income derived from interstate commerce, provided (1) the activities within the state are limited to the solicitation

[1] A number of corporations are exempt from tax social, fraternal, civic, religious, educational, hospital, charitable, etc organizations (See Section V-B) Insurance companies are also exempt as they are taxed on gross premiums in lieu of all other taxes except property taxes The taxation of insurance companies is covered in a report on the subject by Dr Sylvia Lane issued by the Assembly Committee on Revenue and Taxation

[2] Franchise Tax Board, *Annual Report*, 1963, p. 13

of orders for sales of tangible personal property by employees or other representatives; (2) orders are sent outside the state for approval; and (3) orders are filled from stocks of goods maintained outside the state * [See pp 41 ff., below, for a detailed discussion]

* This provision works in the same direction as the business inventory tax, i e, it encourages warehousing out of the state See Harold M Somers, "Business Inventory Tax," in David R Doerr and Raymond R Sullivan, *Taxation of Property in California* (Sacramento Assembly Interim Committee on Revenue and Taxation, 1964)

TABLE I

CORPORATION FRANCHISE AND INCOME TAX RATES AND YIELDS IN CALIFORNIA

Income year	Corporation franchise[a]			Corporation income	
	Rate	Minimum	Yield	Rate	Yield
1964 (est.)	5 5/6%	$100	$310 000,000	5 5/6%	[b]$1,400,000
1963	5½	100	289,468,010	5½	1,375,529
1962	5½	100	271,654,583	5½	1,476,144
1961	5½	100	259,081,827	5½	1,364,379
1960	5½	100	240,767,689	5½	1,371,721
1959	5½	100	227,700,780	5½	1,443,395
1958	4	25	149,744,488	4	984,642
1957	4	25	151,955,220	4	968,224
1956	4	25	151,698,073	4	953,711
1955	4	25	141,527,409	4	748,256
1954	4	25	119,730,070	4	577,692
1953	4	25	112,585,995	4	587,008
1952	4	25	103,407,884	4	595,965
1951	4	25	113,131,987	4	685,904
1950	4	25	98,977,788	4	656,203
1949	3 4	25	85,898,706	3 4	537,892
1948	3 4	25	74,367,002	3 4	493,182
1947	3 4	25	67,739,743	3 4	437,873
1946	3 4	25	52,657,505	3 4	425,708
1945	3 4	25	47,590,254	3 4	N A
1944	3 4	25	47,403,908	3 4	N A.
1943	3 4	25	63,451,936	3 4	N A.
1942	4	25	53,709,511	4	N.A
1941	4	25	33,725,891	4	N A
1940	4	25	19,543,006	4	N A
1939	4	25	[c]16,198,057	4	N A
1938	4	25	[c]14,632,345	4	N A
1937	4	25	[c]15,541,490	4	N A
1936	4	25	[c]15,781,860	—	—

SOURCE Franchise Tax Board, *Annual Reports*, 1936–1963

[a] Does not include Bank Tax (see "The Bank Tax in Lieu of Personal Property Taxation," Section Five, VII, *Taxation of Property in California*, Sacramento Assembly, California Legislature, Assembly Interim Committee on Revenue and Taxation, December, 1964.)

[b] Preliminary

[c] Excludes corporations reporting net loss or no income or loss; such information not being available

III. CORPORATION TAXES IN OTHER STATES

Of the 38 states taxing corporate net income as shown in Table II, eleven states have a maximum rate in excess of that imposed by California However, several of these states allow a deduction for federal tax paid while California does not

TABLE II

STATE CORPORATION INCOME TAX RATES, JANUARY 1, 1964

State	Rate (percent)		Federal tax deductible*	Related provisions
Alabama		5	X	
Alaska	First $25,000	5 4	-	
	Over $25,000	9 36		
Arizona	First $1,000	1	X	
	$1,001–$2,000	2		
	$2,001–$3,000	2 5		
	$3,001–$4,000	3		
	$4,001–$5,000	3 5		
	$5,001–$6,000	4 5		
	Over $6,000	5		
Arkansas	First $3,000	1	-	
	$3,001–$6,000	2		
	$6,001–$11,000	3		
	$11,001–$25,000	4		
	Over $25,000	5		
California		5 5	-	Minimum tax $100.
Colorado		5	-	
Connecticut**		5	-	If tax yield is greater, 2 5 mills per dollar of capital employed in Connecticut Minimum tax $25
Delaware		5	-	
Georgia		4	-	Rate increased to 5 percent, effective January 30, 1964
Hawaii**	First $25,000	5	-	Capital gains entitled to alternate tax treatment
	Over $25,000	10 5	X	are taxed at 3¾ percent
Idaho		10 5	X	A $10 filing fee is imposed
Indiana		2	-	
Iowa		3	X	
Kansas		3 5	X	
Kentucky	First $25,000	5	X	
	Over $25 000	7		
Louisana		4	X	A specific exemption of $3,000, prorated according to the proportion of total net income taxable in Louisana, is allowed against net income
Maryland		5	-	Domestic corporations are allowed credit for franchise taxes in excess of $25
Massachusetts**		5 765	-	Includes the base 2 5 percent rate, a temporary additional tax of 3 percent, a permanent surtax of 3 percent of tax, and a temporary surtax of 20 percent of tax All corporations pay additional $6 15 tax (including surtaxes) on each $1,000 of taxable corporate excess or on taxable Massachusetts tangibles, whichever is greater Minimum tax, the greatest of (1) 1/50 of 1 percent of the fair value of capital stock, plus 3 percent of allocable income, or (2) 1/50 of 1 percent of allocable gross receipts, plus 3 percent of allocable income, or (3) $25 each plus the 23 percent total surtaxes
Minnesota		110 23	X	Includes the 7 5 percent base rate plus, for taxable years beginning prior to January 1, 1965, a 10 percent increase in the basic rate and an additional tax of 1 98 percent A credit of $500, deductable from net income, is allowed each corporation Minimum tax $10
Mississippi	First $5,000	2	-	The maximum rate for later years will be 1965, 3 5 percent on income in excess of $1,000, 1966 and after, 3 percent on income in excess of $5,000
	$5,001–$10,000	3		
	Over $10,000	4		
Missouri		2	X	
Montana		4 5	-	Minimum tax $10

TABLE II—Continued

STATE CORPORATION INCOME TAX RATES, JANUARY 1, 1964

State	Rate (percent)		Federal tax deductible*	Related provisions
New Jersey		1 75	–	All corporations pay additional tax on net worth
New Mexico**		3	X	
New York	5 5 percent plus tax of ½ mill per $1 of allocated subsidiary capital		–	Corporations are subject to the 5½ percent tax on net income or a tax on 3 alternative bases, whichever is greatest The alternative taxes are (1) 1 mill on each dollar of business and investment capital, or (2) 5½ percent of 30 percent of net income plus compensation paid to officers and holders of more than 5 percent of capital stock, less $15,000 and any net loss, or (3) $25, whichever is greatest, plus the tax on allocated subsidiary capital
North Carolina		6	–	
North Dakota	First $3,000	3	X	
	$3,001–$8,000	4		
	$8,001–$15,000	5		
	Over $15,000	6		
Oklahoma**		4	X	
Oregon		††6	–	Manufacturers may claim an offset of up to one-third of the tax for Oregon personal property taxes paid on raw materials, goods in process, and finished products
Pennsylvania**		5	–	
Rhode Island		6	–	Alternative tax 40 cents per $100 on corporate excess, if tax yield is greater Minimum tax $10
South Carolina		5	–	
Tennessee**		4	–	
Utah		4	X	Corporations are subject to the 4 percent tax or a tax of ½₀ of 1 percent of the value of tangible property within the state, whichever is greater Minimum tax $10
Vermont**		5	–	Subject to reduction if there is sufficient surplus in general fund Minimum tax $25
Virginia		5	–	
Wisconsin**	First $1,000	2	‡X	
	$1,001–$2,000	2 5		
	$2,001–$3,000	3		
	$3,001–$4,000	4		
	$4,001–$5,000	5		
	$5,001–$6,000	6		
	Over $6,000	7		
D C		5	–	

* "X" Denotes "yes", "–" denotes "no" In general, each state which permits the deduction of federal income taxes limits such deduction to taxes paid on that part of income subject to its own income tax

** Allows deduction of state corporation income tax itself in computing state tax liability

† Bank rate is 12 54 percent

†† Rate on banks and financial institutions is 8 percent

‡ Limited to 10 percent of net income before federal tax

SOURCE Commerce Clearing House, *State Tax Guides* and *State Taxation of Interstate Commerce*, report of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary Vol 1, pp 105–107 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

The corporation income tax bases vary widely among the various states, as shown in Table III A majority of states do not use net income reported to the federal government as a starting point for the computation of the state tax base. The California corporation franchise tax base is roughly comparable in many respects to New York's and Oregon's.

TABLE III

FRANCHISE TAX BASE: CALIFORNIA AND OTHER STATES

Provision	California	New York	Oregon	Other states
Rate	5 5%	5 5%	6%	See Table II
Federal income used as state tax base	No	Yes	No	Yes—14 states No—21 states
Interest on federal obligations	Taxable	Taxable	Taxable	Exempt—25 states Taxable—8 states Follow federal—2 states
Interest on state and local obligations	Taxable	Taxable	Taxable	Exempt—21 states Partially exempt—3 states Taxable—11 states
Deduction for federal tax	No	No	No	Yes—13 states Partially—Wisconsin No—21 states
Deduction for state tax	No	No	No	Yes—16 states No—25 states
Depreciation federal Section 167	Yes	Yes	Yes	Yes—33 states Reasonable method—2 states
Depreciation 20 percent on personal property in first year	Yes	Yes	No	Yes—27 states No—8 states
Investment	No	No	No	Yes—Alaska No—34 states
Mineral depletion allowances	Substantially same as federal allowances	Follow federal allowances	Allows percentage depletion at rates different than federal	Follow federal—17 states Substantially federal—4 states Rules different—10 states No provisions—8 states
Treatment of intercorporate dividends	Deduction of dividends allowed to extent issuing corp taxed by California	50 percent of dividends and 100 percent subsidiary dividends deductible	Dividends excl from gross income taxpayer holds 50 percent or more of issuing co's stock	Follow federal—7 states Exempt all dividends—4 states Tax all dividends—5 states Allow partial deduction different than federal—19 states
Capital gains and losses	Same as ordinary gains	Follow federal	Same as ordinary gains	Same as ordinary—11 states Varied treatment—24 states
Net operating loss carryover	Not allowed	Can carry back 3 years and carry forward 3 years	Can carry loss forward 5 years	Same as ordinary—11 states Varied treatment—24 states
Charitable contributions	5 percent of net income deductible — no carry over provision	5 percent of net income deductible — 2 years carry over for excess of 5 percent	5 percent of net income deductible — no carry over — vet's organizations must be local to be eligible	Not allowed—3 states 5 percent limit—23 states 15 percent limit—Minnesota Limited to instate charities—6 states All contributions deductible—Tennessee
Corporate reorganizations	Substantially same as federal	Follow federal	Substantially same as federal	Follow federal—10 states Substantially same as federal—13 states No provision—5 states Unclear—1 state
Corporate liquidation	Substantially same as federal	Follow federal	Substantially same as federal	Follow federal—15 states Substantially same—9 states No provision—11 states

SOURCE Compiled from *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on Judiciary, House of Representatives, June 1964, p 235-272

IV. WHO REALLY PAYS THE CORPORATION INCOME TAX?[a]

We are concerned here with trying to determine who really pays the corporation income tax The corporation itself is legally obligated to pay and makes the payment to the revenue agency Can the corporation recoup the tax wholly or partly by paying less for what it buys or charging more for what it sells? This is apart from the obvious fact that a company can recoup about half of its state tax from the federal government through the deductibility feature

The doctrine that "an income tax cannot be shifted" has been held firmly for some time Occasionally a word of protest is raised, but without any serious impairment of the doctrine itself Taxes on income from wages and salaries, interest and dividends can be shifted under certain, reasonably realistic conditions The doctrine of the nonshiftability of an income tax cannot, therefore, apply to such income What of the taxation of business income?

In the analysis of the taxation of business income it is particularly important to distinguish between the short run (fixed capacity) and the long run (variable capacity), even though much of contemporary tax doctrine would say that no shifting takes place in either case

A. GENERAL CONSIDERATIONS

If one may judge from the opinions often expressed popularly, income taxes on business can be shifted It is assumed that a merchant or manufacturer often takes into account, at least indirectly, the amount of income tax he will have to pay and, if the market conditions permit, fixes his prices at such a level as would yield him a certain minimum net income Leaving aside for later discussion the complications introduced by the corporate form of business, however, most economic opinion has in the past been to the effect that "market conditions" usually do not permit the addition of the tax to the price in the short run[4] Any shifting that takes place does not come about by a straightforward shifting from seller to buyer but, if it comes about at all, does so through a complex, indirect, and roundabout process

Before passing to a detailed economic analysis of the problem, it is necessary to discuss several general considerations and also some general arguments which are often used to prove that shifting of the tax does not take place, i e that the tax is absorbed by businessmen

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[a] Prepared by Harold M Somers See Challis A Hall, Jr, "Direct Shifting of the Corporation Income Tax in Manufacturing," *American Economic Review*, May 1964 Marian Krzyzaniak and Richard A Musgrave, *The Shifting of the Corporation Income Tax An Empirical Study of Its Short Run Effect Upon the Rate of Return* (Baltimore The Johns Hopkins Press, 1963) Harold M Somers "The Place of the Corporation Income Tax in the Tax Structure" *National Tax Journal*, September 1952, Richard Goode, *The Corporation Income Tax* (New York John Wiley & Sons, Inc 1951), and Harold M Somers, 'Taxation of Business Income,' Chapter 13 in *Public Finance and National Income* (Philadelphia The Blakiston Company 1949)

[4] See Robert S Ford, 'Some Economic Aspects of the Present Corporate Income Tax," *Proceedings of the National Tax Association*, 1947, pp 55–59 and the bibliographical references given there

The following discussion covers goods and services including those of manufacturing, sales and financial companies

Assumption of Profit Maximization

It is assumed in this discussion that (1) price and output were set at the point of maximum profit before the tax was imposed and (2) that the price and output will be changed, if necessary, to achieve the maximum profit after the tax is imposed [5] Insofar as these assumptions are inconsistent with actual business practice, (i e if businessmen do not actually try to maximize profit) the following analysis is unrealistic However, it may still be useful in suggesting how to approach the problem of tax shifting under other, perhaps more realistic, assumptions For instance, it may reasonably be assumed that inertia, if nothing else, will prevent a change in price for only a small prospective change in profit The analysis can then be modified to ignore any change in profit that is less than, say, 10 percent of the existing amount Professor Shoup has suggested that firms might have kept their prices down for competitive reasons, but that a substantial increase in the income tax might prompt concerted action to raise prices and profits [6]

Significance of "Goodwill"

The possibility of losing "goodwill" is frequently advanced as an argument to prove that price will be unchanged and the tax absorbed This would mean that a change in price would result, not in the sales originally assumed, but in some other sales, because of the change in goodwill attributable to the price change If the change in goodwill is actually attributable to the price change, and it is capable of being estimated even roughly, then a price-sales schedule (i e a demand schedule) can be set up accordingly

Psychological Effects of the Tax

Changes in the price-sales relationship may take place because of the imposition of the tax itself People may be more willing to pay a higher price, knowing that the business firms have to pay higher taxes on their income or other base This means that a new set of price-sales data must be obtained after the tax is imposed The new data must be used to determine the new price and output Even though technically the demand conditions have changed, it may still be legitimate to consider any price rise as a case of tax shifting since the change in the demand conditions is attributable to the tax

Significance of the Quantity of Money

An argument against shifting which has found favor in the past runs somewhat as follows The general price level, given a certain volume of production, depends on the quantity of purchasing power—money and deposits—and the velocity with which it circulates An increase in the income tax could only enable sellers in general to put up their prices, if at the same time it caused an expansion of currency or a more

[5] For a convenient mathematical demonstration that an income tax is not shifted under these assumptions see Paul A Samuelson, *Foundations of Economic Analysis*, p 40 (Cambridge Harvard University Press, 1947)

[6] See Carl Shoup, "Incidence of the Corporation Income Tax Capital Structure and Turnover Rates," *National Tax Journal*, Vol 1, March 1948, pp 12–17

rapid circulation of money, making it possible for the higher prices to be paid

This may be criticized along traditional lines In terms of the equation of exchange, $MV = PT$, where M is the amount of money and money substitutes, V the velocity of circulation of the items included in M, P the price level, and T the volume of trade, an increase in P is possible through a reduction in T and without any change in M or V or MV

Since a rise in price is almost certain to be associated with a decline in output where general demand and supply conditions do not change, the quantity theory of money imposes no barrier to the possibility of tax shifting

If the decline in T is nil or insufficient to offset the rise in P, then it is true that M or V or both must rise so that MV rises Under the presently prevailing banking and monetary system it is likely that the amount of money and money substitutes will actually respond to a rise in PT Hence, the possibility of a rise in P cannot be neglected It is not ruled out of account on overall grounds such as those represented by the equation of exchange

Application of General Supply and Demand Theory

Instead of relying on the quantity theory of money as crudely stated, we may merely speak of the price level as being determined by total commodity demands and total commodity supplies Seligman apparently had this in mind when he approved of the Ricardian statement "Each man's expenses must be diminished to the amount of his tax, and if the seller would wish to relieve himself from the burden of the tax by raising the price of his commodity, the buyer for the same reason would wish to buy cheaper These contending interests would so exactly counteract each other, that prices would undergo no alteration "[7] As Robertson pointed out, however, this argument rests on the assumption that all working class consumers are income taxpayers, and that money collected by the state is not spent [8] Even if all are taxpayers it may generally be assumed that the income tax rates applicable to owners of business firms are higher than those of the general population, i e the final consumers

Significance of Differential Rates

One of the arguments sometimes accepted as indicating that the tax cannot be shifted is that the amount of the shift cannot be determined because of the various tax rates which exist As Robertson has caricatured it, "because it [the tax] would not know so to speak, to what extent to affect them "[9] Needless to say, the fact that we do not know exactly how great the shifting may be is no disproof of the possibility that some shifting will take place Robertson has made this point very clearly and has argued that, besides, Pigou had measured the effect of differential taxes upon various sources of supply

[7] E R A Seligman, "Income Taxes and the Price Level," Appendix to the Colwyn Report, p 123n

[8] D H Robertson, "The Colwyn Committee, the Income Tax and the Price Level," *Economic Journal* Vol 37, December 1927, p 576

[9] *Ibid*

Significance of International Price Level

Another of the superficial and mechanical arguments, similar to the one based on the quantity theory, is based on the existence of a general international price level There is a common price level throughout the world for goods which enter into international trade and it has been argued that this price level could not be affected by the fact that the income tax in one country is higher than income taxes in other parts of the world In criticism of this Robertson points out that The British supply is a large part of the world supply, the argument would be just as valid for local taxes, and, businessmen have contended that British trade was restricted because the tax made it difficult to compete at world prices Similarly, we may argue that American supply is a substantial part of the world supply, hence anything that tends to push up the prices of American goods on the world market may affect the market as a whole, and in certain products California output is a significant factor in the formation of domestic and international market prices

Significance of Corporate Organization

Where the firm in question is incorporated there are added reasons why it is claimed that the tax will not be shifted It may be argued that this type of business enterprise is not concerned with the tax because it recoups itself by deducting the tax from its shareholders, the directors are not personally affected to any great extent and are unwilling to experiment with higher prices because of the size of the undertaking, and the differential rates of the income tax affect different shareholders to various extents This argument, if valid, would be very important because management is separated from ownership in substantial degree in American corporate interprise

This type of argument is not very convincing because it implies a disregard for profits on the part of management It must be assumed that if the tax made a change in profits, management would at least consider offsetting the change It is curious that the conclusion of the nonshiftability of the tax is reached here by assuming (implicitly) that the principle of profit maximization does not hold whereas in later sections of this chapter the same conclusion is reached (under conditions of fixed plant and equipment) on the assumption of profit maximization

There is no need to go the extreme of denying profit maximization completely in an effort to be realistic A profit "constraint" alone helps explain business behavior The constraint, either imposed by shareholders or self-imposed by management, sets a minimum amount or rate of profit to be earned As long as that minimum is secure, management might try to make the company grow as rapidly as possible, as by maximizing gross sales [10] Another objective might be to keep a certain share of the market even though profits might suffer somewhat

[10] See W J Baumol, *Business Behavior and Growth* (New York 1957) and William C Pardridge, "Sales or Profit Maximization in Management Capitalism," *Western Economic Journal* II (2), 134–141 (spring 1964)

B. SHIFTING UNDER FIXED CAPACITY

The theoretical argument that a tax on business income cannot be shifted if profit is maximized can be stated simply The price and output which yield the maximum profit before the tax will yield the maximum profit after the tax Suppose that the best profit is $1,000 and this profit is obtained at a price of, say, $5 and output of 500 units (i.e. any other price and output will yield a smaller profit than $1,000) The imposition of a 20-percent tax on all income will leave 80 percent of $1,000, or $800 This is greater than 80 percent of any of the other possible profit figures, all of which are less than $1,000 before tax and less than $800 after tax

This is true also in the case of a monopolist Even if the monopoly is absolute, the monopolist is assumed to be charging the highest desirable price before the tax is imposed And since the income tax does not affect the cost of production or the demand price (not directly, at any rate), there is no theoretical reason why the supply price should be raised In actual practice, it is true, the price being charged may not be the highest possible and the monopolist may be stimulated by the tax to raise prices, but it cannot be claimed that the tax itself made the increased price possible It appears, therefore, that the monopolist cannot with impunity shift an income tax Normally the price he charges will not in any way be directly affected by the imposition or increase of such a tax

Revolting as it may seem to the orthodox analyst, there is a possibility that though the income tax is a tax on profit and not a tax on unit of output or sales, it might be shown in the demand curve When the businessman considers the fact that part of the receipts derived from an additional 1,000 units, say, of the product, will be paid out in the form of taxes, then he actually has in mind, not the sort of demand curve which economists impute to him, i e one which is independent of the tax, but actually he has before him a demand curve (and the corresponding marginal curve) which is *net* of the tax We may object to this on the grounds that the demand curve alone cannot determine net profit, hence it cannot correctly reflect the tax But where we speak of "the demand curve as seen by the seller," we must be prepared to accept anything the seller sees The imposition of the tax might shift the demand curve he sees, and result in changes in price and output In this way the irrational view which the seller has of the demand curve may be rationalized in terms of economic theory Nevertheless, at the margin there would still be no net profit, hence no tax If the seller had been operating at the margin, he would still have no reason to change price or output The average and marginal curves could be so constructed as to reflect the tax but there would be no change at the crucial point, the point of maximum profit, where marginal cost equals marginal revenue and marginal net profit and marginal tax are zero

Numerical Example

The following numerical example will illustrate this point further It is assumed the first $2,000 is exempt, the next $2,000 is taxable at 10 percent, the next $2,000 at 20 percent, the next $2,000 at 30 percent, and all amounts over $8,000 at 40 percent Any other percentage

tax set up on a bracket system will yield the same conclusion as long as no bracket is taxed more than 100 percent

In Table IV various prices per unit are given in column (1) At these prices the outputs listed in column (2) are sold The total receipts from the sales of these amounts at the prices indicated are given in column (4) The cost of producing and selling a unit of the product at the various levels of output is given in column (3) In this example

TABLE IV

SHIFTING OF BUSINESS INCOME TAX WITH FIXED CAPACITY

Price per unit (1)	Number of units sold (2)	Cost per unit (3)	Total receipts (4)	Total cost (5)	Total profit (6)	Total tax (7)	Total profit after tax (8)
$10	900	$5	$9,000	$4,500	$4,500	$300	$4,200
9	1,200	5	10 800	6 600	4 800	360	4,440
8	1,400	5	11 200	7 000	4 200	240	3,960
7	1,600	5	11 200	8 000	3,200	120	3,080
6	1,800	5	10,800	9,000	1,800	—	1 800
5	2,000	5	10,000	10,000	—	—	—

SOURCE Somers, *Public Finance and National Income*, p 213

the cost is assumed to be uniform throughout The total cost, items in column (2) multiplied by items in column (3), is given in column (5) The total profit, given in column (6), is obtained by subtracting each item in column (5) from each item in column (4) The figures in column (7) are obtained by applying the tax structure given above to the profit data in column (6) The total profit after tax, column (8), is obtained by subtracting the items in column (7) from those in column (6)

Absence of Forward or Backward Shifting

It will be seen that the point of maximum profit before the tax is imposed is at a price of $9 and sales of 1,200 units The same holds true after the tax is imposed The profit after tax at this price and output is greater than any other There is no tendency to shift the tax forward by changing the price Since the output is unchanged there is no reason to believe that there will be any backward shifting

Analysis in Terms of the "Marginal" or the "Representative" Firm

The short-term analysis of business-income tax shifting is sometimes done in terms of the "marginal" firm Since the marginal firm has no net income, an income tax does not affect it And since the marginal firm sets the price, price is not affected The "representative" firm rather than the "marginal" firm is sometimes given the strategic price-determining role But, as the above analysis shows, even profit-taking firms, including the representative firm, are not induced to raise the price as a result of an income tax

Nevertheless the marginal producer approach provides one of the most widely accepted arguments against the possibility of the income tax being shifted—accepted mainly by those who have uncritically accepted classical value theory The basic thesis is that in a free, competitive market with ample supplies in relation to demand, the price

at any time is measured by the cost of production to the marginal producer That price yields no profit and is not liable to income tax, hence, no element of tax can enter into it There are two main defects in this as an argument against the possibility of passing on the tax

The first defect lies in the definition of "marginal producer" As Robertson points out, "I do not think any warrant can be found in Marshall's pages either for the view that the costs of production which are relevant to the determination of normal value are those of the most inefficient or unfortunate producers, or for the view that they do not comprise a substantial element of profit" [11] Under monopolistic conditions the marginal theory loses even more of its effectiveness as an argument against the likelihood of the shifting of the tax This is the second defect of the marginal producer analysis To the extent that we have differentiated products and, in the extreme case, to the extent that we have virtual monopolies, the gradation super-, sub-, and marginal producers becomes inappropriate Each producer is to some degree or other independent of every other in that his price cannot be said to be determined solely by some producer who happens to be breaking even Thus as a result every other producer (including the one who is just breaking even) is producing a product which, at best, is only an imperfect substitute for his

Risk as a Factor Inducing Shifting

There is one set of realistic factors, not considered above, which might also require a modification of the conclusion that the business income tax is not shifted in the short run Increased output even with fixed productive capacity necessarily involves additional risk taking Working capital which might otherwise be in the form of cash gradually takes the form of various inventories—raw materials, semifinished and finished goods—as expenditures are made on account of purchases and payrolls At the same time the demand figures are not certainties Even if goods are produced only to order there are numerous risks involved, such as those of cancellation and nonpayment When goods are not produced to order but for the market, then the demand figures must be considered as some sort of average of estimates—with some possibility of over- as well as under-estimate The income tax reduces the net return and it is no longer worth while to produce for the more risky orders or sections of the market Thus some reduction in output and increase in price is likely This means that there may be some short-run forward shifting of the income tax Since a change in price would involve a change in sales and output there is also a possibility of some backward shifting through a reduction in the price of goods purchased

Taxation of "Accounting Profit" instead of "Economic Profit"

It is taken for granted that the business income tax cannot be shifted in the short run because the point of maximum profit before the tax is the same as the point of maximum profit after the tax provided that the tax is less than 100 percent in total or in any bracket This conclusion if it holds at all applies only if the tax impinges on true economic profit, namely the profit which is the reward of the fac-

[11] Robertson, *op cit*, pp 568–69

tor, business enterprise However, the taxes are actually imposed on the accounting profit This may be radically different from the economic concept of profit, it may include implicit shares of other factors such as wages, interest, and rent To the extent that the businessman pays the income tax on these shares he may be induced to curtail his activities In other words, entrepreneurship is a factor of production and must be paid [12] The businessman may decide that it does not pay him to work so hard if the government is going to take away a substantial portion of his income in the form of taxes Thus he will curtail his production Under such conditions it cannot be said that prevailing taxes on business income cannot be shifted in the short run A tax which might theoretically be imposed on pure business profits would not be shifted in the short run, but the taxes which are actually imposed on business income do impinge on elements other than pure business profit and therefore can be shifted

An examination of the arbitrary decisions involved in the determination of the accounting profit reinforces the above conclusions The accounting methods of evaluating assets is highly questionable from an economic point of view, however necessary and desirable they may be for conservative accounting practice and as a device for preventing extravagant business decisions The book value of fixed assets net of depreciation allowances does not begin to portray the true economic value of those assets as they change from year to year in response to changing business conditions earning power, etc The same may be said of most accounting methods of evaluating inventory. As a result of these accounting devices the accounting profit may be different from the true economic profit In many instances the accounting profit may actually include elements of other shares of distribution In so far as taxes on such shares do result in some short-run shifting, it may be said that prevailing income taxes on business profits—as determined by accountants—may be subject to short-run shifting

Confiscatory Bracket Rates

Some forward tax shifting might occur under a peculiar tax structure where a bracket rate exceeds 100 percent From time to time high-income celebrities are quoted as saying that they cannot afford to accept an additional engagement the current year because that would put them "in a higher tax bracket" and leave them with less money than before This would hold true only if the tax rate for the bracket exceeded 100 percent This is not and probably never will be true in law, but there may be some peculiarities of administration which would have the same effect Raising the income above a certain level might subject it to a more rigid type of audit which would have the effect of raising the tax liability on the earlier brackets of the taxpayer's income This, if large enough, would be the same as taxing the latest bracket more than 100 percent Another possibility occurs in the higher brackets in cases where multiple taxation exists

Although these situations have occurred occasionally they are not very likely It is interesting to see what sort of tax shifting they lead to The following table recomputes columns (7) and (8) of the pre-

[12] See Harold M Groves, "Revision of the Corporation Income Tax," *Proceedings of the National Tax Association* 1947, pp 99–100

vious table on the basis of the following (highly objectionable) tax structure: first $2,000 exempt, next $2,000 taxed 80 percent, amounts over $4,000 taxed 150 percent

TABLE V

CONFISCATORY BRACKET RATES

Price per unit (1)	Total profit (6)	Total tax (9)	Total profit after tax (10)
$10	$4,500	$2,350	$2,150
9	4,900	2,800	2,000
8	4,200	1,900	2,300
7	3,200	960	2,240
6	1,800	—	1,800

SOURCE Somers, *Public Finance and National Income* p 217 (modified)

In this case the point of greatest profit is at a price of $9 before taxes and $8 after taxes It apparently pays the seller in this case to *reduce* the price In other numerical examples or with other tax structures it might occur that the price is raised or that there is no change whatever

Thus the conclusion that the best point of production before the tax is imposed must also be the best point of production after the tax is imposed holds only if no bracket is taxed at confiscatory rates—that is, at 100 percent or more If any bracket is taxed at less than 100 percent, then there will always be some additional net income after taxes when the individual moves into the higher bracket He will not lose in dollars and cents by moving into the higher bracket

In order to be certain that the brackets are not confiscatory, it is sometimes necessary to examine carefully the structure of rates Suppose the rates are not stated in bracket but overall terms Then it is possible that the system is confiscatory at certain brackets even though it does not appear to be so at first sight The following example may serve to explain this point

Suppose that the tax system is such that on income up to $10,000 the rate is 20 percent and that on the total of income when the income exceeds $10,000, the rate is 30 percent If the individual makes $10,000 he pays a total tax of $2,000 If he makes $10 001 he pays a total tax of $3,000 30 Thus by raising his income $1 he increases his tax liability by $1,000 30 Implicitly, therefore, there is a confiscatory bracket of tremendous size In such cases of course the business income tax would be shifted in the short run because an individual would reduce production so as to avoid getting into the higher bracket Such a bracket structure does not exist in the federal income taxes at the present time It is quite conceivable, though, that through the variety of tax structures and also the possibility of multiple taxation and variations in exemptions, practical cases could exist where the individual is in practice faced with a confiscatory bracket Within this limited range the business income tax would result in a price change even in the short run

C. SHIFTING UNDER VARIABLE CAPACITY

The possibility of shifting a business income tax in the long run where productive capacity and the number of plants can be varied has generally been discarded on a very plausible basis This is the twofold argument (1) that an income tax does not affect the marginal firms, which have no income, and therefore does not force any firms out of business, and (2) an income tax does not change the optimum size of a firm since the size of plant which gives the maximum profit before tax will also give the maximum profit after income tax

Complications Introduced by the Nature of Investment Decisions

The above statements, although fully consistent with "classical" price theory, ignore two important interrelated aspects of investment decisions (1) the data on which investment decisions are based are not known quantities but are merely estimates involving a wide range of probabilities and a high degree of risk, and (2) if the net return after tax falls below a certain level the investor will keep his assets in the form of a cash or riskless securities such as government bonds

In any business investment there is the possibility of loss If there is a good chance of making a large profit there will be some people who are willing to make an investment of a certain amount If an income tax is imposed on a given income-probability structure, the net prospective returns are reduced throughout Some investors will decide not to invest at all and others will reduce the amount of their investment For these marginal investors, and for the marginal investments of the other investors, the marginal efficiency of capital has dropped below the marginal rate of liquidity preference and there will be a shift into liquid holdings until the two are brought into equality again [18] This means that fewer plants are opened up than, would otherwise be the case and existing plants are allowed to deteriorate to some extent or are not expanded as much as they would otherwise be

There is no escaping the conclusion that in the long run the possibility of price increase and forward shifting of the income tax exists This conclusion is based not on vague references to "confidence" but on a direct application of contemporary economic analysis which recognizes the existence of risk and the influence of liquidity-preference (the preference for cash or equivalent)

Importance of Alternative Possibilities

The important thing to remember is that the absolute amount of net income is not the sole determining factor in business investment decisions Alternative possibilities, such as purchase of interest-bearing bonds or even holding idle cash, cannot be ignored In the case of the small businessman even the possibility of current consumption should be considered The large corporation in which management and ownership are said to be "divorced" also has these alternatives although a desire on the part of management to make the company as large as possible may have a predominant influence in price policy

[18] See Harold M Somers, "Monetary Policy and the Theory of Interest," *Quarterly Journal of Economics*, Vol 55, May 1941, pp 488–507 Reprinted in *Readings in the Theory of Income Distribution*, pp 477–98 (Homewood, Ill Richard D Irwin, Inc , 1951) See also J Hirshleifer, "On the Theory of Optimal Investment Decision," *Journal of Political Economy*, August 1958

Taxation of Alternative Possibilities

One caution must be sounded in connection with alternative investments they too may be subject to the income tax If the income from the interest-bearing bonds is subject to tax at the same rates as business income, then the alternative loses some of its attractiveness by virtue of the income tax There are, however, two other alternatives: holding cash (or equivalent) and spending the money on consumption The "psychic income" or whatever it is that is derived from devoting funds to these purposes is not (as yet) subject to income taxation

Marginal Rates of Liquidity- and Time-preference

To make this approach to the problem amenable to further analysis, it is necessary to keep in mind two concepts the "marginal rate of liquidity preference" and "marginal rate of time preference" The marginal rate of liquidity preference may be considered the minimum net return which is required to induce an individual to invest an additional sum of money rather than hold it idle in the form of cash The marginal rate of time preference may be considered the minimum net return which is required to induce an individual to invest an additional sum of money rather than spend it for current consumption

Business Expectations

A numerical illustration is difficult because of the many complications involved in the analysis of risk-taking In particular, not enough is known about the businessman's reaction to (1) the average expected return, i e arithmetic mean of all the possible returns weighted by their probabilities, (2) the most probable return, i e the single return which has the highest single probability, however large or small that may be, and (3) the dispersion of the various possibilities, i e how great the probability is of losing all, how great it is of losing 90 percent, etc Different businessmen will of course react differently to each of these The gamblers may ignore (1) and (2) and go for the long chance, as in a sweepstake The more conservative businessman will consider all three He will want a high average expected return, a high "most probable" with a large probability, and will not look kindly on a wide dispersion of the possible, or at least the more probable, returns Another important factor is the margin of safety required by the businessman after all calculations are completed [14]

Numerical Example

By way of illustration, the mean expected return is used in the numerical illustration below A single company contemplating various sized plants is considered The effect of an income tax is then examined

Table VI gives the basic data for a discussion of long-run shifting of an income tax in the particular case mentioned above Column (1) gives various possible amounts of investment representing plants of different size The task is to determine which amount of investment should be undertaken in the absence of an income tax and which amount with an income tax Column (2) gives the net income derived from

[14] See William Fellner, *Monetary Policies and Full Employment*, Chapter 5 (Berkeley University of California Press, 1946)

TABLE VI

SHIFTING OF BUSINESS INCOME TAX WITH VARIABLE CAPACITY

Total investment (1)	Total net return before tax* (2)	Marginal investment (3)	Marginal net return before tax (4)	Net income tax at 20 per cent (5)	Total net return after tax (6)	Marginal net return after tax (7)	Marginal rate of return before tax (8)	Marginal rate of return after tax (9)	Marginal rate of liquidity preference (10)
$1,000	$80	$1,000	$80	$16	$64	$64	8%	6 4%	4%
2,000	170	1,000	90	34	136	72	9	7 2	4
3,000	270	1,000	100	54	216	80	10	8 0	4
4,000	360	1,000	90	72	288	72	9	7 2	4
5,000	440	1,000	80	88	352	64	8	6 4	4
6,000	510	1,000	70	102	408	56	7	5 6	4
7,000	570	1,000	60	114	456	48	6	4 8	4
8,000	620	1,000	50	124	496	40	5	4 0	4
9,000	660	1,000	40	132	528	32	4	3 2	4
10,000	690	1,000	30	138	552	24	3	2 4	4

*At best output This is not the low cost output except under conditions of long-run constant costs Under other cost conditions the best output is generally at a cost higher than the low cost points for the plant concerned

SOURCE Somers, *Public Finance and National Income* p 221

the various amounts of investment stated in column (1) All expenses have been allowed for, including interest, either actual or imputed These are estimated figures and represent some sort of average of the various possible returns to be expected at each level of investment

Column (3) gives the increment in the total investment figures listed in (1). In this case the increments are all $1.000 Column (4) gives the increments in the total net return figures of column (2) Column (5) gives the amounts of income tax computed at a flat rate of 20 percent on the net return figures of column (2) Although a simple proportional tax is used here, the analysis does not preclude a more complicated tax structure.

Column (6) gives the net return after the tax has been deducted, i e column (2) minus column (5) Column (7) gives the increments in column (6) Column (8) is column (4) computed as a percentage of column (3) Column (9) is column (7) computed as a percentage of column (3). Column (10) gives the marginal rate of liquidity preference, which was explained above In this case the rate is assumed to be 4 percent throughout This means that the businessman would rather hold cash than invest additional amounts at less than a net return of 4 percent This is a "take-home" net return after all expenses, taxes, interest, etc , are deducted It represents a state of mind and is not subject to taxation It is unaffected by the imposition of a tax on income In practice this rate might rise in relation to larger investments since the investor will be left with fewer liquid resources as the amount of investment rises A variable marginal rate of liquidity preference does not change the type of analysis considered here It is assumed, however, that the schedule of marginal rates of liquidity preference is not affected by variations in other returns as a result of taxes

The same principles will hold as long as there is some minimum net return which would induce a potential investor (whether an individual or a business firm) to hold cash (or equivalent) rather than invest When income taxes reduce the net return below that minimum, the

switch to cash will occur An absolutely rigid liquidity preference—as in the example — is not essential to the analysis

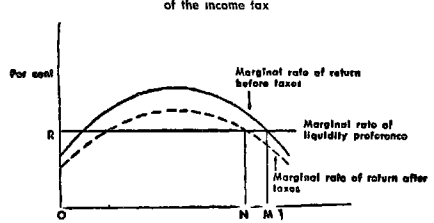
Before the imposition of the tax the businessman is willing to invest up to $9,000 and build a plant of corresponding size At this level of investment the marginal rate of return just equals the marginal rate of liquidity preference Up to this point the additional return has exceeded the minimum required to induce him to make the investment. He will not invest $10,000 because the return on the last thousand is only $30 or 3 percent while the minimum that he will consider is $40 or 4 percent

When the tax is imposed the marginal rates of return are reduced The ninth thousand yields only 3 2 percent, which is below the required minimum of 4 percent The eighth thousand yields 4 percent and this is as far as the businessman will go He will build a plant requiring the investment of $8,000

Graphic Analysis

The analysis of the problem of the long-run shifting of the income tax is demonstrated diagrammatically in Fig 1 The marginal rate of liquidity preference is shown by the solid line extending horizontally from the point *R* This, it will be recalled, is the minimum return at which an additional amount of money will be removed from cash holdings and diverted to investment in business This rate is here considered to be uniform It is likely that a higher minimum rate would prevail as investment increases and cash holdings decline In that case the curve out of point *R* would be upward-sloping to the right The curve might also shift downwards in response to taxes imposed on the other returns Neither the analysis nor the qualitative conclusions would be affected as long as it shifts less than the other curves

Figure 1 The graphic analysis of the problem of the long-run shifting of the income tax



SOURCE Somers, *Public Finance and National Income* p 223

The marginal rate of return before taxes is indicated by the solid curve so labeled The best amount of investment is OM where the marginal rate of return on the investment equals the marginal rate of liquidity preference When the tax is imposed the curve falls to the broken line in Fig 1 The best investment is now ON Business plans will now call for a smaller plant

Significance of Deductibility of Interest Expense

It will be noted that in the above example the marginal net return is compared, *not* with the rate of interest, but with the marginal rate of liquidity preference Decisions concerned with debt-financed investment based solely on a comparison of interest with marginal efficiency of capital (marginal net return before deduction of interest) will not be affected by the income tax where interest expense is deductible for tax purposes [15] The imposition of the tax reduces the prospective return but it also reduces the net interest cost to the firm because of the deductibility of interest expense for tax purposes Some modifications have to be made in this conclusion if it is found that the prevailing interest rate itself changes

Effects on Costs and Prices

The effect which reduced capacity in an industry will have on costs of production will depend on a variety of economic factors The reduced industrial capacity may mean higher, lower, or constant costs depending on whether long-run decreasing, increasing, or constant costs prevail Under highly competitive conditions the prevailing price will correspondingly be higher, lower, or unchanged (unless we specify the shape of the long-run demand curve) Under other conditions, the reduced capacity will generally mean less competition Reduced competition may have various effects on prices In this case, where reduced capacity accompanies the reduction in competition, the influence would be in the direction of higher prices [16] A sufficient reduction in costs—if such is the nature of this industry—could offset this tendency

Prospects of Shifting in the Long Run

It is frequently assumed that the business income tax will be shifted in the long run because the tax does reduce the incentive to expansion and may even encourage gradual liquidation of investment Whether a reduction in the size or number of firms results in an increase or decrease in prices will depend on the long-run cost conditions and the conditions of demand Thus aspect of the problem has been discussed above

The conclusion that the business income tax will have the effect of reducing incentives in the long run requires some further study If there are some "windfall" or true "economic surplus" elements in business profit in the long run then any income tax which is confined to those elements would not reduce incentives The surplus is something over and above what is necessary to promote long-run changes in investment This is probably merely a technical point, however. Under conditions of pure competition economic surpluses cannot persist generally in the long run The lure of supernormal profits would increase the number of firms so that the supernormal profits disappear through a reduction in price If the supernormal profits are taxed away, then the number of firms will not increase and the prevailing

[15] See E Cary Brown, "Business-income Taxation and Investment Incentives" *Income, Employment and Public Policy Essays in Honor of Alvin H Hansen*, p 314 (New York W W Norton & Co, 1948)

[16] It should be emphasized that we are not dealing here with the question whether a monopoly price is necessarily higher than a competitive price We are considering a change in the monopoly price itself as a result of an income tax

prices will remain Thus the taxing away of the supernormal profits prevents a price change which would otherwise take place In this sense it may be said that tax shifting might occur

Under conditions of monopolistic competition, if it is assumed that free entry exists, then again increase in the number of firms will take place so that in the long run supernormal profits are wiped out Once again the presumption is that the increase in the number of firms will reduce the price The imposition of the tax will prevent the increase in the number of firms by taxing away the attraction to new firms and therefore higher prices will persist Once again, however, the answer depends on the long-run nature of the cost and demand conditions It is quite conceivable that the increase in the number of firms might then result in higher costs and higher prices (through bidding up of scarce labor and materials) Under such conditions the tax keeps the price lower than would otherwise have been the case

Under conditions of monopoly where it is assumed that even in the long run supernormal profits may persist, the taxing away of those profits should have no effect whatever, assuming that the tax is on economic business profits The best-sized plant for the monopoly before the income tax will still be the best-sized plant after the income tax Thus only in the case of monopoly can it be said that an income tax which is imposed on supernormal profits alone will not be shifted even in the long run

If the business income tax actually impinges on normal profits because it is based on accounting definitions, then more drastic effects may be expected The tax on supernormal profits may reduce the attraction to new firms but a tax on normal profits will encourage the dropping out of existing firms There again the final effects on prices will depend on long-run cost conditions and demand conditions Even the monopolist will be induced to seek alternative occupations if the tax impinges on normal profits, that is, the opportunity cost Even if all fields are taxed the monopolist may prefer to go out of business completely and may perhaps decide to live off his investments A tax system which would prevent such effects would have to be more carefully devised so that the tax by its very nature reduces the alternative possibilities by taxing them In other words the tax would have to reduce the opportunity cost and thereby reduce the normal profit itself

This would require that all income-producing alternatives be taxed equally so that any effects of opportunity costs are reduced and all normal profits, or normal incomes generally, are correspondingly reduced It is even doubtful whether this would be an effective method of avoiding long-run consequences The alternative of holding cash and indulging in leisurely activities constantly exists Unless the government supplements its income tax with some device for taxing cash and preventing leisure, a tax which impinges on presently prevailing normal profits will undoubtedly have the effect of changing the price Thus it may be concluded that the business income tax which impinges on normal profits will generally result in price changes in the long run

D. CONCLUSIONS ON SHIFTING

In general, we may conclude that in the short run there is little likelihood of business income tax being shifted under the rigorous assumption of profit maximization in the literal sense Departures from this assumption, such as maximization of gross sales (or size of the business) subject to a profit constraint, lead to the conclusion that prices will change under the impact of an income tax in some instance, e g , where the company has been operating right at the profit constraint Various other situations in which price changes may occur have been mentioned above

There is some recent empirical evidence that tends to support the conclusion that the business income tax is shifted [17] It has been shown that an increase in the corporation income tax is shifted through short-run adjustments to prevent a decline in the net rate of return, and that these adjustments are maintained subsequently [18] This suggests that strict profit maximization had not been followed and that a business firm has much leeway in terms of buying and selling prices and internal efficiency An increased tax prompts changes which will leave the profit rate unimpaired The reluctance of management to alter dividend policy abruptly as a result of changes in profits after taxes [19] strengthens the notion that shareholders, at any rate, do not bear the burden of changes in corporate income taxation in the short run

In the long run, where a greater variety of alternative possibilities exists, there is a stronger likelihood that basic changes will be induced by the tax In particular, the constant possibility of holding cash (or equivalent) stands as a deterrent to investment where the net return after taxation falls too low [20] The result is some curtailment of economic growth

[17] Kryzaniak and Musgrave, *op cit* But see Hall, *op cit* , for a contrary view

[18] Kryzaniak and Musgrave, *op cit* , pp 65–66

[19] See Richard Goode, *The Individual Income Tax*, pp 298–299, and references to studies by Lintner, Brittain and Fromm, cited there (Washington, D C The Brookings Institution, 1964)

[20] *Cf* "Assuming that investors will incur risk only in the expectation of a higher return, an income tax discriminates in favour of holding wealth in safe (or idle) forms, and against the productive employment of capital " Michael Stewart "Dr Balogh's Note on the Wealth Tax A Comment," *Economic Journal*, December 1964, 1030–1031 at 1030

V. PROBLEMS IN CORPORATION INCOME TAXATION

A. CONFORMITY

California is in substantial conformity with the federal Internal Revenue Code provisions relating to corporation taxation, but it is not in detailed, technical conformity on many important items.

The broad arguments pro and con on the question of conformity of taxation in general have been thoroughly covered in an earlier publication of the Assembly Committee on Revenue and Taxation entitled *Conformity of State Personal Income Laws to Federal Personal Income Tax Laws* It will suffice here to note that some of the reasons for nonconformity are. nonapplicability, administrative problems, and loss of revenue to the state In addition, it has been deemed unnecessary to conform on purely incentive provisions as the federal law supplies sufficient incentive Another problem in conformity is the unitary nature of the federal code as compared with the separate personal and corporation tax laws in California This problem is discussed in detail below.[21]

The extremely large number of amendments made to the federal law in recent years makes the task of achieving conformity (in areas in which conformity is deemed desirable) difficult for at least two reasons.

(1) The existence of a separate personal income tax law and a separate corporation income tax law in many instances doubles the job of drafting amendments As businesses may be operated as sole proprietorships, partnerships or corporations, the tax provisions relating to business generally must be set forth in both tax laws This is avoided in the case of the federal income tax inasmuch as a single law governs such matters as exclusions from income, gross income, and deductions irrespective of the type of legal entity conducting the business

(2) Amendments conforming the California income tax laws to changes in the federal law are, of necessity, enacted after the federal amendments The state amendments generally are adopted in the year following that of the federal amendments. This may delay conformity for one year in many instances, but after that year transactions receive the same tax treatment for both state and federal purposes In other cases, however, e.g, amendments revising the law on depreciation, the action taken by a taxpayer for federal tax purposes the first year may affect the determination of income and tax liability for subsequent years. The delay of a year in the adoption by California of a federal change may, accordingly, as a practical matter, result in a permanent loss, or a loss for many years, of conformity so far as the affected taxpayers are concerned

[21] The following material on conformity (pp 29–34) was prepared by Felix Wahrhaftig

The problem first above mentioned arising from the two California income tax laws could be solved by combining the two into a single income tax law This could be done in conjunction with a general revision as a means of achieving a greater degree of conformity with the federal law.

There is, however, a major obstacle to the use by California of a single income tax law applying to both individuals and corporations. It lies in the requirement of Section 16 of Article XIII of the California Constitution that any tax imposed on banks or corporations under that section shall be under an act passed by not less than a two-thirds vote of all the members elected to each of the two houses of the Legislature. This provision has been construed by the Legislative Counsel as requiring a two-thirds vote on any bill increasing or decreasing the tax liability of the banks or corporations.

If the two taxes were embodied in a single law and that law was amended by less than a two-thirds vote in such a way as to change the tax liabilities of both individuals and corporations (including banks), the amendment would not be effective, under the Legislative Counsel's view, as to corporations This would be an undesirable result as it would mean that an individual or partnership conducting a business would have his or its income computed in one manner while a corporation conducting the same business would have its income computed in a different manner

Wholly independently of the question of conformity, one may consider whether it is proper policy to require a two-thirds vote to change the law governing the tax liability of corporations while merely a majority vote will suffice to effect a change in the tax liability of individuals If the two-thirds vote requirement were removed, it would then be entirely logical to consider the adoption by the state of single income tax law to replace the existing two separate laws

The second problem above mentioned, that of the taking effect of an amendment to the California law in a later year than the corresponding change in the federal law, could also be solved to a considerable extent through a constitutional amendment Problems in this connection have generally arisen through the claim that the retroactive application of an amendment reducing tax liability would violate Section 31 of Article IV of the California Constitution which prohibits a gift of public money. (See, for example, *Allen* v *Franchise Tax Board*, 39 Cal 2d 109) It may be desirable to consider in this connection the advisability of a constitutional amendment authorizing the Legislature to give such retroactive effect to amendments to the California income tax laws as would be necessary to obtain conformity as respects effective dates to the federal amendments

This proposal does not involve any requirement that changes to the California law have any retroactive application, but would simply confer a discretion on the Legislature to provide for the very limited retroactive application The Legislature would be able in each instance to consider whether the interests of conformity and the convenience of taxpayers and the tax administrator as to the effective date of a California amendment would be best served by the adoption of the effective date of the federal amendment

The recent changes in the federal law which have not yet been adopted by California provide opportunities for further possible conformity There are certain provisions of the Federal Revenue Act of 1964 which might, in the interests of conforming the federal and California law, be adopted as amendments to the California Bank and Corporation Tax Law

(No consideration is given here to those provisions of the Federal Revenue Act amending provisions of the Internal Revenue Code which had not heretofore been adopted by California This covers such matters as capital gains and losses, personal holding companies and the investment tax credit, inasmuch as the California law does not contain counterparts of the federal law on these subjects Similarly, there are certain 1964 federal amendments in situations, such as that relating to depletion, wherein the pre-1964 California law was different from the pre-1964 federal law)

Three matters are considered here and the adoption by California of the federal amendments is recommended in each case The three matters are relatively minor ones and while the adoption of the amendments is desirable in the light of policy considerations and conformity, the amendments would be virtually without revenue significance

Perhaps the most important thing to point out is that there is a more desirable manner of studying the question of conformity of the California with the federal law As indicated above, there are several areas in which California has not adopted provisions of the Internal Revenue Code relative to the taxation of corporations Furthermore, in some areas the California law is still patterned after the Internal Revenue Code of 1939 rather than the 1954 code so it is rather difficult to pick up the amendments to the federal 1954 code sections through amendments of the differently worded provisions of the Bank and Corporation Tax Law.

In order to pursue this matter of conformity more fully, it would be advisable to start with a listing of all the major areas, not individual sections, of the law in which the federal and California corporation tax provisions differ today A determination would then be made of the areas in which conformity is desirable and those in which it is not desirable In areas in which conformity is found desirable, action would be taken to achieve that conformity without regard to the time at which or the particular federal act from which the present nonconformity arose

This involves a considerable amount of work of a reviewing, policy determining, or amendment drafting type This is the only effective way in which a greater degree of conformity in desired areas may be achieved The present piecemeal method of picking up only certain provisions from each revenue act enacted by Congress will only result in less and less conformity with the passing years

The three 1964 federal revisions to which attention is directed are as follows

I *Disallowance of Interest on Certain Indebtedness to Meet Insurance Policy Premiums*

Section 24424 of the California Bank and Corporation Tax Law, which is based on Section 264 of the Internal Revenue Code, disallows

the deduction of interest on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment or annuity contract This is a loophole-closing provision for normally all or a substantial part of the proceeds of an insurance policy will not be subject to income tax. The taxpayer is, accordingly, not permitted to reduce taxable income by interest paid on amounts borrowed to purchase the policy

Section 264 was amended by the Revenue Act of 1964 to extend the interest disallowance requirement to situations wherein the insurance was purchased under a plan which contemplated systematic borrowing to meet premium payments for a number of years The amendment is designed to make more effective the closing of the loophole whereby it would otherwise be possible to obtain what is in effect non-taxable interest income at the cost, in part at least, of deductible interest expense

The 1964 amendment is explained generally in one of the Congressional committee reports as follows·

> "'. . . interest paid on indebtedness incurred or continued to pay premiums on life insurance contracts, endowment contracts, or an annuity is not to be deductible if the individual is following a plan of systematically borrowing amounts equal to the increase in the cash value of the insurance contract to pay part or all of the premiums The interest deduction is to be denied whether the borrowing is direct or indirect, that is, whether it is from the insurance carrier, from a bank, or from any other person. It also is intended to cover cases where the individual borrows on other property or on his general line of credit to pay the premiums. This provision is not to apply to a single premium contract or to a contract treated like a single premium contract, since present law already denies a deduction in these cases ' '' *

The deduction is not disallowed, however, in the following cases

(1) No part of four of the first seven annual premiums is paid with funds borrowed under the plan Where premiums on an existing policy are substantially increased, the policy is treated as a new contract for the purpose of this seven-year rule.
(2) The interest paid or accrued during the year is $100 or less. (If more, all would be disallowed)
(3) If taxpayer proves that the loan was incurred because of an unforeseen substantial loss of income or increase in his financial obligations
(4) The loan was for business reasons

It is recommended that the 1964 amendment to Section 264 of the Internal Revenue Code be incorporated in Section 24424 of the California Bank and Corporation Tax Law Such action would be desirable in the interest of conformity with the federal law and for the same loophole-closing policy considerations that prompted the amendment of the federal law The amendment would have only nominal revenue significance, but its effect would be on the gain side.

* U S Congress, House of Representatives, Committee on Ways and Means, *Revenue Act of 1963*, p 62 88th Congress, 1st Session, House Report No. 749. (Washington, D C , 1964)

II. *Corporate Reorganizations*

Section 24562 of the California Bank and Corporation Tax Law, defining the term "reorganization," is based on Section 368 of the Internal Revenue Code. The definition is an important part of the statutory plan whereby certain transfers of the stock of corporations or of the assets of corporations are declared nontaxable transactions, in whole or in part.

The California law, like the pre-1964 federal law, included within the meaning of reorganization the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition). In this situation, the acquired corporation becomes a subsidiary of the acquiring corporation

Under the 1964 federal amendment, the transaction would constitute a reorganization if the stock of the acquired corporation is obtained by a subsidiary of the acquiring corporation in exchange for the acquiring corporation's stock In other words, the nontaxable status which has attached heretofore to a qualifying transaction in which a parent corporation acquired a subsidiary through an exchange of the stock of the parent for the stock of the subsidiary would also attach when a parent corporation obtained a new subsidiary through an exchange of the stock of the parent for the stock of the new subsidiary but the stock of the new subsidiary was transferred to an already existing subsidiary of the parent

In so broadening the definition of reorganization in the stock-for-stock area, the federal law was made consistent with the situation previously existing in the stock-for-property area Even prior to the 1964 federal amendment, a transaction in which substantially all the assets of another corporation were acquired in exchange for stock of a parent corporation could qualify as a corporate reorganization even though the acquired assets were transferred to an existing subsidiary of the parent

It is recommended that the 1964 amendment to Section 386 of the Internal Revenue Code be incorporated in Section 24562 of the California Bank and Corporation Tax Law Here, again, such action would be desirable in the interests of conformity with the federal law and in the light of the policy considerations leading to the amendment of the federal law The change in the California law would result in an undeterminable, though purely nominal, loss of revenue

III *Employee Stock Options.*

The Revenue Act of 1964 amended substantially the provisions of the Internal Revenue Code relative to stock options granted by employers to employees California has previously adopted provisions similar to the federal law on this subject The 1964 federal act, in addition to continuing the existing treatment for restricted stock options previously granted to employees, provides for the tax treatment of what are termed qualified stock options and employee stock purchase plans

Most of the 1964 federal amendments involve the taxation of the employees receiving the options and such amendments have been picked

up in the California Personal Income Tax Law through Statutes 1964 (First Extra Session), Chapter 63

Technical amendments are required to Sections 24435 and 24621 of the Bank and Corporation Tax Law in order that those sections may conform to the revised federal and state stock option taxing provisions Both sections refer to a 'restricted stock option' and should accordingly, be amended so as to set forth a more general reference to the portions of the California tax law providing for the three classes of stock options The technical amendments will not result in any real change in the California law and will not have any revenue effect.

A complete compilation of the areas of substantive nonconformity between California and federal law in regards to corporation income taxation can be found in the Appendix

The question of conformity with the federal definition of income is considered separately in Section D, below, because of the special problem of interstate allocation of income

B. TAX-EXEMPT ORGANIZATIONS

Many corporations are exempt from the corporation franchise and corporation income taxes In general, these organizations can be described as nonprofit educational, religious, charitable, literary, scientific, civic, fraternal, and social organizations Also exempt are nonprofit cemetery companies, business leagues, real estate boards, labor, agricultural or horticultural organizations except cooperatives, and various beneficiary and retirement organizations [22]

However, most of these organizations are subject to tax on unrelated business income over $1,000. They are also subject to tax on rental income if they borrow money to acquire property Religious, charitable, scientific, or educational organizations may lose their exemption by engaging in transactions with their creators or accumulating income under certain conditions [23] California's statutes on tax-exempt corporations are substantially the same as those in federal law

As of August 31, 1963, a total of 62,631 organizations were exempt from California franchise and corporation income taxes Of this total, 30,091 were granted exemptions under sections of the law which are not excluded from the provisions of Section 23772 as to the requirement for filing information returns The organizations in this group have a liability to file information returns if the gross income exceeds $25,000 Approximately 5,000 of the 30,091 had gross income of over $25,000 [24]

Most of these exempt organizations do a great deal of public good and often discharge duties that would otherwise fall to government to perform However, increasing evidence points to the conclusion that a few tax-exempt foundations have abused their tax-free status Since 1962, a subcommittee of the House of Representatives Small Business Committee has been studying foundations which are exempt from federal corporation taxes Congressman Wright Patman of Texas, chairman of the subcommittee, in reporting the findings of the study, cited

[22] See *Revenue and Taxation Code*, Sections 23701–23705
[23] See *Revenue and Taxation Code*, Sections 23731–23737
[24] Letter from Martin Huff, Executive Officer, Franchise Tax Board, to David R Doerr, September 25, 1963 and supplementary information

what he termed an "unreasonable accumulation" of income [25] He found that 40 percent of the aggregate receipts of $7 billion of selected foundations during a 10-year period were unspent Congressman Patman has also charged that (1) some foundations were active in speculative and margin trading on the stock market and contributed substantially to the stock market plunge in the spring of 1962; (2) actual violations of Treasury regulations were made by far too many foundations; (3) present laws are ineffective as foundations can aid profit making corporations by proxy fights, in lending money, in leasing back of property, in aiding employees of a company, purchasing goodwill for a company, and many other devices, and (4) that the wealthy can keep control of wealth through foundations by appointing relatives as directors of foundations, through control over investments, etc

In view of the findings of the Patman study and in view of the fact that California law closely parallels the federal law in this area, a study in depth of the role of tax exemptions on California's tax base and economy would appear to be warranted

C. COMPUTATION ON BASIS OF PREVIOUS YEAR'S INCOME

The California franchise tax is based on the previous year's income Corporations pay a state tax for the privilege of operating in California based on net income derived from their operations during the previous year.

The income for the first full year of operations is used to measure the tax for that year and for the subsequent year This results in a double payment in the first year of operation

Upon dissolution of the corporation or withdrawal from operations within the state, the corporation is not subject to any franchise tax based on its final year. A corporation that can postpone all of its net income until its final year can escape paying any franchise tax at all except for the minimum $100 per year In some lines of business, particularly the construction and motion picture business, net income tends to concentrate in the year in which a project is completed If the corporation dissolves in the final year, it escapes payment of taxes to California on most of its net income

On the other hand, if a corporation suffers a net loss and is withdrawing from business because of financial difficulties, it is likely that the total tax liability of the corporation will be higher under the present previous-year features of the law than under a system where the tax is based on the net income of the current year

If the corporation earned a profit in its first year of operation and a net loss in its last year of operation, it will pay more in taxes to the state under the existing pre-year provisions Such corporations would find it advantageous to have the franchise tax measured by current net income rather than on net income of the previous year [26]

One problem associated with changing from a previous year's income basis to a current year's income basis would be that of treating

[25] *Tax-exempt Foundations and Charitable Trusts Their Impact on Our Economy*, Chairman's Report to the Select Committee on Small Business, House of Representatives, 87th Congress, Washington, D C, U S Government Printing Office, 1961

[26] See Edward A Weiss, "California Franchise Tax as Applied to Commencing and Dissolving Corporations," *The Hastings Law Journal*, August 1960, for a more extensive discussion of this point.

equitably those corporations that began under the old law and would dissolve under the new law These corporations would then have paid twice in the first year and would also pay for their final year This could be overcome by crediting the second tax paid for the first year of operation against the tax due for the last year of operation and refunding the second tax paid in the first year to the extent such tax exceeds the tax payable in the final year of operation.

Considering the inequity of the present law and considering that numerous tax experts, including a State Bar Committee on Taxation, have recommended a change to a current basis, the Corporation Franchise Tax Law should be revised to provide that the tax be imposed for the privilege of doing business in California measured by the net income of the current year The second first-year tax paid by existing corporations should be applied as a tax credit (or refunded in cases of an excess payment) on taxes due for the final year of operation

D. TAXATION OF MULTISTATE CORPORATIONS

The major portion of California's corporation franchise tax is paid by corporations operating in two or more states In levying the tax, the Franchise Tax Board must determine the net income of the corporation derived from or attributable to sources within the state. This is necessary in order to insure that multistate firms do not have a competitive tax advantage over firms solely operating in California

When a corporation is engaged in business in more than one state the first step in determining taxable income for California purposes is to segregate its income into two groups—unitary and intangible California has been primarily determining its portion of the unitary income subject to tax through the application of a property-payroll-sales formula [27] This three factor formula was upheld by the U S. Supreme Court in 1942 (*Butler Bros* v *McColgan* (1942) 315 US 501)

The property-payroll-sales formula works as follows:

The percentage of the firm's total real property and tangible personal property in California is computed; the percentage of the firm's total payroll of wages, salaries and commissions paid to employees in California is computed; the percentage of the firm's gross sales, less returns and allowances, in California is computed The three percentage figures are totaled and the resulting sum is then divided by three. The final figure applied to total business income represents the percentage of the total net business income of a firm which can be allocated to California.

Intangible income is apportioned by situs If a corporation is local, all of its intangible income is subject to tax If it is foreign, its intangible income is not taxable in California

The division of income for a corporation doing business in two or more corporate income-taxing states is of critical importance. The standards used to establish taxable nexus also vary greatly from one jurisdiction to another Before considering the various standards cur-

[27] Revenue and Taxation Code Section 25101 gives broad authority to the board to allocate net income by other means, however, the board uses this authority only infrequently and in special circumstances.

rently in use, it will be helpful to consider the California standard in some detail A summary of the California provisions follows *

CALIFORNIA

Nature of tax

* * * California imposes both a franchise tax measured by net income and a direct tax on net income Cal Rev. & Tax Code §§ 23151, 23501, 23503.

Taxable event

All domestic corporations and foreign corporations "doing business" within California are subject to the franchise tax Code § 23151 "Doing business" is construed to mean engaging in intrastate commerce Reg 23101

The direct income tax is imposed on the derivation of income from sources within the state. Code § 23501

DIVISION OF INCOME

General

A corporation may divide its income for tax purposes if its income "is derived from or attributable to sources both within and without . " California Code § 25101 Under the franchise tax, in order to meet this test it is "necessary that a stock of goods, from which shipments are regularly made, be maintained without the State, that employees perform services without the State, or that some activity of the corporation be carried on without the State " Instructions to Bank and Corporation Franchise Tax Return Form 100 (1962). No similar provisions appear in the Instructions to the Corporation Income Tax Return Form 200 (1962)

California distinguishes between income received "in connection with the unitary business" and income "which is not a part of or connected with the unitary business," apportioning all of the former by formula and specifically allocating all of the latter. Reg. 25101.

Interest

If connected with the unitary business, apportioned by formula Otherwise, follows the business situs of the intangible property from which the interest is earned If the intangible property has not acquired a business situs, allocation is made to California if the corporation has its commercial domicile in California Reg 25101 The instructions respecting allocation of income of the Bank and Corporation Franchise Tax Return Form 100 (1962) define the business situs of intangibles as follows

> "Intangible personal property has a business situs in this State if it is employed as capital in this State or the possession and control of the property has been localized in connection with a business, trade or profession in this State so that its substantial use and value attach to and become an asset of the business, trade or profession in this State For example, if a corporation pledges intangible personal property in California as security or the payment of indebtedness, taxes, etc, incurred in connection with a business in this State, the property has a busi-

* See p 40 for source.

ness situs here. Again, if a corporation maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this State, the bank account has a business situs here"

Dividends

Dividends are never treated as unitary income[28] Letter from Dixwell L Pierce, Secretary of State Board of Equalization, Sept 12, 1961 (in subcommittee files) Thus all dividend income is specifically allocated

Dividend income follows the business situs of the stock, or, in the event that the stock has not acquired a business situs, is allocated to California if the corporation has its commercial domicile in California Reg. 25101.

Rents and royalties from tangible property

If connected with the unitary business, apportioned by formula; otherwise, allocated to the state where the property is located Reg 25101, Bank and Corporation Franchise Tax Form 100 (1962), Corporation Income Tax Return Form 200 (1962)

There is no prescribed method for prorating rents and royalties from transient personalty not used in the unitary business Allocation on a time-situs basis appears to be customary, although not universal Letter from Dixwell L Pierce, *supra*. Allocation of such income will sometimes be governed in part by Code § 25101, which provides that "Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business" shall be allocated to the state of commercial domicile

Royalties from intangibles

If connected with the unitary business, apportioned by formula Otherwise, follows the business situs of the property, or, if the property has not acquired a business situs anywhere, the income is allocated to California if the corporation has its commercial domicile in California Reg 25101.

Capital gains from tangibles

If the assets are connected with the unitary business, apportioned by formula, otherwise, allocated to the state where the assets are located Bank and Corporation Franchise Tax Return Form 100 (1962), Corporation Income Tax Return Form 200 (1962)

Capital gains from intangibles

Same treatment as royalties from intangibles

Other items of income given special treatment

Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business are allocated to the state in which the taxpayer has its principal place of business or commercial domicile Code § 25101

[28] [According to the California Franchise Tax Board, dividends received by a corporation operating as a stockbroker are included in unitary income.]

Apportionment formula

California uses a three-factor formula based on property, payroll, and sales Reg 25101

Property factor

The property factor is based on the real and tangible personal property "owned by the taxpayer and used in the unitary business" Property of which the taxpayer is lessee is excluded from the factor Also generally excluded is property owned by the taxpayer but not used in the unitary business

The valuation normally used is the same as the "adjusted basis" used for determining gain or loss under the California law However, in cases where this basis is not readily available and it appears that there would be little distortion, the adjusted basis for federal tax purposes may be used. Letter from Dixwell L Pierce, *supra* Property is included in the factor at average value Normally, the average of end-of-month values is used However, where the business has been in operation throughout the entire year with no unusual seasonal fluctuations, opening and closing values may be used Reg 25101

Rolling stock and similar assets with no fixed situs are apportioned on the basis of mileage There are special rules with regard to vessels *Ibid*

Payroll factor

This factor is based on all compensation paid to officers and employees such as wages, salaries, commissions and bonuses *Ibid* With respect to employees rendering services in more than one state, the regulations provide only that their compensation is to be "apportioned on the basis of time spent in the performance of services on behalf of the taxpayer" *Ibid* Commissions or compensation to independent agents, brokers or other representatives not defined as employees under the Federal Insurance Contributions Act are excluded from the factor. Instructions to Bank and Corporation Franchise Tax Return Form 100 (1962), Instructions to Corporation Income Tax Return Form 200 (1962)

Sales factor

The numerator of the sales factor includes sales resulting from employee sales or promotional activities within California This rule also applies to repeat or mail order sales resulting from prior employee solicitations Sales are ordinarily considered as being outside the state when the employee responsible for the sale performs all of the services without the state Similarly, sales are ordinarily considered as within the state when the services are performed within the state *Ibid* , Reg 25101 The problem of locating the situs of the sale presents no little difficulty. It has been observed that in practice in California,

> "judgment rather than hard and fast rules must govern the assignment of the sales If only a slight portion of the activities leading to a sale is carried on outside California, the sale may be assigned entirely to this state If, the sales negotiations follow a regular pattern of activities partly within and partly without the state, a portion of the total sales, e.g , 25 or 50 per cent, may be assigned

to California on the basis of a review of the entire sales activity " Wahrhaftig, *Allocation Factors in Use in California,* 12 Hastings L J 65, 89 (1960).

DIVISION OF DEDUCTIONS

General

Expenses are attributed in the same manner as the income items to which they are related Reg 24201d. Losses from the sale of assets are attributed in the same manner as gains Reg 25101; Letter from John J Campbell, Executive Officer of Franchise Tax Board, March 19, 1962 (in subcommittee files).

Overhead expenses

A "reasonable" portion of general overhead expense is assigned to income which is specifically allocated Reg 24201d(2). No method is prescribed for making the proration

Interest expense

Rev Code § 24344(b) limits the amount of deductible interest expense to "an amount equal to interest income subject to allocation by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under the provisions of section 24402) not subject to allocation by formula " The interest expense not included in the preceding amount is "directly offset against interest and dividend income (except dividends deductible under the provisions of section 24402) not subject to allocation by formula " The general purpose of the above-cited statutory provision is to limit the deduction of interest expense when a taxpayer has intangible income which is not included in the measure of the tax Reg 24121(b).

Deductions for state and federal income taxes

State and federal income taxes are not deductible. Code § 24345

Operating loss carryovers

There are no provisions which allow operating losses to be carried forward or carried back

SEPARATE ACCOUNTING AND ADMINISTRATIVE MODIFICATION OF ALLOCATION AND APPORTIONMENT METHODS

The Franchise Tax Board is given broad powers to divide income "by such other method of allocation as is fairly calculated to determine the net income derived from or attributable to sources within this State " Code § 25101

Departures from the statutory method are made "occasionally " These generally consist of adjustments in one or more of the factors, most frequently the property factor For example, adjustments may be made where a plant has been constructed in California at inflated costs while older plants outside the state are substantially depreciated, and the product can be manufactured at a comparable price per unit at the old and new plants Letter from Dixwell L Pierce, *supra.*

SOURCE: Committee on the Judiciary, *State Taxation of Interstate Commerce,* Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol II, pp. A248–52 88th Congress, 2d Session, House Report No. 1480 (Washington, D C 1964.)

The Federal Law of 1959

The number of corporations subject to the corporation income tax was decreased by the enactment in 1959 of P L 86-272 This federal law prevents the states from declaring the existence of a taxable nexus in certain circumstances It provides that a net income tax may not be imposed on income derived from interstate commerce if the only business activity within the state is:

1. The solicitation of orders for sales of tangible personal property, which orders are sent outside the state for approval or rejection, and if approved are filled by shipment from a point outside the state; or
2 The solicitation of orders from a prospective customer, if orders by the customer are filled by shipment or delivery from a point outside the state

In large measure, this federal statute is a "stopgap" measure. The law provides that both houses of Congress shall hold hearings and investigate the entire problem of state taxation of interstate commerce, with reports to be made on or before June 30, 1965

Corporations doing business in several states have complained long and bitterly about the lack of uniformity in state laws taxing interstate commerce, particularly corporate income tax laws The jurisdictional standards set forth by the several states are conflicting and confusing It is possible that any particular sale, for instance, will be taxed once. twice, or not at all depending on the state of origin and state of destination The problem has received attention from the various states and numerous conferences have been held by organizations attempting to deal with the problem The National Conference of Commissioners on Uniform State Laws has proposed the Uniform Division of Income for Tax Purposes Act (UDITPA) This law, designed to obtain uniformity in the area of tax jurisdiction has been entirely adopted by one state, Kansas, and partially adopted by four others

It has been estimated that P L 86-272 has reduced the revenue from California's corporate income tax by about $1 million per year This is not a highly significant amount in percentage terms but the law has two undesirable features First, it provides a shelter which more and more businesses are likely to attempt to use Second, it establishes a precedent for more legislation to restrict further the state's taxation of interstate commerce The potential effect of this law on California's tax revenue may be significant

While California and most other states use the property-payroll-sales formula to determine taxable income of multistate corporations, not all states do so Even where states use a property-payroll-sales formula, there is no guarantee of uniformity among these states Each factor is susceptible of definition in various ways

It is as a result of the inconsistencies in the taxation of corporations among the states, that Congress has taken a deep interest in the problem The special subcommittee of the House of Representatives' Committee on Judiciary, cited in Chapter III, above, was established to make a thorough study of state taxation of interstate commerce The first

report of this subcommittee, issued June 15, 1964, concluded that "the overall situation is chaotic" [29]

The committee found that: [30]

> Although all of the income tax states prescribe apportionment formulas to be used under varying circumstances, no formula devised has been found generally acceptable One-factor, two-factor, and three-factor formulas are all in use today The three-factor formula based on property, payroll, and sales is the most common, but this prevalence is one of form only There are differences from one state to another in respect to which items are to be included in the factors and how they are to be located [*sic*] These differences are especially pronounced in the sales factor, with the states employing a half-dozen different rules for assigning sales For the company which sells into any number of states the likelihood is that it will be required to account for its sales by standards different from one another and often different from those used to keep records for ordinary business purposes

Because of this situation, the subcommittee found that some companies paid taxes on a net income in excess of actual net income while other companies paid taxes on only a portion of net income The subcommittee also noted that the diversity of state corporation tax laws make it difficult for small businesses to compete in interstate commerce

As can be seen in Table VII, a sample of companies involved in interstate commerce shows that a very large percentage of them have protected activity in from 1 to 37 of the 38 income-taxing states

This characteristic is also shown in Tables VIII and IX Over 90 percent of the manufacturing firms surveyed and over 50 percent of the

[29] U S House of Representatives, Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary, *State Taxation of Interstate Commerce*, Vol I, Washington, D C Government Printing Office, June 1964 p 595

[30] *Ibid*, p 596

TABLE VII

SCOPE OF PROTECTION GIVEN BY PUBLIC LAW 86-272

1,431 companies, classified by the number of income tax states in which they had protected activity but no taxable activity

Number of states	Whole group	By size of company (gross receipts)					
		Under $200,000	$200 000 up to $500 000	$500 000 up to $1 million	$1 million up to $5 million	$5 million up to $50 million	$50 million or more
0	880	176	189	176	235	97	17
1	117	21	27	29	32	9	3
2 to 3	116	13	23	21	44	11	3
4 to 6	72	7	21	11	21	10	2
7 to 10	62	9	10	13	20	9	1
11 to 15	38	2	8	6	11	8	3
16 to 30	37	3	7	8	14	9	1
21 to 30	55	2	1	13	17	10	3
31 to 37	45	2	6	6	20	10	1
Total	1 431	235	292	275	414	182	33

DATA Business Questionnaire II (sample of companies engaged in interstate commerce) Resolution of doubtful cases may result in understatement of the number of states for some companies

SOURCE Committee on the Judiciary *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 428 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

TABLE VIII

SPREAD OF INCOME TAX PAYMENT COMPARED WITH SPREAD OF SALES, BY SIZE OF COMPANY (MANUFACTURING)

892 manufacturing companies, classified by the difference between the number of income tax states to which they shipped goods and the number in which they paid taxes

	Size of company (gross receipts)											
	Under $200 000		$200 000 up to $500,000		$500,000 up to $1 million		$1 million up to $5 million		$5 million up to $50 million		$50 million or more	
Difference[1]	No	(%)	No	(%)	No	(%)	No	(%)	No	(%)	No	(%)
0[2]	14	(9 2)	17	(9 2)	8	(4 8)	17	(7 2)	5	(3 8)	1	(4 3)
1	26	(17 0)	16	(8 6)	16	(9 7)	8	(3 4)	5	(3 8)	1	(4 3)
2 to 3	25	(16 3)	20	(10 8)	16	(9 7)	23	(9 7)	4	(3 1)	2	(8 7)
4 to 6	20	(13 1)	34	(18 4)	18	(10 9)	33	(9 7)	4	(3 1)	5	(21 7)
7 to 10	17	(11 1)	19	(10 3)	19	(11 5)	27	(11 4)	9	(6 9)	1	(4 3)
11 to 15	16	(10 5)	12	(6 5)	18	(10 9)	22	(9 3)	11	(8 5)	—	—
16 to 20	6	(3 9)	12	(6 5)	15	(9 1)	20	(8 5)	9	(6 9)	4	(17 4)
21 to 30	14	(9 2)	25	(13 5)	26	(15 8)	24	(10 2)	28	(21 5)	6	(26 1)
31 to 37	15	(9 8)	30	(16 2)	29	(17 6)	72	(30 5)	55	(42 3)	3	(13 0)
Total	153	(100 0)	185	(100 0)	165	(100 0)	236	(100 0)	130	(100 0)	23	(100 0)

[1] Number of income tax states in which company made sales less number of states in which taxes were paid
[2] Includes 8 companies paying taxes in more income tax states than the number in which they had sales

DATA Business Questionnaire II (sample of companies engaged in interstate commerce)

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce Vol I, p 293 88th Congress 2d Session, House Report No 1480 (Washington, D C 1964)

TABLE IX

SPREAD OF INCOME TAX PAYMENT COMPARED WITH SPREAD OF SALES, BY SIZE OF COMPANY (MERCANTILE)

446 mercantile companies, classified by the difference between the number of income tax states to which they shipped goods and the number in which they paid taxes

	Size of company (gross receipts)											
	Under $200,000		$200 000 up to $500,000		$500 000 up to $1 million		$1 million up to $5 million		$5 million up to $50 million		$50 million or more	
Difference[1]	No	(%)	No	(%)	No	(%)	No	(%)	No	(%)	No	(%)
0[2]	10	(15 4)	10	(11 1)	19	(20 9)	33	(22 3)	9	(21 4)	4	(40 0)
1	20	(30 8)	23	(25 6)	16	(17 6)	31	(20 9)	6	(14 3)	—	—
2 to 3	7	(10 8)	17	(18 9)	17	(18 7)	33	(22 3)	7	(16 7)	1	(10 0)
4 to 6	6	(9 2)	13	(14 4)	13	(14 3)	16	(10 8)	2	(4 8)	1	(10 0)
7 to 10	5	(7 7)	6	(6 7)	6	(6 6)	7	(4 7)	3	(7 1)	2	(20 0)
11 to 15	3	(4 6)	6	(6 7)	4	(4 4)	6	(4 1)	8	(19 0)	—	—
16 to 20	2	(3 1)	—	—	4	(4 4)	2	(1 4)	1	(2 4)	—	—
21 to 30	4	(6 2)	4	(4 4)	4	(4 4)	8	(5 4)	2	(4 8)	1	(10 0)
31 to 37	8	(12 3)	11	(12 2)	8	(8 8)	12	(8 1)	4	(9 5)	1	(10 0)
Total	65	(100 0)	90	(100 0)	91	(100 0)	148	(100 0)	42	(100 0)	10	(100 0)

[1] Number of income tax states in which company made sales less number of states in which taxes were paid
[2] Includes 2 companies paying taxes in more income tax states than the number in which they had sales

DATA Business Questionnaire II (sample of companies engaged in interstate commerce)

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce* Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I p 294 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

mercantile firms reported sales in a greater number of income tax states than the number of income tax states in which they actually paid taxes

Due to the "stopgap" nature of P L 86-272, there is every indication that new legislation in this area will be forthcoming from the federal government in the near future The proponents of even more restrictive legislation in the area have pointed chiefly to the lack of uniformity in the various state laws Vague jurisdictional definitions and cases of conflicting and overlapping jurisdiction are often cited as evidence of the "need" for federal legislation in this area For this reason, where greater uniformity can be achieved without loss of revenue to the state involved, steps to implement the uniformity should be made. If greater uniformity should bring with it increased revenue, then a movement in the direction of uniformity would clearly be overdue This matter will be taken up in greater detail later in this report

Pending the completion of other reports in the areas of sales and property taxes, no recommendations were made by the subcommittee in the June report. There is every indication, however, that action will be forthcoming by Congress if the states collectively do not agree on a more uniform approach to taxing corporations

Comparison of the Federal and California Definitions of Taxable Income

An extremely troublesome and controversial area of the corporate income tax in the several states is the definition of income Corporations involved in interstate commerce complain that because the definition of taxable income in the various states differs from the federal definition, they must bear a great deal of additional expense in the form of additional recordkeeping Some of the states have dealt with this problem by adopting the federal income definition and including provisions which automatically make new federal legislation on the subject part of the state statute Other states, including California have maintained their own income definitions

A comparison of selected provisions of the Internal Revenue Code of the United States and the California definitions of taxable income follows [31] The California taxable income definition is considerably broader than the federal definition in several important respects. Perhaps the most important differences are that in California there is no provision for special treatment of capital gains and losses, there is no deduction for taxes paid to other jurisdictions, there is a $75,000 limit on exploration expenses rather than the $100,000 provided in the federal code; and there is a greater limitation on the deduction of intercorporate dividends

Interest on governmental obligations

Federal

Section 103 exempts interest on obligations of states, territories, possessions, political subdivisions of these units, and the District of Columbia It also grants partial exemption for a limited number of obligations of the United States; requiring only the payment of the surtax

[31] The following summaries are from *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Committee on the Judiciary, Vol II, pp A368–A370, A377–A378 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

California

Interest on federal obligations is exempt from the direct income tax but is taxable under the franchise tax measured by net income California Revenue and Taxation Code Section 24272. Interest on obligations of California and its subdivisions and of other states and their subdivisions is taxable. Code Section 24271.

Expenses related to exempt income

Federal

Section 265 disallows deductions for expenses related to exempt income, including interest paid on money borrowed to invest in tax-exempt securities

California

Substantially similar to federal provision Code Section 24425

Deductions and credits for taxes

Federal

Section 164 allows deductions for taxes other than federal income taxes Subject to limitations in amount, Sections 901 and 902 allow a domestic corporation a credit for income taxes, or taxes "in lieu" of income taxes, paid, or deemed to have been paid upon receipt of dividends from a foreign corporation, to a foreign country or a possession of the United States If the taxpayer claims a credit for any tax under Section 901, it may not claim a deduction for any tax which would qualify for a credit

California

California does not allow a deduction for taxes on or measured by income imposed by the United States, California, or any other state. Code Section 24345. No credit for taxes paid to other jurisdictions is allowed.

Depreciation

Federal

Section 167 permits straight line, declining balance, sum of the years-digits, or any other method of proration which does not, during the first two-thirds of the life of the property, exceed the total that would have been allowed under the declining balance method Methods other than straight line may be used only for assets having useful lives of three years or more

Section 179 permits 20 percent of the cost of tangible personal property to be depreciated in the first year, for no more than $10,000.

California

California follows the federal provisions both regarding the methods of prorating depreciation as well as the additional 20-percent first-year depreciation allowance Code Sections 24349, 24356.

Investment credit [32]

Federal

Sections 38, 46, and 48 permit a credit against tax of 7 percent of "qualified investments" in certain new (and in some cases, used) depreciable property other than buildings "Qualified investments" are generally defined to include: 100 percent of the cost of investment prop-

[32] As of 1962

erty with a useful life of eight years of more, 66⅔ percent of the cost of investment property with a useful life of at least four but less than six years Amounts taken in the form of the credit are excluded from the depreciable basis of such property These provisions became effective on January 1, 1962

California

The federal investment tax credit is not allowed by California However, an amount equal to the federal investment credit may be depreciated separately over the life of the property, or added to the salvage value, or deducted in the year succeeding the useful life of the property. Reg. 24349(k)(1).

Depletion

Federal

Sections 611–614 permit depletion based on cost (adjusted basis) or on a percentage of gross income from the property, not to exceed 50 percent of the net income from the property Rates for percentage depletion are as follows

- 27½%—oil and wells,
- 23% —sulfur, uranium, tin, zinc, bauxite, many of the rarer metals, and many minerals;
- 15% —many metals, including iron and copper, rock asphalt, vermiculite, some clays, and a large group of minerals,
- 10% —coal, lignite, and some other items;
- 5% —gravel, shells, sand, some clays, and some other items

California

Substantially similar to federal provisions Code Section 24832

Intangible drilling expenses

Federal

Section 263 permits the "operator" of an oil or gas interest to deduct the costs of drilling and development of wells

California

Follows federal provision Code Section 24423

Exploration and development expenses

Federal

Sections 615 and 616 permit the deduction of expenses of exploring for minerals and developing mines These sections do not apply to oil and gas The deduction for exploration expenses is limited to $100,000 annually, with a $400,000 maximum

California

Exploration expenses not exceeding $75,000 annually for four years are deductible Code Section 24837(a) Development expenses may be deducted without limitation Code Section 24836(a)

Research and experimentation expenses

Federal

Section 174 permits the deduction of expenses for research and experimentation, even if the expenses would otherwise be treated as capi-

tal. However, the section does not apply to expenses for the acquisition of depreciable property or land to be used for research purposes, and it does not apply to expenses of exploring for mineral deposits.

California

Follows federal provision Code Section 24366

Installment method of accounting

Federal

Section 453 permits dealers in personal property sold on the installment plan to report the income from such sales ratably as payments are received, rather than accruing all income at the time of the sale Such installment reporting may be used only if the initial payment does not exceed 30 percent of the selling price With certain qualifications the same treatment is allowed with respect to sales of realty and casual sales of personal property

California

Substantially similar to federal provision. Code Sections 24667, 24668

Intercorporate dividends

Federal

Section 243 permits the deduction of 85 percent of the dividends received from domestic corporations

California

Dividends received are deductible to the extent that they are declared from income which has been taxed in California Code Section 24402

Capital gains and losses

Federal

Excess of net long-term gain over net short-term loss is taxed at 25 percent. Excess of net short-term gain over net long-term loss is taxed at regular corporate rates Property must be held for six months for a gain or loss to be long-term A net capital loss may not be deducted, but may be carried forward for five years as a short-term loss Sections 1201, 1211, 1212, 1222.

Special treatment is generally given to sales of depreciable property and land if held for more than six months, as well as to some other dispositions of property. The total of losses from such dispositions during the year is subtracted from the total of gains from such dispositions. If the result is a net gain, it is treated as capital gain, if a net loss, it is treated as ordinary loss Section 1231

For tax years starting after 1962, gains from the disposition of depreciated property other than buildings are generally treated as ordinary income to the extent of the depreciation of the property after December 31, 1961 Section 1245

California

No distinction is made between capital gains and losses and ordinary gains and losses

Basis of property held at time of adoption of income tax

Federal

The federal income tax was first adopted on March 1, 1913. Section 1053 provides that for property held at the time of the initial adoption of the tax the basis for gain is the higher of fair market value or depreciated cost as of March 1, 1913 The basis for loss is depreciated cost as of that date.

California

Follows federal provision Code Section 24963; Reg 24963

Net operating loss carryovers

Federal

Section 172 allows a net operating loss to be carried back for three years and carried forward for five years

California

No provision

Charitable contributions

Federal

Section 170 allows deductions for contributions to certain organizations in an amount not to exceed 5 percent of net income, computed without regard to loss carrybacks or intercorporate dividend deductions. A two-year carryover is provided for contributions in excess of a 5-percent limitation

California

Substantially similar to the federal provision except that carryovers are not allowed. Code Sections 24358, 24359.

Payment to employees' trusts

Federal

Subject to limitations of amount, Section 404 permits deductions for amounts paid to pension and profitsharing trusts which meet certain standards There is an unlimited carryover for payments to a pension trust which are in excess of the limitations.

California

Substantially similar to federal provision Code Section 24601

Reorganizations and liquidations

Federal

Section 361 gives tax-free treatment to certain transfers of assets and stock pursuant to reorganization plans. Section 337 permits the tax-free sale of corporate assets in connection with a plan of liquidation.

California

Substantially similar to federal provisions Code Sections 24512, 24551 *

Several important arguments have been advanced in defense of the differences between the California and federal definitions of taxable income First, it has been pointed out that most of the differences between the federal and state returns can be computed by means of the simple addition or subtraction of items For instance in preparation of the federal return, a certain transaction may be accorded capital gains

* End of excerpt from report cited on p 44, above.

treatment The necessary figures to return the same transaction as ordinary income are certainly readily discernible from the computations on the federal return If a certain expense is deductible on the federal return but not on the state return, the difference between the federal and state returns on this item is simply a shift of the amount of the item out of the "deductions" column

Adoption of the federal definition of taxable income would also mean that the state would lose its ability to adjust the tax base to reflect local conditions When a state adopts the federal income definition, it is desirable for the state also to adopt all future changes in the federal law automatically to keep the two definitions identical over time This in effect removes the determination of the size of the tax base for the corporate income tax from state control.

TABLE X

FEDERAL DEFINITION OF TAXABLE INCOME COMPARED WITH CALIFORNIA DEFINITION

233 corporations, classified by size of federal taxable income and by amount of difference between the companywide taxable income reported to the federal government and that reported to California

	Federal taxable income												
	Under $1,000	$1,000 up to $5,000	$5,000 up to $10,000	$10,000 up to $15,000	$15,000 up to $20,000	$20,000 up to $25,000	$25,000 up to $50,000	$50,000 up to $100,000	$100,000 up to $250,000	$250,000 up to $500,000	$500,000 up to $1 million	$1 million up to $5 million	$5 million or more
DIFFERENCE BETWEEN FEDERAL AND STATE													
State exceeded federal by—													
$1 million or more													16
$500,000 up to $1 million													3
$100,000 up to $500 000									1		3	19	8
$50 000 up to $100,000							1	1	2			6	
$20,000 up to $50,000		1			1			1	2	4	4	6	1
$10 000 up to $20,000					1	1	3	1	1	5	4	3	
$5,000 up to $10,000								2	10	3	2		
$2,000 up to $5 000		1	1			1	5	9	7	2	1	1	
$1 000 up to $2,000		1		1	2	4	6	3	3	1			
$500 up to $1,000		3	1	2	2	3	4	1		2			
Less than $500	1	1	1	1	1	2	1	5	3	1			
State equal to federal		2			2	1			2	1	1	2	1
Federal exceeded state by—													
Less than $500	1		1										
$500 up to $1 000				1									
$1 000 up to $2,000					1			1					
$2,000 up to $5 000							1						
$5 000 up to $10 000				1									
$10 000 up to $20 000							1	1					
$20 000 up to $50 000										2			
$50 000 up to $100 000									1			1	
$100 000 up to $500 000								1				1	
$500 000 up to $1 million													
$1 million or more													

DATA Business Questionnaire II (combined samples) Figures have been adjusted to eliminate capital loss carryovers and net operating loss carryovers and carrybacks

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 574 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

The differences between the California and federal income definitions are quite large when considered in terms of the tax base, as shown in Table X. For many corporations, the difference in taxable income amounts to over $1 million

A Survey of the State Taxation of Interstate Corporations

Following is a survey of the corporate income tax in the several states, with particular emphasis on California The problems faced by the multistate firm can be seen in better perspective in this way It is also helpful to consider developments in other taxing jurisdictions in considering revisions in California

The popular conception of the modern corporation dealing in interstate commerce has been one of a huge corporate giant, with sales in the hundreds of millions and a battery of tax lawyers, economists and accountants A recent study shows that this is not the case A very sizable percentage of the companies engaged in interstate commerce are of modest size As Table XI shows, from one-sixth to one-fifth of the companies engaged in interstate commerce have annual gross receipts of less than $200,000

The same study points out that about half of the companies engaged in interstate commerce have fewer than 20 employees. For a firm of modest size, compliance with-state corporate income tax laws can pose serious problems The state corporate income tax laws are of bewildering variety and complexity Many different methods are employed to determine whether a corporation is liable for any corporate income tax in a particular state Once the liability has been established, there are numerous provisions determining the apportionment of the corporation's income for tax purposes This results in the situation that frequently a firm which has the every intention of complying with the tax laws is quite unable to determine what its tax liability is, or even if any liability exists This creates difficulties in compliance and corresponding difficulties in enforcement

TABLE XI

SIZE OF COMPANIES ENGAGED IN INTERSTATE COMMERCE, BY INDUSTRY

1,568 companies, classified by their volume of gross receipts

Size of company (gross receipts)	Manufacturers		Wholesalers		Retailers	
	No	(%)	No	(%)	No	(%)
Under $200,000	184	(17 5)	58	(15 0)	26	(19 7)
$200,000 up to $500,000	210	(20 0)	81	(21 0)	32	(24 2)
$500 000 up to $1 million	204	(19 4)	74	(19 2)	23	(17 4)
$1 million up to $5 million	277	(26 4)	127	(32 9)	40	(30 3)
$5 million up to $50 million	150	(14 3)	41	(10 6)	6	(4 5)
$50 million or more	25	(2 4)	5	(1 3)	5	(3 8)
Total	1,050	(100 0)	386	(100 0)	132	(100 0)

DATA Business Questionnaire II (sample of companies engaged in interstate commerce), 7 manufacturers, 9 wholesalers, and 4 retailers which did not report gross receipts figures have been classified on the basis of their receipts from sales of goods

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 74 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964).

The corporate income tax paid by foreign corporations is quite significant in California As Table XII shows, over 50 percent of the income-tax revenue derived from corporations in 1959 in California was derived from corporations whose income was divided among two or more states

TABLE XII

REVENUE SIGNIFICANCE OF CORPORATIONS DIVIDING THEIR INCOMES

Percentages of income tax revenue derived from income-dividing corporations, selected classes of taxpayers

	Year of data	Percentage from income-dividing corporations among—			
		Manufacturing corporations	Mercantile corporations	Manufacturing and mercantile corporations	All corporations
California	1959	77 9	41 4	69 4	55 8
Colorado	1959	N A	N A	N A	139 2
Idaho	1959	85 4	48 0	69 0	57 7
Minnesota	1959	N A	N A	N A	51 2
New Jersey	1959	75 4	N A	N A	64 8
New York	1959	78 1	36 6	66 8	60 0
North Carolina	1959	70 2	51 9	65 5	65 8
Oregon	1959	66 8	42 0	60 6	52 6
Tennessee	1959	89 2	65 9	81 4	76 9
All states with data		76 5	43 2	68 1	58 9

[1] Based on estimates made by the Colorado Department of Revenue and submitted to the Special Subcommittee

N A Data not available

DATA State Revenue Questionnaire

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 88 88th Congress 2d Session House Report No 1480 (Washington, D C , 1964)

The percentage was much higher for manufacturing corporations, almost 80 percent of the income tax revenue derived from corporations engaged in manufacturing came from companies whose income was split

At the present time, 38 of the 50 states have some form of corporate income tax The tax rates range from 1 percent on the first $3,000 of income in Arkansas to 10 5 percent in Idaho The present tax rates, and the rates in effect at selected dates over the past 15 years are shown in Table XIII

California, together with 29 other states charges a flat rate The eight other states that have corporate income tax laws charge graduated rates with the higher rates usually applying to over $25,000 of business income For all but the smallest corporations, the graduated features of these other tax structures are not too important In 11 of the states, deduction for federal income taxes is allowed California is one of the 27 states that do not permit deduction for federal income taxes

As Table XIV shows, the corporate income tax has increased in relative importance in California over the last 15 years

Table XV shows the division of income for tax purposes in 1929 At that time California had no provision for separate accounting There was no specific allocation provided for All income division was therefore handled by means of an apportionment formula The factors

TABLE XIII

CORPORATE INCOME TAX RATES, 1948–1963

State	1948	1952	1956	1960	1963
Alabama	3%*	3%*	3%*	3%*	5%*
Alaska	Tax not in effect	3% 1st $25,000[1] 5 2% on balance	3 75% 1st $25 000[1] 6 5% on balance	5 4% 1st $25,000[1] 9 30% on balance	5 4% 1st $25,000[1] 9 30% on balance
Arizona	1% 1st $1,000* 2% 2d $1,000 2 5% 3d $1,000 3% 4th $1,000 3 3% 5th $1,000 4 5% 6th $1,000 5% on balance	No change	No change	No change	No change
Arkansas	1% 1st $3,000* 2% 2d $3,000 3% next $5,000 4% next $14,000 5% on balance	1% 1st $3,000 2% 2d $3,000 3% next $5 000 4% next $14,000 6% on balance	No change	No change	No change
California	3 4%[2]	4%	4%	5 5%	5 5%
Colorado	5%*	4%*[2]	4%*[2]	5%	5%
Connecticut	3%	3%	3 75%	3 75%	5%
Delaware	Tax not in effect	Tax not in effect	Tax not in effect	5%	5%
District of Columbia	5%	5%	5%	5%	5%
Georgia	5 5%*	5 5%*	4%	4%	4%
Hawaii	10%[4]	10%[4]	10%[4]	5% to $25,000 5 5% on balance	5% to $25 000 5 5% on balance
Idaho	1 3% 1st $1,000* 3% 2d $1,000 4% 3d $1,000 5% 4th $1,000 6% 5th $1 000 8% on balance	No change	1 6% 1st $1,000*[5] 3 2% 2d $1,000 4 3% 3d $1 000 5 4% 4th $1 000 6 5% 5th $1,000 8 6% on balance	9 5%*	10 5%*
Indiana	Tax not in effect	Tax not in effect	Tax not in effect	Tax not in effect	2%
Iowa	2%*	2%*	3%*	3%*	3%*
Kansas	2%*	2%*	2%*	3 5%*	3 5%*
Kentucky	4%*	4 5%*	5% 1st $25.000* 7% on balance	5% 1st $25.000* 7% on balance	5% 1st $25.000* 7% on balance
Louisiana	4%*	4%*	4%*	4%*	4%*
Maryland	4%	4%	5%	5%	5%
Massachusetts	6 215%	6 765%	6 765%	6 765%	6 765%
Minnesota	6%* 1% 1st $4,000 2% next $3,000 3% next $3,000 4% next $5,000 5% next $10,000 6% on balance	6 3%*[6] 2% 1st $5,000 3% 2d $5 000 4% 3d $5,000 5% next $10,000 6% on balance	7 3%*[6]	9 3%*	10 23%* 2% 1st $5,000 3% 2d $5,000 4% 3d $5,000 5 4% on balance
Mississippi			No change	No change	
Missouri	2%*	2%*	2%*	2%*	2%*
Montana	3%*	3%*	3%*	6%*	4 5%
New Jersey	Tax not in effect	Tax not in effect	Tax not in effect	1 75%	1 75%
New Mexico	2%*	2%*	2%*	2%*	3%*
New York	4 5%[7]	5 5%[7]	5 5%[7]	5 5%[7]	5 5%[7]
North Carolina	6% (3% 1st $3,000* 4% next $5,000	6%	6%	6%	6%
North Dakota	5%, next $7,000 6% on balance	No change	No change	No change	No change
Oklahoma	4%*[8]	4%*[8]	4%*[8]	4%*[8]	4%*[8]
Oregon	8%*	8%*[8]	6%*[8]	6%*[8]	6%*[8]
Pennsylvania	4%	6%	6%	6%	6%
Rhode Island	4%	6%	5%	6%	6%
South Carolina	4 5%	4 5%	5%	5%	5%
Tennessee	3 75%*	3 75%	3 75%	3 75%	4%
Utah	3%*	3%*	4%*	4%*	4%*
Vermont	4%	3 4%[10]	5%	5%	5%
Virginia	3%	5%	5%	5%	5%
Wisconsin	2% 1st $1,000*[11] 2 6% 2d $1,000 3% 3d $1,000 3 5% 4th $1,000 4% 5th $1,000 5% 6th $1,000 6% on balance	No change	2% 1st $1 000* 2 5% 2d $1 000 3% 3d $1 000 4% 4th $1,000 5% 5th $1 000 6% 6th $1,000 7% on balance	No change	No change

*Deduction for federal income taxes allowed

[1] Rate is a percentage of federal income tax, percentage was 10% in 1952, 12 5% in 1956, 18% in 1960 and 1963

[2] 15% credit against tax is included

[3] 20% credit against tax is included

[4] 75% of territorial dividends tax withheld or paid on certain dividends is credited against tax

[5] Surtax of 7 5% of normal tax is included

[6] Credit against tax, based on property-payroll formula, is allowed

TABLE XIV

REVENUE FROM CORPORATE INCOME TAXES RELATIVE TO TOTAL TAX REVENUE BY STATE FOR SELECTED YEARS

	1947	1948	1949	Average of '47, '48, '49 ratios	1960	1961	1962	Average of '60, '61, '62 ratios
	(%)	(%)	(%)	(%)	(%)	(%)	(%)	(%)
Alabama	3 7	6 0	N A	4 9	3 5	3 5	3 2	3 4
Alaska	N A	N A	N A	N A	6 2	4 6	5 0	5 3
Arizona	6 9	11 5	11 3	9 9	4 1	3 5	3 0	3 5
Arkansas	4 6	6 8	7 8	6 4	5 6	5 6	5 8	5 6
California	10 2	9 9	10 1	10 1	11 3	12 2	12 8	11 9
Colorado	5 1	6 0	6 8	6 0	5 6	8 1	8 6	7 5
Connecticut	14 1	14 2	16 3	14 9	12 9	12 3	12 2	12 5
Delaware					10 b	8 8	8 3	9 2
Georgia	12 1	16 7	14 1	14 3	6 4	6 2	6 2	6 3
Hawaii	N A	N A	N A	N A	4 5	4 4	5 5	4 8
Idaho	8 7	10 8	12 2	10 6	8 7	7 9	7 2	7 9
Iowa	1 8	2 1	2 3	2 1	1 4	1 7	1 6	1 6
Kansas	2 9	3 4	3 7	3 3	4 1	4 0	3 9	4 0
Kentucky	6 6	8 6	9 7	8 0	8 9	7 5	6 8	7 7
Louisiana	5 3	6 0	N A	5 7	4 0	3 7	4 8	4 2
Maryland	4 6	3 9	6 4	5 0	5 9	5 7	4 9	5 5
Massachusetts	N A	N A	N A	N A	N A	N A	N A	N A
Minnesota	12 8	13 5	10 8	12 4	11 3	9 7	8 7	9 9
Mississippi	8 0	9 3	8 9	8 4	6 9	5 4	6 4	6 5
Missouri	N A	N A	N A	N A	3 2	3 5	3 1	3 3
Montana	6 7	8 3	8 7	7 9	7 2	6 8	6 3	6 8
New Jersey	N A	N A	N A	N A	7 8	6 8	5 9	6 8
New Mexico	2 1	2 6	3 2	2 6	N A	N A	N A	N A
New York	21 9	23 8	21 5	22 1	13 1	13 4	12 8	13 1
North Carolina	16 8	18 1	19 4	18 1	11 2	11 5	10 5	11 1
North Dakota	3 1	3 8	3 9	3 6	2 3	2 4	2 8	2 5
Oklahoma	5 9	6 3	6 3	6 2	4 4	5 1	4 7	4 7
Oregon	16 5	19 3	20 4	18 7	10 3	10 5	10 1	10 5
Pennsylvania	16 6	15 6	21 3	17 8	13 8	12 8	11 8	12 8
Rhode Island	N A	15 1	16 7	16 4	9 8	9 3	9 8	9 6
South Carolina	15 9	18 8	20 9	18 5	8 0	8 9	7 3	8 1
Tennessee	5 4	5 4	6 1	5 6	7 0	6 8	6 6	6 8
Utah	5 0	5 4	7 0	5 8	5 8	6 2	6 2	6 0
Vermont	4 5	7 4	7 6	6 5	5 1	5 0	5 0	5 0
Virginia	9 9	11 6	17 3	13 9	10 9	8 3	8 4	9 2
Wisconsin	20 7	24 0	24 3	23 0	13 9	12 9	11 7	12 8

N A Comparable data not available

DATA U S Bureau of the Census, Dept of Commerce, Compendium of State Government Finances, Table 5, for years 1947, 1948, 1949, 1960, 1961, and 1962

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 112 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

FOOTNOTES TO TABLE XIII—Continued

[7] 1% of face value of certain bonds is credited against tax

[8] Credit for dividends from certain corporations taxable in Oklahoma

[9] Personality tax is credited against tax, within limits

[10] Surtax of 15% of normal tax is included

[11] Add surtax equal to a fraction of normal tax in each bracket starting with 4th $1,000

DATA The material in this table is based upon information made available to the subcommittee by Prentice-Hall, Inc

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, pp 105–7 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

TABLE XV

DIVISION OF INCOME FOR TAX PURPOSES, 1929

Income tax states	Separate accounting	Specific allocation	Factors in apportionment formula			
			Property	Payroll	Sales	Other
Arkansas	Allowed	None			X[1]	Cost of production[1]
California	No provision	None	X	X	X	
Connecticut	None	None	X[2]			
Georgia	Allowed	[3]				[3]
Massachusetts	None	B & Nonb	X	X	X	
Mississippi						
Manufacturers	}	B & Nonb				Capital assets, expenditures for labor
Merchants	Allowed					Net cost of sales
Missouri	Allowed	None			X	
Montana	Compulsory	None				[4]
New York	None	None				Property, bills and accounts receivable, and stock of other companies
North Carolina	None	None	X[5]			
North Dakota	None	B & Nonb	X			Business (payroll, purchases, and sales)
Oregon	[3]	[3]				[3]
South Carolina	Allowed	None	X[5]		X[5]	
Tennessee	None	None			X	
Virginia	Allowed	None				Property and sales
Wisconsin	Allowed	B & Nonb	X		X	Manufacturing costs

[1] Alternative factors

[2] A one-factor formula based on sales is used for certain nonmanufacturing and nonmercantile companies

[3] Statute was enacted in 1929 and gave the tax administrator authority to determine the methods of income division No information is available as to what methods were used in 1929

[4] No formula prescribed

[5] Manufacturers in South Carolina use only the property factor, companies engaged only in selling in South Carolina use the sales factor, other companies use both factors

B & Nonb Specific allocation of both business and nonbusiness items

DATA (1) 1929 Proceedings National Tax Association pp 163–89, (2) National Industrial Conference Board, State and Local Taxation of Business Corporations, pp 80–81 (1931)

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 114 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

employed were the "Massachusetts formula" of property, payroll and sales

The pattern of apportionment formulas used by the various states has changed markedly since 1929 As Tables XVI and XVII show, the property payroll, sales formula has increased in adoption from 2 of 17 states in 1929 to 26 of 38 states in 1963. This is, of course, the formula presently used by California

These tables mask the differences in the income division provisions of the several states While many states use the same apportionment formula, definitions vary widely This is brought out clearly in Table XVIII in the case of "sales"

California assigns sales to the state if the sales result from employee activity in the state Other frequently used standards are the sales' origin and the sales' destination When the origin standard is used, sales are assigned to the state if the goods are located in the state at the time of the sale Under the destination definition, sales are assigned to a state if they are shipped into the state or delivered to customers in the state

TABLE XVI

DIVISION OF INCOME FOR TAX PURPOSES, 1963

Income tax states	Separate accounting	Specific allocation	Factors in apportionment formula			
			Property	Payroll	Sales	Other
Alabama	Preferred	Nonb	X		X	Manufacturing costs[1]
Alaska	Preferred	Nonb	X	X	X	
Arizona	Allowed	B & Nonb	X	X	X	
Arkansas	Allowed	Nonb	X	X	X	
California	Allowed	B & Nonb	X	X	X	
Colorado	None	B & Nonb	X		X	
Connecticut	None	B & Nonb	X	X	X	
Delaware	Allowed	B & Nonb	X	X	X	
District of Columbia	Allowed	Nonb			X	
Georgia	Allowed	Nonb		X	X	Inventory
Hawaii	Allowed	B & Nonb	X	X	X[2]	
Idaho	Allowed	B & Nonb	X	X	X	
Indiana	Allowed	None	X	X	X	
Iowa	Allowed	B & Nonb			X	
Kansas	Allowed	Nonb	X	X	X	
Kentucky	Allowed	Nonb	X	X	X	
Louisiana	Allowed	B & Nonb	X	X	X	
Maryland	Allowed	B & Nonb	X	X	X	
Massachusetts	Allowed	B & Nonb	X	X	X	
Minnesota	Allowed	B & Nonb[3]	X	X	X	
Mississippi	Preferred	B & Nonb			X	Manufacturing assets, manufacturing payroll
Missouri	Allowed	None			X	
Montana	Allowed	Nonb	X	X	X	
New Jersey	Allowed	None	X	X	X	
New Mexico	Preferred	B & Nonb				[4]
New York						
Investment income	None	None	X	X	X	Investment capital in securities
Business income						
North Carolina	Allowed	B & Nonb	X	X	X	
North Dakota	Allowed	B & Nonb	X			Business (payroll, purchases, sales)
Oklahoma	Allowed	B & Nonb	X[5]		X	Expenditures[5]
Oregon	Allowed	B & Nonb	X	X	X	
Pennsylvania	Allowed[6]	B & Nonb	X	X	X	
Rhode Island	Allowed	None	X	X	X	
South Carolina	Preferred	B & Nonb	X	X	X	
Tennessee						
Manufacturers	Allowed	B & Nonb[7]	X		X[8]	Manufacturing costs
Merchants			X		X[8]	Sales through Tennessee office or agency
Utah	Allowed	B & Nonb	X	X	X	
Vermont	Allowed	None	X	X	X	
Virginia	Allowed	B & Nonb	X	X	X	
Wisconsin	Allowed	Nonb	X		X	Manufacturing costs[1]

[1] Manufacturers only
[2] Only for taxpayers whose principal activity in Hawaii is selling
[3] Plus income from business conducted wholly within or without Minnesota
[4] Indefinite
[5] Option to certain firms to use only sales ratio
[6] For franchise tax only
[7] Allocation made only out of Tennessee
[8] Both manufacturers and merchants use a factor representing sales to Tennessee customers
Nonb Specific allocation of nonbusiness items only
B & Nonb Specific allocation of both business and nonbusiness items

DATA Division of Income Summaries, appendix J

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, pp 116-117 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

TABLE XVII

APPORTIONMENT FORMULAS IN USE 1929, 1953, 1963

	Number of states using each formula		
	1929	1953	1963
1 Property, payroll, sales	2	16	26
2 Property, manufacturing costs, sales	1	6	3
3 Property, sales	1	3	3
4 Sales	4	4	4
5 Cost of production	1		
6 Property	3		
7 Property, business (payroll, purchases, sales)	1	1	1
8 Property, bills and accounts receivable, and stock of other companies	1		
9 Net cost of sales	1		
10 Capital assets, expenditures for labor	1		
11 Property and sales	1	1	
12 Manufacturing costs, sales		1	
13 Marketing costs, sales		1	
14 Property, manufacturing costs		1	
15 Property, payroll		2	1
16 Manufacturing assets, manufacturing payroll, sales		1	1
17 Property, expenditures, sales		1	1
18 Inventory, payroll, sales		1	1
19 Investment capital in securities		1	1
20 Property, sales to in-state buyers, sales from in-state offices		1	1

DATA (1) Division of Income Summaries, appendix J, (2) P-H State and Local Taxes *All States Tax Guide* ¶ 1046 (Sept 1963), (3) 1929 Proceedings, National Tax Association, pp 103-30

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 110 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

There are additional standards used in assigning sales but these are three of the most important ones It is apparent that these three sales definitions are not mutually exclusive There is ample opportunity for a given sale to be taxed once, twice or not at all depending on the location of the origin of the sale, the destination of the sale and the location of the relevant sales activity It is precisely this type of jurisdictional conflict and multiple taxation which has led to the current demand for federal legislation in this field While it would be difficult to select one of these standards as "better" than the others on theoretical grounds, it seems clear that uniformity in this area is most desirable If the several states all agree on one standard, this will be a better solution than the present situation no matter which standard is decided upon

At present there is a marked movement toward the destination sales standard One reason for this may be the fact that this is the standard contained in the Uniform Division of Income for Tax Purposes Act (UDITPA) which was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1957. This act has been adopted verbatim by Kansas, with minor variations by Alaska and Arkansas, and with major variations by South Carolina and Virginia In addition, Indiana and Oregon appear to have followed the UDITPA sales standard at least to some degree.

The destination standard has at least two advantages In the case of California, these advantages could only be realized by applying the

TABLE XVIII

STANDARDS USED IN ASSIGNING SALES, 1955–1963

Types of standard are indicated by initials as explained in key below

	1955 Sept 13	1957 Aug 6	1958 May 6	1959 Mar 3	1959 Nov 4	1960 Apr 1	1963 Nov 1
Alabama	SO,O,D	SO,O,D	SO,O,D	SO,O,D	D	D	SO,O
Alaska	Sales not used in allocation					D	D
Arizona	SA	SA	SA	SA	SA	SA	SA
Arkansas	No detail as to sales standard						D
California	SA	SA	SA	SA	SA	SA	SA
Colorado	D	D	D	D	D	D	D
Connecticut	SO	SO	SO	SO	SO	SO	SO
Delaware	No tax		D	D	D	D	D
District of Columbia	D	D	D	D	D	D	D
Georgia	D	D	D	D	D	D	D
Hawaii	D	D	D	D	D	D	D
Idaho	P/A	P/A	P/A	P/A	O,P/A	O,P/A	O,P/A
Indiana	No tax						D
Iowa	D	D	D	D	D	D	D
Kansas	SO	SO	SO	SO	D	D	D
Kentucky	SO	SO	SO	SO	SO	SO	D,SO
Louisiana	SO,SA,D,O, P/A	D	D	D	D	D	D
Maryland	SO	SO	SO	SO	SO	SO	SO
Massachusetts	SO	SO	SO	SO	SO	SO	SO
Minnesota	SO	SO	SO	SO	SO	SO	SO
Mississippi	P/A	P/A	P/A,IS	P/A,IS	P/A,IS	P/A,IS	P/A,IS
Missouri	O	O	D,O	D,O	D,O	D,O	D,O
Montana	O	O	O	O	O	SA,IS	SA,IS
New Jersey	No tax			SO	D,O	D,O	D,O
New Mexico	No detail as to sales standard						
New York	O	O	O	O	O	O	D,O
North Carolina	SO	D	D	D	D	D	D
North Dakota	SO,O	SO,O,D	SO,D	SO,D	SO,D	SO,D	SO,D
Oklahoma	D	D	D	D	D	D	D
Oregon	SO	SA,D	SA,D	SA,D	SA,D	D	D
Pennsylvania	SO,SA	SO,SA	SO,SA	SO,SA	SO,SA	SO,SA	SO,SA
Rhode Island	SO	SO	SO	SO	SO	SO	D,SO,SA,O, P/A
South Carolina	SO,SA	SO,SA	SO,SA	SO,SA,P/A	SO,SA,P/A	D	D
Tennessee	D,SO,SA	D,SO SA	D,SO,SA	D,SO,SA	D,SO,SA	D,SO	D,SO
Utah	D,SO	D,SO	D,SO	D,SO	D,SO	D,SO	D,SO
Vermont	No detail		O	O	O	O	O
Virginia	O,SO	O,SO	O,SO	O,SO	O,SO	O,SO	D
Wisconsin	SO	SO	SO	SO	SO	SO	SO

KEY

D—Destination (sales assigned to state if shipped into or delivered to customers in the state)

O—Origin (sales assigned to state if goods are located in the state at time of the sale)

SO—Sales office (sales assigned to state if arising from negotiations through an office or other place of business in the state)

SA—Sales activity (sales assigned to state if resulting from employee activity in the state)

P/A—Place of acceptance (sales assigned to state if made in response to orders accepted in the state)

IS—Intrastate shipment (sales assigned to state if shipped from a point within the state to another point within the state)

Note These definitions are highly generalized and are designed only to show the orientation of the standard

DATA The material in this table is based upon information made available to the subcommittee by Prentice-Hall, Inc

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, pp 120–1 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

destination standard to the franchise tax as well as the corporate income tax First, if a locally based manufacturer with a significant amount of sales outside the state is allowed to attribute his sales by destination, the state is able to offer him a lower tax bill than he would have under an origin test, or a sales activity test where his sales activity is in California Second, under a destination standard, the state not only allows locally based industry to apportion out, it also attributes to itself income from sales destined into the state from manufacturers based elsewhere

An estimate has been made of the effect on tax revenue of a change from the present California formula to a three-factor formula based on destination as well as certain other formulas These estimates are shown in Table XIX.

TABLE XIX

CALIFORNIA: EFFECTS OF VARIOUS APPORTIONMENT FORMULAS

Estimated income tax base of manufacturing and mercantile corporations, and estimated revenue from these corporations, under four apportionment formulas

	Estimated tax base and revenue in thousands of dollars		Relative sizes of tax base under four formulas	
	Tax base	Tax revenue	As percent of base under State formula	As percent of base under two-factor formula
State formula	2,193,564	120,646	*100*	100 4
Two-factor formula	2,185,530	120,210	99 6	*100*
Three-factor formula (destination)	2,248,336	123,658	102 5	102 9
Three-factor formula (origin)	2,199,882	120,994	100 3	100 7

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol II, p A482 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

According to these estimates, the use of a destination sales standard would result in a 2¼ percent increase in California tax revenue from this source The tax base and tax revenue figures shown in this table are highly unrealistic. They are based on the use of the federal income definition and on 1958 income data. However, these qualifications only affect the absolute magnitude of the figures, not the relative figures The data are perfectly consistent internally and therefore the percentage figures can be taken to be reasonably accurate. (It appears that the effect of P L 86-272 was considered in making this estimate This is implicit in the discussion of the estimates in the study cited but it is not actually stated)

Adoption of the destination standard for the sales factor of the apportionment formula would have thus two important effects in California· It would increase tax revenue and it would represent an important step toward uniformity

The "nexus standards" for state income taxes imposed on foreign corporations vary widely from one jurisdiction to another. What one state considers a taxable nexus is ignored by another state and vice

versa The types of contacts with the various taxing states which are considered sufficient to require a corporation to file a return for a tax on or measured by net income are shown in Chart I.

In all cases the corporation is assumed to have a place of business, including a factory, warehouse and sales office, outside the taxing state and to ship goods regularly by mail or common carrier into the taxing state

The diversity among the several states in the circumstances which the tax administrators consider sufficient to create tax liability is striking Not one of the activities considered was universally agreed upon as sufficient to create tax liability. On the other hand, while many of the listed activities provide an extremely weak basis for jurisdictional claims, each of the listed activities is considered the basis for jurisdiction by at least one state In fact, most of them are considered to indicate taxable nexus by several states

The standards used to assign sales in the several states are summarized in Table XX As can be seen, destination is by far the most common standard

The circumstances in which a corporation based in the taxing states is allowed to apportion its income to other states are shown in Chart 2.

This chart summarizes the results of a questionnaire sent to the tax administrators of the various states concerned In each case the administrator was asked to assume that a company had a place of business, including a factory, warehouse, and sales office in the administrator's state, and shipped goods regularly by mail or common carrier to another state The administrators were not asked to distinguish between the rules governing eligibility to apportion and the apportionment rules themselves Each position represented on the chart therefore indicates a result reached by applying both the eligibility rules and the apportionment rules It should be noted that under the California standard of "sales activity," if salesmen are regularly soliciting orders in the other state, even if they do not have authority to accept them, this by itself is sufficient to permit apportionment.

On the other hand if sales are obtained through telephone or mail orders without salesmen in the other state, apportionment is only permitted if a stock of raw materials is stored in the other state; or there is an administrative office in the other state, or there is a research facility, for company use only, in the other state

If sales are obtained through independent contractors with offices accepting orders in the other state on the corporation's behalf then California permits apportionment of income if there are goods in the other state consigned to customers or if there are "missionary men" in the other state creating demand for the corporation's products. Of course the "missionary men" can easily be considered as a "sales activity."

The differences between states with apparently similar standards can be seen in Chart 2 Both California and Arizona have a sales activity standard, but California permits apportionment in 12 more situations than Arizona does

CHART 1

NEXUS STANDARDS FOR STATE INCOME TAXES IMPOSED ON FOREIGN CORPORATIONS

This chart indicates the types of contacts with the various taxing states which we considered sufficient to require a corporation to file a return for a tax on or measured by net income In all cases the corporation is assumed to have a place of business, including a factory, warehouse, and sales office, outside the taxing state and to ship goods regularly by mail or common carrier into the taxing state

"★" opposite an activity described below indicates that the activity is considered by the state tax administrator to be sufficient contact with his state to require the corporation to file a return.

"□" indicates that the administrator considers the activity to be insufficient contact to require the filing of a return

The absence of a symbol indicates that no answer was provided in response to the subcommittee's inquiry.

CONTACTS WITH TAXING STATE	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Georgia	Hawaii	Idaho	Iowa	Kansas	Kentucky	Louisiana	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
Sales obtained through telephone or mail orders (without salesmen in the state) and—																																					
sales catalogs mailed to prospective customers in the state	□	□	□	□	□	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
goods exhibited at space leased occasionally and for short terms	□	□	□	★	□	□	★	★	★	□	□	★	□	★[8]	□	□	□	□	★	□	★	□	★	★	★	□	★	□	★	□	★	□	★	★	□	★	□
stock of raw materials stored in the state	★	★	□	★	★	★	★	★	★	★	□	★	★	★	★	□	★	★	★	□	★	□	★	★	★	□	★	★	★	★[9]	★	★	★	□	★	★	★	□
administrative office in the state	★	★	□	★	★	★	★	★	★	★	□	★	★	★	★	★	★	★	★	□	★	□	★	★	★	□	★	★	★	★	★	★	★	□	★	★	★	
research facility, for company use only, in the state	★	★	★	★	★	★	★	★	★	★	□	□	★	★	★	□	★	★	★	□	★	★[7]	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★
realty in the state producing "investment income"[1]	□	□	□	□	□	★	□	□	□	□	□	□	★	□	★	□	□	★	□	□	★	□	★	□	★	□	□	□	□	□	□	★	□	□	★	★	★	□
Sales obtained through independent contractors with offices accepting orders in the state on corporation's behalf and—																																					

no other activities	□	□	□	★	□	□	□	□	☆[2]	★	□	☆	☆	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□		★	□	□	□	□	□	□	□
goods in the state consigned to customers	□	★	☆	★	★	★	□	□	★	☆	☆	★	☆	☆	☆	□	★	★	☆	★	☆	□	★	□	□	☆	★	★	★	★	★	☆	□	★	☆	★	□
"missionary men" creating demand for products	□	□	□	★	★	□	□	□	☆[3]	★	□	★	★	□	□	★	□	□	□	□	★	□	□	□	□	□	□	□	☆	[6]	□		□	□	□	□	□
Salesmen regularly soliciting orders in the state (without authority to accept unless otherwise indicated) and—																																					
no other activities	□	□	□	□	□	□	□	□	□	★	□	□	★	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
displaying goods at space leased occasionally and for short terms	□	□	☆	★	□	☆	☆	★	☆	★	□	★	★	★[5]	□	☆	□	□	★	□	☆	□	★	★	□	□	☆	□	□[10]	★	□	□[11]	□	★	★	□	□
telephone answering service in the state with local directory listing	□	□	☆	★	□	□	□	★	□	★	□	□	★	★	□	☆	□	□	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
stock of goods in the state from which goods are delivered in the state by common carrier — in public warehouse	☆	★	★	★	★	★	□	□	★	★	☆	☆	★	☆	★	☆	★	□	★	★	★	☆	★	★	☆	☆	★	☆	☆	★	☆	★	☆	★	★	★	□
— in private warehouse	★	☆	☆	☆	★	★	★	☆	★	☆	☆	☆	★	★	☆	☆	☆	☆	☆	☆	☆	★	★	★	☆	★	★	☆	☆	★	★	★	☆	★	☆	★	□
sales office in the state — with orders accepted outside the state	★	□	★	☆	☆	☆	☆	★	☆	★	★	★	★	☆	☆	★	☆	□	★	□	☆	□	★	★	□	★	★	☆	★	★	☆	★	☆	☆	☆	★	□
— with orders accepted in the state	☆	☆	☆	☆	☆	☆	☆	★	★	★	★	★	★	★	★	☆	★	★	☆	★	★	☆	☆	★	□	☆	★	★	★	☆	★	☆	☆	☆	★	☆	★
salesmen residing in the state using homes for maintaining records only	□	★	□	□	□	★	□	□	★	★	□	★	★	□	□	☆	□	□	★	□	★	□	□	□	□	□	☆	□	□	□	□		□	□	□	□	□
corporation qualified to do business in the state	□	★	★	★	□[7]	□	★	★	□	★	★	★	★	★	□	★	★	□	☆	☆	★	□	★	★	□	☆	★	☆	□	★	☆	★	★	★	★	★	★
C O D shipments into the state — regularly	□	□	★	□	□	□	□	□	□	★	□	★	★	□	□	★	□	□	□	□	★	□	□	□	□	□	★	★	□	□	□	★	□	□	□	□	□
— occasionally	□	□	□	□	□	□	□	□	□	★	□	★	★	□	□	★	□	□	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
security interest retained in goods sold — regularly	□	□	★	□	□	□	□	□	□	★	□	★	★	□	□	★	□	★	□	★	★	□	□	□	□	□	★	□	★	□	□	★	□	□	□	★	□
— occasionally	□	□	□	□	□	□	□	□	□	★	□	★	★	□	□	★	□	★	□	★	★	□	□	□	□	□	★	□	□[10]	□	□	★	□	□	□	★	□
credit investigations and collections made by salesmen — regularly	□	★	☆	□	☆	★	□	★	□	★	★	★	★	★	□	★	★	★	★	□	★	□	★	□	□	★	★	□	★	★	★		□	□	□	□	□
— occasionally	□	□	□	□	★	★	□	★	□	★	★	★	★	★	□	★	★	★	□	□	★	□	★	□	□	□	★	□	□[10]	★	★		□	□	□	□	□

CHART 1—Continued

This chart indicates the types of contacts with the various taxing states which we considered sufficient to require a corporation to file a return for a tax on or measured by net income. In all cases the corporation is assumed to have a place of business including a factory, warehouse, and sales office, outside the taxing state and to ship goods regularly by mail or common carrier into the taxing state.

"★" opposite an activity described below indicates that the activity is considered by the state tax administrator to be sufficient contact with his state to require the corporation to file a return.

"□" indicates that the administrator considers the activity to be insufficient contact to require the filing of a return.

The absence of a symbol indicates that no answer was provided in response to the subcommittee's inquiry.

CONTACTS WITH TAXING STATE		Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Georgia	Hawaii	Idaho	Iowa	Kansas	Kentucky	Louisiana	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
cars in the state owned by corporation and used by salesmen	regularly	□	★	★	□	□	★	□	□	□	★	□	★	★	★[1]	□	★	□	□	★	□	★	□	□	□	□	□	★	★	□	□	★	□	□	□	□	□	□
	occasionally	□	□	□	□	□	★	□	□	□	★	□	★	★	★[1]	□	★	□	□	★	□	★	□	□	□	□	□	★	□	□[10]	□	□	★	□	□	□	□	□	□
delivery of goods into state in company-operated vehicles	regularly	□	★	★	□	★	□	□	★	□	★	□	★	★	★[1]	□	★	★	□	★	□	★	□	□	★	□	□	★	★	★	□	□	□	□	□	□	□	★
	occasionally	□	□	□	□	★	□	□	★	□	★	□	★	★	★[1]	□	★	★	□	★	□	★	□	□	★	□	□	★	□	□[10]	□	□	□	□	□	□	□	□	□
installation or assembly of corporation's products by salesmen	regularly	★	□	★	★	★	★	★	□	□	★[4]	★	★	★	★[1]	★	★	★	★	★	★	★	★[9]	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★
	occasionally	★	□	★	□	★	★	★	□	□	★	★	★	★	★[5]	★	★	★	★	★	★	★	★[9]	★	★	□	★	★	★	★	★	★	★	□[12]	★	★	★	★	★
acceptance of orders in the state by salesmen	regularly	□	★	★	□	★	★	□	★	□	★	★	★	★	★	□	★	★	★	★	★	★	★[8]	□	□	□	★	□	★	★	★	★	★	□	□	□	★	★	★
	occasionally	□	□	★	□	★	★	★	★	□	★	□	★	★	□	□	★	★	★	□	★	★	□[3]	□	□	□	★	□	★	★	★	★	★	□	□	□	★	★	★
servicing or repairing of corporation's products by its employees at no additional charge	regularly	□	★	★	★	★	★	★	□	□	★	★	★	★	[6]	□	★	★	★	★	★	★	□	★		★	★	★	★	★	★	★	★	□	□	[6]	★	★	★
	occasionally	□	□	★	□	★	★	★	□	□	★	★	★	★	[6]	□	★	★	★	★	★	★	□	★	□	□	□	★	□	★	★	★	★	□	□	[6]	★	★	★
	rarely	□	□	□	□	□	★	□	□	□	★	□	★	★	[6]	□	★	□	□	★	★	★	□	□	□	□	□	★	□	★	★		□	□	[6]	★	★	□

[1] Results apply only to the taxability of income from the sale of goods
[2] A fixed-fee minimum tax is required
[3] The administrator indicates that a return is *not* required if the independent contractor is an "independent broker"
[4] A return is required if there is a charge for the service
[5] The administrator indicates that "in actual practice" a return is not required
[6] The administrator's reply is unclear
[7] The results depend largely on the type of business
[8] The results depend largely on the nature of the products

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[9] There is no liability if the corporation's activities are confined to purchasing and storage of personality incident to shipment outside the state
[10] The administrator indicates that the result is "probable"
[11] The administrator expresses some uncertainty as to the administrative practice
[12] Return might be required under "special circumstances"

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, pp. 148–9 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

Chart 3 compares nexus and "reverse nexus" for foreign corporations in the several states As can be readily seen, there are a great many inconsistencies in the treatment of nexus and "reverse nexus" Quite often an activity that is the basis for a jurisdictional claim is not considered sufficient grounds for apportionment of income and vice versa

In California, the only inconsistencies are those in which an activity is not considered the basis for the requirement of filing of a return, but it is sufficient to allow apportionment of income These activities are salesmen regularly soliciting orders in the state (without authority to accept unless otherwise indicated) and no other activities, displaying goods at space leased occasionally and for short terms, telephone answering service in the state with local directory listing, salesman residing in the state using homes for maintaining records only, corporation qualified to do business in the state, occasional or regular C O D shipments into the state, occasional or regular security interest

TABLE XX

STANDARDS USED TO ASSIGN SALES IN EACH OF THE STATES

	Destination	Sales office	Sales activity	Origin	Place of acceptance	Intrastate shipments
Alabama		X		X		
Alaska	X					
Arizona			X			
Arkansas	X					
California			X			
Colorado	X					
Connecticut		X				
Delaware	X					
District of Columbia	X					
Georgia	X					
Hawaii	X					
Idaho				X	X	
Indiana	X					
Iowa	X					
Kansas	X					
Kentucky	X	X				
Louisiana	X					
Maryland		X				
Massachusetts		X				
Minnesota		X				
Mississippi					X	X
Missouri	X			X		
Montana			X			X
New Jersey	X			X		
New Mexico[1]						
New York	X			X		
North Carolina	X					
North Dakota	X	X				
Oklahoma	X					
Oregon	X					
Pennsylvania		X	X			
Rhode Island	X	X	X	X	X	
South Carolina	X					
Tennessee	X	X				
Utah	X	X				
Vermont				X		
Virginia	X					
Wisconsin		X				

[1] New Mexico authorizes apportionment by formula but prescribes no specific formula Although the return form suggests a three-factor formula, with "gross income" as one factor no standard for assigning gross income to New Mexico is specified

DATA Division of Income Summaries, Appendix J

SOURCE Committee on the Judiciary *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 182 88th Congress, 2d Session, House Report No 1480 (Washington, D C 1964)

CHART 2

CIRCUMSTANCES IN WHICH A CORPORATION MAY APPORTION ITS INCOME

This chart indicates the types of contacts with a state other than the taxing state which are considered sufficient to allow a taxable corporation to apportion its income In all cases the corporation is assumed to have a place of business, including a factory, warehouse, and sales office in the taxing state and to ship goods regularly by mail or common carrier into the other state

"★" opposite an activity described below indicates that the administrator of the taxing state considers that activity to be sufficient contact with another state to allow the corporation to apportion its income

"□" indicates that the administrator considers the activity to be insufficient contact with the other state to allow apportionment

The absence of a symbol indicates that no answer was provided in response to the subcommittee's inquiry

CONTACTS WITH OTHER STATE	Alabama[2]	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware[3]	District of Columbia	Georgia	Hawaii[4]	Idaho	Iowa	Kansas	Kentucky	Louisiana[2]	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
Sales obtained through telephone or mail orders (without salesmen in the state) and—																																					
sales catalogs mailed to prospective customers in the state	□	□	□	□	□	□	□	★	□	□	□	□	★	□	□	★	□	□	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
goods exhibited at space leased occasionally and for short terms	□	□	□	□	□	□	□	★	□	□	□	□	★	□	□	★	□	□	□	□	★	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□
stock of raw materials stored in the state	★	★	□	★	★	★	★	★	★	★	□	□	★	★	★	★	★	□	□	□	★	□	□	★	□	★	★	★	□	□	★	★	□	□	★	★	★	★
administrative office in the state	★	★	□	★	★	★	★	★	★	★	□	□	★	★	★	★	★	□	★	□	★	□	□	★	□	★	★	★	□	□	★	★	□	□	★	★	★	★
research facility, for company use only, in the state	★	★	★	★	★	★	★	★	★	★	□	□	★	★	★	★	□	★	★	□	★	★[9]	□	★	★	★	★	★	□	□	★	★	□	□	★	★	★	★
realty in the state producing "investment income"[1]			□	□	□	□	★	□	★	★	□	□	★	□	□	★	□	★	□	□	★	□	★	★	★	□	□	□	★	□	□	★	□	□	★	★	□	□
Sales obtained through independent contractors with offices accepting orders in the state on corporation's behalf and—																																					
no other activities	□	□	□	□	□	□	□	★	★	★	□	□	★	□	□	★	□	□	□	□	★	□	□	★	□	□	□	□	□	□	□	□	□	□	□	□	□

goods in the state consigned to customers		□	★	★	□	★	★	□	☆	★[5]	★	★	★	☆	★	★	★	☆	★	□	★	★	□	□	☆	□	★	★	★	★[12]	□	★	★	□	□	★	★	□
"missionary men" creating demand for products		□	□	□	□	☆	□	□	☆	☆[5]	★	□	★	★	□	□	★	□	□	□	□	★	□	□	★	□	□[11]	□	□	★[12]	□	□	★	□	□	□	□	□
Salesmen regularly soliciting orders in the state (without authority to accept unless otherwise indicated) and—																																						
no other activities		□	□	□	□	★	□	□	☆	☆[6]	☆	☆	□	★	□	□	☆	□	□	□	□	☆	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
displaying goods at space leased occasionally and for short terms		□	□	★	□	☆	☆	□	★	★[6]	★	★	□	☆	★	□	☆	□	□	□	□	☆	□	□	□	★	□[11]	★	□	□	□	□	□	□	□	☆	□	□
telephone answering service in the state with local directory listing		□	□	☆[3]	□	☆	□	□	★	☆[6]	☆	☆	□	☆	□	□	★	□	□	□	□	☆	□	□	★	□	□[11]	□	□	□	□	□	□	□	□	□	□	□
stock of goods in the state from which goods are delivered in the state by common carrier	in public warehouse	☆	☆	★	☆	★	☆	□	☆	☆	☆	☆	□	☆	★	☆	☆	☆	□	□	★	★	☆	□	☆	★	★	★	☆	★	★	★	☆	□	□	☆	★	□
	in private warehouse	☆	☆	★	☆	☆	★	☆	☆	☆	★	☆	□	☆	☆	☆	☆	☆	☆	☆	☆	☆	★	★	☆	★	★	☆	☆	★	★	★	☆	☆	□	★	★	□
sales office in in the state	with orders accepted outside the state	★	□	★[4]	★	☆	☆	☆	☆	★[6]	☆	★	□	☆	☆	☆	☆	□	□	☆	□	★	□	☆	★	★	☆	☆	★	★	★	☆	★	☆	☆	☆	★	□
	with orders accepted in the state	☆	☆	★	☆	★	☆	☆	☆	☆[6]	☆	★	☆	★	☆	☆	★	☆	☆	★	☆	★	★	☆	☆	★	★	☆	☆	☆	★	☆	☆	☆	☆	☆	☆	★
salesmen residing in the state using homes for maintaining records only		□	☆	□	□	★	☆	□	★	☆[6]	☆	★	□	☆	□	□	☆	□	□	□	□	☆	□	□	★	□	□	□	□	□	□	□	☆	□	□	□	□	□
corporation qualified to do business in the state		□	□	□	☆	☆	□	□	☆	★[6]	☆	★	□	☆	★	□	★	★	□	□	□	☆	□	□	☆	□	★	□	□	□	□	□		★	□	□	★	□
C O D shipments into the state	regularly	□	□	★	□	★	□	□	★	☆[6]	☆	☆	□	★	□	□	☆	□	□	□	□	☆	□	□	☆	□	□[11]	★	★	□	□	□	☆	□	□	□	□	□
	occasionally	□	□	□	□	★	□	□	☆	★[6]	★	☆	□	☆	□	□	★	□	□	□	□	★	□	□	☆	□	□[11]	□	□	□	□	□	☆	□	□	□	□	□
security interest retained in goods sold	regularly	□	□	★	□	★	□	□	★	☆[6]	★	★	□	★	□	□	☆	□	□	□	☆	★	□	□	□	□	□[11]	☆	□	□	□	□	★	□	□	□	☆	□
	occasionally	□	□	□	□	★	□	□	★	★[6]	★	★	□	★	□	□	☆	□	□	□	★	★	□	□	□	□	□[11]	★	□	□	□	□	☆	□	□	□	★	□
credit investigations and collections made by salesmen	regularly	□	★	★	□	☆	★	□	★	★[6]	★	★	□	☆	★	□	★	★	□	□	□	★	□	□	☆	□	★	☆	□	□	□	□	★	□	□	[8]	★	□
	occasionally	□	□	□	□	☆	★	□	☆	★[6]	★	★	□	☆	★	□	★	★	□	□	□	★	□	□	★	□	□[11]	★	□	□	□	□	☆	□	□	[8]	★	□
cars in the state owned by corporation and used by salesmen	regularly	□	★	★	□	★	□	□	★	☆[6]	★	★	□	★	★	□	★	□	□	□	□	★	□	□	★	□	□[11]	★	★	□	□	□	★	□	□	[8]	□	□
	occasionally	□	□	□	□	★	□	□	☆	★[6]	★	★	□	★	□	□	★	□	□	□	□	★	□	□	★	□	□[11]	★	□	□	□	□	☆	□	□	[9]	□	□
delivery of goods into state in company-operated vehicles	regularly	□	★	★	□	★	□	□	☆	★[6]	★	★	□	[8]	☆	□	★	☆	□	□	□	★	□	□	★	□	□[11]	★	★	□	□	□	□	□	□	□		★
	occasionally	□	□	□	□	★	□	□	☆	★[6]	★	★	□	[8]	□	□	★	★	□	□	□	★	□	□	★	□	□[11]	★	□	□	□	□	□	□	□	□		□

CHART 2—Continued

This chart indicates the types of contacts with a state other than the taxing state which are considered sufficient to allow a taxable corporation to apportion its income In all cases the corporation is assumed to have a piece of business, including a factory, warehouse and sales office, in the taxing state and to ship goods regularly by mail or common carrier into the other state

"★" opposite an activity described below indicates that the administrator of the taxing state considers that activity to be sufficient contact with another state to allow the corporation to apportion its income

"□" indicates that the administrator considers the activity to be insufficient contact with the other state to allow apportionment

The absence of a symbol indicates that no answer was provided in response to the Subcommittee's inquiry

CONTACTS WITH OTHER STATE		Alabama[1]	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware[2]	District of Columbia	Georgia	Hawaii[3]	Idaho	Iowa	Kansas	Kentucky	Louisiana[2]	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
installation or assembly of corporation's products by salesmen	regularly	★	□	★	★	★	★	□	★	★[5]	★	★	□	[8]	★	★	★	★	□	★	★	★	★[10]	□	★	□	★	★	★	□	□	□	★	★	★	[8]	★	★
	occasionally	★	□	★	★	□	★	★	□	★	★[5]	★	★	□	[8]	★	★	★	□	★	★	★	★[10]	□	★	□	★	★	□	□	□	□	★	★[14]	★	[8]	★	★
acceptance of orders in the state by salesmen	regularly	□	★	★	□	★	★	□	★	★[5]	★	★	□	★	□	□	★	□	□	★	★	★	★[10]	□	★	□	★	★	★	★[13]	□	★	★	□	□	□	★	★
	occasionally	□	□	★	□	★	★	□	★	★[5]	★	★	□	★	□	□	★	□	□	★	★	★	□[10]	□	★	□	★	★	□	□	□	□	★	★	□	□	□	★	★
servicing or repairing of corporation's products by its employees at no additional charge	regularly	□	★	★	★	★	★	□	★	★[5]	★	★	□	★	★	□	★	★	□	□	★	★	□	□	□	★	★	★	□	□	□	□	★	★	□	[8]	★	★
	occasionally	□	□	★	□	★	★	□	★	★[6]	★	★	□	★	★	□	★	□	□	□	★	★	□	□	□	★	□	★	□	□	□	□	★	★	□	[8]	★	★
	rarely	□	□	□	□	★	★	□	★	★[6]	★	★	□	★	□	□	★	□	□	□	★	★	□	□	□	★	□	□	□	□	□	□	□	□	□	[8]	★	□

[1] Results apply only to income from sale of goods
[2] Domestic corporations are not allowed to apportion income but instead get credit for taxes paid to other states
[3] The administrator indicates that apportionment is allowed "if substantial activity prevails"
[4] The administrator indicates that apportionment is allowed "if the activities require the office as a necessity"
[5] The administrator's reply as applied to domestic corporations is unclear
[6] Apportionment is allowed only if income from the sales is subject to inclusion in the measure of any income or franchise tax imposed by the other state
[7] Domestic corporations may apportion only if their income is subjected to a tax in the other state
[8] The administrator's reply is unclear
[9] The results depend largely on the type of business
[10] The results depend largely on the nature of the products
[11] Apportionment is allowed if the corporation is required to pay a tax based on income to the other state
[13] The administrator indicates that apportionment might "possibly" be allowed
[14] The administrator indicates that the result is "probable"
[16] Apportionment might not be allowed under "special circumstances"

DATA State Income Tax Nexus Questionnaire.

SOURCE: Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, pp 240–1 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

retained in goods sold, and occasional or regular maintenance of cars in the state owned by the corporation and used by salesmen

One would think that if these activities are sufficient to permit apportionment of income, they should also be sufficient grounds for a jurisdictional claim If sufficient nexus does not exist to support a jurisdictional claim, it is difficult to see how apportionment can be sustained

A Two-factor Formula?

The foregoing is based on the Congressional investigation and study Another study of this problem, by Charles E Ratliff, Jr, also merits careful attention in California [33] The question is whether "sales" should be by origin or destination Ratliff notes that limitations on a state's powers come under the due process clause and the commerce clause A tax imposed on the privilege of engaging in interstate commerce is unconstitutional but a fairly apportioned tax levied directly on the net income of a business engaged in interstate commerce and measured by income is constitutional He notes that the National Commission on Uniform State Laws recommended the destination basis for the sales factor,[34] and for the following reasons

> "(1) with the origin basis the sales factor tends to duplicate the property and payroll factors, (2) with the destination basis there is less opportunity for manipulation of sales operations merely for tax avoidance, (3) some recognition should be given the state providing the market"

The author argues for the two-factor formula He states that income is produced by human effort and the use of land and capital, not by selling and purchasing except to the extent that human effort and property are involved He states that inclusion of the sales factor gives a disproportionate weight to the property and labor involved in sales It should be noted that this argument is along the lines of the contribution-to-income approach If one really wants to trace the contributions to income in a multiproduct, multifactor firm he has an unbelievable problem in partial derivatives since the marginal productivity of the factors must be determined

In 1957 North Carolina changed from the two-factor formula to a three-factor (property, payroll, destination-sales) formula Early experience indicates that taxes were reduced for North Carolina manufacturers selling nationally and increased for foreign manufacturers selling in North Carolina [35] North Carolina experience indicates that the new formula produces wider fluctuations in yield over the cycle than the old formula [36]

In attacking the sales factor the author states [37]

> "In fact with a sales factor included in the formula, the labor and property devoted to selling are allocated once in the payroll and property factors, and then the sales factor in effect allows them to be counted again, at a much heavier weight The sales

[33] Charles E Ratliff, Jr, *Interstate Apportionment of Business Income for State Income Tax Purposes* (Chapel Hill University of North Carolina Press, 1962)
[34] *Ibid*, p 22
[35] *Ibid*, p 67-68
[36] *Ibid*, p 81
[37] *Ibid*, p 93

CHART 3

COMPARISON OF NEXUS AND "REVERSE NEXUS" FOR FOREIGN CORPORATIONS

This chart shows for each income-tax state the degree of consistency between the standards for determining whether out-of-state corporations are required to file returns (nexus) and the standards for determining whether in-state corporations may apportion their income ("reverse nexus")

In all cases, the activities listed below are assumed to be the only activities which a corporation has outside its base state

"●" opposite an activity described below indicates that the activity is sufficient to require a corporation based outside the state to file a return, but is insufficient to allow a corporation based in the state to apportion its income

"▲" indicates that the contact does not require filing of a return but does permit apportionment

"□" indicates that the treatment of corporations based outside the state is consistent with that of corporations based inside the state

The absence of a symbol indicates that no meaningful comparison could be made

CONTACTS WITH OTHER STATE	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Georgia	Hawaii	Idaho	Iowa	Kansas	Kentucky	Louisiana	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
Sales obtained through telephone or mail orders (without salesmen in the state) and—																																					
sales catalogs mailed to prospective customers in the state	□	□	□	□	□	□	□	□	□	□	□	□	▲	□	□	▲	□	□	□	□	▲	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
goods exhibited at space leased occasionally and for short terms	□	□	□	□	●	□	□	●	□	□	□	●	▲	●	□	▲	□	□	□	●	□	□	●	□	▲	□	□	□	●	●	□	□	□	□	□	□	□	□
stock of raw materials stored in the state	□	□	□	□	□	□	□	□	□	□	□	●	□	□	□	▲	□	□	□	●	□	□	●	□	▲	□	□	□	●	●	□	□	□	●	□	□	□	□
administrative office in the state	□	□	□	□	□	□	□	□	□	□	□	●	□	□	□	□	□	□	□	●	□	□	●	□	▲	□	□	□	●	●	□	□	□	●	□	□	□	□
research facility, for company use only, in the state	□	□	□	□	□	□	□	□	□	□	□	●	▲	□	□	▲	●	□	□	□	□	□	□	□	▲	□	□	□	●	●	□	□	□	▲	□	□	□	□
realty in the state producing "investment income"		□	□	□	□	□	□	▲		▲	□	□	□	□	●	▲	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□	□
Sales obtained through independent contractors with offices accepting orders in the state on corporation's behalf and—																																					

no other activities		□
goods in the state consigned to customers		□
"missionary men" creating demand for products		□
Salesmen regularly soliciting orders in the state (without authority to accept unless otherwise indicated) and—		
no other activities		□
displaying goods at space leased occasionally and for short terms		□
telephone answering service in the state with local directory listing		□
stock of goods in the state from which goods are delivered in the state by common carrier	in public warehouse	□
	in private warehouse	□
sales office in the state	with orders accepted outside the state	□
	with orders accepted in the state	□
salesmen residing in the state using homes for maintaining records only		□
corporation qualified to do business in the state		□
C O D shipments into the state	regularly	□
	occasionally	□
security interest retained in goods sold	regularly	□
	occasionally	□
credit investigations and collections made by salesmen	regularly	□
	occasionally	□
cars in the state owned by corporation and used by salesmen	regularly	□
	occasionally	□
delivery of goods into state in company-operated vehicles	regularly	□
	occasionally	□

CHART 3—Continued

This chart shows for each income-tax state the degree of consistency between the standards for determining whether out-of-state corporations are required to file returns (nexus) and the standards for determining whether in-state corporations may apportion their income ("reverse nexus")

In all cases, the activities listed below are assumed to be the only activities which a corporation has outside its base state

"●" opposite an activity described below indicates that the activity is sufficient to require a corporation based outside the state to file a return, but is insufficient to allow a corporation based in the state to apportion its income

"▲" indicates that the contact does not require filing of a return but does permit apportionment

"□" indicates that the treatment of corporations based outside the state is consistent with that of corporations based inside the state

The absence of a symbol indicates that no meaningful comparison could be made

CONTACTS WITH OTHER STATE		Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	District of Columbia	Georgia	Hawaii	Idaho	Iowa	Kansas	Kentucky	Louisiana	Maryland	Massachusetts	Minnesota	Mississippi	Missouri	Montana	New Jersey	New Mexico	New York	North Carolina	North Dakota	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	Tennessee	Utah	Vermont	Virginia	Wisconsin
installation or assembly of corporation's products by salesmen	regularly	□	□	□	□	□	□	●	▲		□	□	●		●	□	□	□	●	□	□	□	□	●	□	●	□	□	□	●	●	□	□	□	□	□	□	□
	occasionally	□	□	□	□	□	□	●	▲		□	□	●		●	□	□	□	●	□	□	□	□	●	□	●	□	□	□	●	●	□	□	□	□	□	□	□
acceptance of orders in the state by salesmen	regularly	□	□	□	□	□	□	□	□		□	□	●	□	●	□	□	●	●	□	□	□	□	□	▲	□	□	▲	□	□	●	□	□	□	□	□	□	□
	occasionally	□	□	□	□	□	□	□	□		□	▲	●	□	□	□	□	●	●	□	□	□	□	□	▲	□	□	▲	□	□	●	□	□	□	□	□	□	□
servicing or repairing of corporation's products by its employees at no additional charge	regularly	□	□	□	□	□	□	●	▲		□	□	●	□	□	□	□	□	●	□	□	□	□	●	▲	●	□	□	□	●	●	□	□	□	□	□	□	□
	occasionally	□	□	□	□	□	□	●	△		□	□	●	□	□	□	□	□	●	□	□	□	□	●	▲	●	□	□	□	●	●	□	□	□	□	□	□	□
	rarely	□	□	□	□	□	▲	□	▲		□	▲	●	□	□	□	□	●	●	□	□	□	□	●	▲	●	□	●	□	□	●	□	□	□	□	□	□	□	□

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol 1, pp 402-3 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

DATA State Income Tax Nexus Questionnaire

factor may also be condemned on the economic grounds that it interferes with the allocation of resources, increasing the real cost of goods, by inducing firms to *manipulate their selling operations for tax advantages* and by imposing upon them more work in compliance" (Emphasis added)

This is a fairly weak argument It is difficult to imagine how a firm is going to manipulate its selling operations for tax advantages Usually we consider that the firm has certain markets and sells in those markets in accordance with the cost and demand conditions holding at the moment One can much more easily see a firm changing the location of a plant or warehouse for tax purposes than obtaining tax advantage from rearranging its markets It would appear also that the three-factor formula was designed to determine what percentage of the operations of a firm can equitably be attributed to a certain state Elimination of the sales factor would cause the foreign firm with no property or payroll in the state to obtain a tax-exempt advantage over the domestic producer in the state market

Ratliff states that the sales factor cannot be included under the contribution-to-income approach but he admits that a destination-sales factor may be justified under the burden-of-tax approach [38] He attacks the burden-of-tax approach because he maintains that we cannot estimate the distribution of the burden to any degree of precision He is, of course, open to the same criticism with the contribution-to-income approach due to the complex nature of the marginal products involved

It should be noted that the foreign corporation with sales in a state enjoys the protection of the laws and the services of the state and the state is justified in demanding that the corporation contribute its equitable share to the upkeep of the state in which its market is located To exclude the destination-sales factor in favor of a two-factor formula would be to give the foreign corporation a substantial advantage over the California corporation in the California market The long-run effect of this could only be to increase the number of California corporations locating in Nevada

Ratliff argues that the lack of uniformity in state laws operates as a burden upon the economy because of the increased cost of both enforcement and compliance [39]

In conclusion, Ratliff recommends that the federal government establish a uniform two-factor formula [40] We must point out, however, that 26 states have the three-factor sales-destination formula It would cause a much greater dislocation of state finances than would standardization along prevailing lines In California, even more income would be lost by the fact that Ratliff recommends standardization on the Federal Tax Code definition of income which is much narrower than the California income definition

The property-payroll-sales factor can be justified on economic grounds as allocating to the state that portion of the unitary business's income for tax purposes as corresponds with the business's operations in that state Here the corporation, like the individual, is treated as a unitary entity The source of the income is not considered, only the

[38] *Ibid*, p 98
[39] *Ibid*, p 101
[40] *Ibid*, pp 106–108

percentage of the operations that falls within the particular state The ability to pay is determined by the amount of corporate income The state of jurisdiction is determined by the location of the various operations The destination-sales factor operates to offset the disadvantage that domestic corporations would have vis-à-vis foreign corporations in the California market and to block a rather obvious tax avoidance loophole

Some data from this study that are of general interest follow in Charts 4, 5 and 6

A Single Factor Formula?

A recent decision of the U S Supreme Court has even held valid a single-factor unapportioned tax It sustained the State of Washington's tax on the privilege of doing business in the state The tax was measured by the company's gross wholesale sales of motor vehicles, parts and accessories sold in the state The state superior court had held that the presence of a branch office in Seattle subjected some of the company's transactions to the tax, but application of the tax to the remainder would be repugnant to the commerce and due process clauses of the U S Constitution The state supreme court reversed, holding that all the company's transactions were subject to taxation The U S Supreme Court, affirming the state supreme court, declared that it was well established that state taxation of a business measured by gross receipts is constitutional if it is fairly apportioned The company main-

CHART 4

RANKING OF THE IMPORTANCE OF FACTORS OF 31 FIRMS MAKING LOCATION DECISIONS

Factor	Number of corporations assigning specified ranks													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Markets	12	2	1		1									
Manpower	4	3	3	1	1	3								
Momentum of early start	3	4	1											
Materials	2	1	1					1					1	
Building construction costs	2		3	2					1					
Manufacturing space immediately available	2													
Transportation facilities	1	4	3	2	1		2			1				
Land cost and availability	1	4	1	3	1		1				1			
Power and fuel	1	1	1				1							
Living conditions	1		1		2	2			1					
Capital availability	1		1							2				
Climate	1				1	1	1	1	1					
Unionization of labor		3				1		1						
Water supply		2	1											1
Diversification for national defense		2						1						
Complementary industries		1		1										
Service industries		1					1	1						
Waste disposal			1	2					1					
Educational systems			1	1	1	1								
Taxes, local				1	2				1			1		
Financial aids				1	1									
Taxes, state					1	1		1			1			
Personal reasons						1								
Religious and cultural advantages						1								
Certainty of government policy							1							
Recreational facilities							1							
Totals	31	28	19	14	12	11	8	6	5	3	2	1	1	1

SOURCE Charles E Ratliff, Jr, *Interstate Apportionment of Business Income for State Income Tax Purposes* p 74 University of North Carolina Press, (Chapel Hill 1962), based on data obtained from individual corporations by questionnaire

CHART 5

RANKS OF FACTORS IN LOCATION DECISIONS OF FIVE FIRMS

Factor	Firm[a]				
	A	B	C	D	E
Building construction costs	1	—	—	4	3
Capital availability	—	—	—	—	10
Climate	—	—	—	9	—
Diversification for national defense	2	—	—	8	—
Educational systems	3	—	—	6	—
Financial aids	—	—	—	—	4
Land cost and availability	—	2	—	—	5
Living conditions	—	—	—	5	6
Manpower	4	6	3	1	1
Markets	—	1	—	3	—
Materials	—	—	—	13	—
Momentum of early start	—	—	1	—	—
Power and fuel	—	—	—	2	—
Service industries	—	—	—	7	—
Taxes, local	5	4	5	12	9
Taxes, state	6	5	—	11	8
Transportation	—	3	—	10	7
Certainty of government policy	7	—	—	—	—
Unionization of labor	8	—	—	—	2
Waste disposal	9	—	4	—	—
Water supply	—	—	2	14	—

[a] All firms are manufacturers A, D, and E electrical machinery and equipment, B, machinery other than electrical, C, textile mill products

SOURCE Charles E Ratliff, Jr., *Interstate Apportionment of Business Income for State Income Tax Purposes*, p 75 University of North Carolina Press, (Chapel Hill 1962), based on data obtained from individual corporations by questionnaire

tained district managers and service representatives in the state and headquarters personnel made personal visits to the state The court found that "the bundle of corporate activity so enmeshed in local connections" was sufficient to justify the state's finding that they were a sufficient basis for the levy of a tax Even though the tax was unapportioned in the usual sense, the court did not declare it constitutionally impermissible in view of the findings of the state supreme court The company had argued that it might be subjected to multiple taxation on the same sales because of its manufacturing and service connections in other states which handled Washington-bound products The court answered this by saying that the company had not actually demonstrated that this was the case The four dissenters were concerned with the fact that failure to apportion would result in multiple taxation of the same sales where commercial activity in several states resulted in a sale in one of them, or that the majority decision would mean that states would be permitted to tax wholly interstate sales by any company selling through local agents or traveling salesmen [41] This decision aggravates the need for an interstate compact or Congressional or Constitutional action

California will have to watch future Congressional action closely in order to protect its corporation franchise tax base Yet, it is clear that there is an urgent need for more uniformity among the states in the taxation of corporation net income

[41] *General Motors Corporation* v *Washington*, 377 U S 436, 12 L ed 2d 430, 84 S Ct 1564, 32 Law Week 4482 (No 115, decided June 8, 1964)

CHART 6

COMMENTS OF CORPORATIONS ON IMPORTANCE OF TAX FACTOR IN LOCATION OF ECONOMIC ACTIVITY, BY TYPE OF BUSINESS

Comment	Number of corporations making comment		
	Total	Manufacturing	Selling
I			
No significance	10	5	5
Unimportant, not even tertiary	2	1	1
Moves not influenced by tax factor	1	1	0
	13	7	6
II			
Relatively minor	11	8	3
Only one of many factors	10	4	6
One of many, but may be determining	6	3	3
Purely secondary factor	5	2	3
Secondary, but could be determining	2	0	2
Final determining factor after all others	1	0	1
Only a grossly disproportionate tax burden significant	1	0	1
	36	17	19
III			
Influences decisions, taken into consideration	6	4	2
Important, but not primary	4	4	0
One of many important factors	3	1	2
Total tax package significant	3	1	2
	16	10	6
IV			
A major factor, *primary* importance	5	1	4
Matter of substantial consideration	2	1	1
Tax climate a most important consideration	2	1	1
	9	3	6
V			
Tax factor becoming more important	3	1	2
Assurance of equitable treatment more important than amount	1	1	0
Income tax not significant because of continual changes in laws	1	0	1
Local taxes more important than state income taxes	1	1	0
	6	3	3
VI			
No answer	46	30	26
Total corporations	126	60	66

SOURCE Charles E Ratliff Jr *Interstate Apportionment of Business Income for State Income Tax Purposes*, p 77 University of North Carolina Press, (Chapel Hill 1962), based on data obtained from individual corporations by interview and questionnaire

Noncompliance

The complexities of jurisdiction and apportionment lead to problems of compliance To a large extent, the corporate income tax is self-assessed If there is confusion on questions of taxable nexus, there is bound to be noncompliance to a greater degree than would otherwise be the case Even a firm that is extremely careful about paying the tax in every state where it believes that taxable nexus exists may find genuine areas of doubt The course to be taken by the company in such cases is not too clear To ask the state commissioner is to invite litigation Certainly no firm wishes to pay taxes where it is not legally liable Therefore, quite often the problem is resolved by the relatively simple expedient of noncompliance

Table XXI indicates the results of a questionnaire concerning firms who had salesmen accepting orders but no other activity in a state which considered this a taxable nexus

It is interesting to note that returns were filed in less than three percent of the cases surveyed Even in California returns were filed in only 3 cases out of 39, which is less than 10 percent

Where jurisdiction is based on the maintenance of goods in a public warehouse, compliance was markedly better This can be seen in Table XXII

For all the states included in the survey there were returns filed in 39 percent of the cases California with 20 out of 25 returns filed or 80 percent did considerably better than most states It is significant however that in no state was there 100 percent filing

Table XXIII shows the incidence of noncompliance with assertions of jurisdiction based on the maintenance of a sales office in the state but having no stronger contact

Here only 44 out of 130 returns were filed for a 33 8 percent compliance percentage In most states noncompliance was the rule rather than the exception in spite of a rather strong nexus California's filing percentage of 58 8 percent, representing 10 returns filed out of 17, was one of the highest of all the states Even in California, however, the number of returns filed cannot be considered to represent close compliance

The extremely low compliance figures may be partly explained by the fact that some of the states excuse a portion of the potential taxpayers A California official has indicated that discretion is currently

TABLE XXI

NONCOMPLIANCE WITH ASSERTIONS OF JURISDICTION BASED ON SALESMEN ACCEPTING ORDERS

For each asserting state, total number of cases of a company having this activity but no stronger contact and number of these cases in which returns were filed

	Number of cases—total	Number of cases—returns filed
Alaska	10	0
Arizona	32	1
California	34	3
Colorado	26	1
Delaware	41	0
Georgia	41	1
Hawaii	16	1
Idaho	28	1
Kansas	36	0
Louisiana	43	0
Minnesota	55	0
Mississippi	38	2
Missouri	50	1
North Carolina	46	1
North Dakota	24	2
Oklahoma	30	1
Oregon	32	0
Pennsylvania	72	2
South Carolina	53	3
Utah	29	1
Wisconsin	66	1
Total	819	21

DATA Business Questionnaire II (combined samples) Doubtful cases have been resolved in favor of return filing

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I p 303 88th Congress, 2d Session, House Report No 1480 (Washington D C, 1964)

TABLE XXII

NONCOMPLIANCE WITH ASSERTIONS OF JURISDICTION BASED ON MAINTENANCE OF GOODS IN A PUBLIC WAREHOUSE

For each asserting state, total number of cases of a company having this activity but no stronger contact and number of these cases in which returns were filed

	Number of cases—total	Number of cases—returns filed
Alabama	9	3
Alaska	0	0
Arizona	10	1
Arkansas	3	0
California*	25	20
Colorado	16	6
Georgia*	17	10
Hawaii	3	1
Idaho	4	0
Kansas	7	1
Kentucky	10	3
Louisiana*	12	5
Minnesota*	12	5
Mississippi	5	1
Missouri	16	1
New Mexico	7	2
North Carolina	12	7
North Dakota	4	1
Oklahoma	7	3
Oregon*	16	10
Pennsylvania	19	3
South Carolina	9	2
Utah	11	6
Total	234	91

*States reputed to be vigorously enforcing jurisdictional assertions

DATA Business Questionnaire II (combined samples) Doubtful cases have been resolved in favor of return filing

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 305 88th Congress, 2d Session, House Report No 1480 (Washington, D C 1964)

being exercised to excuse filing by smaller corporations Part of his testimony follows [42]

"**Mr. Drabkin.** Yesterday the subcommittee heard a small manufacturer who indicated that his operations were in a large number of states, and that in 20 percent of the states in which he operated, his sales were about $12,000 gross or less He operates on a net profit, after taxes of 1 24 percent In other words, his net profit in a state may be as little as $150

How is a uniform apportionment formula going to do that man any good?

Mr. Walker. [Bruce W Walker, assistant executive officer, the California Franchise Tax Board] I would say this would be solved, and is currently being solved, by tax administrators using their discretion not to require that returns be filed

Mr. Drabkin. Your suggestion is that the taxpayer pay or not pay at his peril?

Mr. Walker. Well, as far as California is concerned, if he wrote us a letter and said, "My sales in your state were $12,000, I had no payroll, no property there," we would never do anything about it

Mr. Drabkin. Isn't he entitled to a clearer delineation of his liabilities under the law than simply administrative discretion?

[42] *Hearings Before the Special Subcommittee on State Taxation of Interstate Commerce of the House Committee on the Judiciary*, pp 170–171, 87th Congress, 1st Session, serial 20 (1962)

Mr. Walker. I do not know. I rather doubt it. If he is present in the state of California he knows the situation when he goes there. When you go into another state it is burdensome on you to know their laws; is it not?

Mr. Drabkin. If you would not impose liability on this taxpayer anyway, why are you so concerned, as you are, with the loss of his taxes? Even if a line could be drawn where this type of operation is excluded, you apparently would still be totally opposed to it.

Mr. Walker. Well, as I have indicated here, if you put $100,000 as a minimum on 86-272, we think it would be all right and, perhaps we would not argue about it, because we are concerned about the money, you see That is what we are concerned about

. . . I am simply saying, when I talk about administrative discretion, that taxation is a practical matter, and tax administrators are practical people, and they do not pursue people for very small sums of money if they can tell it is a small sum before they start after it."

Recommendations [48]

There are two changes of major importance that could be undertaken to improve the California corporation income tax and its accompanying franchise tax Both of these relate to the apportionment formula used

[48] Suggested to the authors by Joseph J Launie

TABLE XXIII

NONCOMPLIANCE WITH ASSERTIONS OF JURISDICTION BASED ON A SALES OFFICE

For each asserting state, total number of cases of a company having a sales office but no stronger contact and number of these cases in which returns were filed

	Number of cases—total	Number of cases—returns filed
Alabama	4	0
Arizona	3	1
Arkansas	1	1
California*	17	10
Colorado	7	0
Delaware	4	2
Georgia*	8	4
Hawaii	0	0
Idaho	0	0
Kansas	10	2
Kentucky	5	2
Louisiana*	1	1
Maryland	7	2
Minnesota*	11	5
Missouri	13	2
New Mexico	1	0
North Carolina	8	2
North Dakota	1	0
Oklahoma	4	2
Oregon*	3	2
Pennsylvania	13	4
South Carolina	2	0
Utah	2	0
Virginia	5	2
Total	130	44

*States reputed to be vigorously enforcing jurisdictional assertions

DATA Business Questionnaire II (combined samples) Doubtful cases have been resolved in favor of return filing

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol I, p 209 88th Congress, 2d Session, House Report No 1480 (Washington, D C , 1964)

to determine what proportion of the income of a company doing business in California and other States is subject to the California tax

1 One of the factors used in the California formula is property This factor is based on the real and tangible personal property owned by the taxpayer and used in the unitary business Property of which the taxpayer is lessee is excluded from the factor This exclusion of leased property appears to violate the principle of tax neutrality and provide a large loophole at the same time

There appears to be no economic justification for the inclusion of a plant if it is owned and the tax exemption of the same plant if it is leased Certainly this tax exemption greatly affects the "buy-or-lease" decision of the taxpayer and is at odds with the goal of tax neutrality The loophole provided by this exemption also has adverse equity implications because it can easily provide for undertaxation of those taxpayers in a position to take advantage of it and overtaxation correspondingly for those taxpayers who cannot A further disadvantage of the leased property exemption is that it represents the only substantial difference between the California property factor and the property factor contained in the Uniform Division of Income for Tax Purposes Act. California could well consider revising its property tax factor by adopting at least the principles of the Uniform Division of Income for Tax Purposes Act The wording proposed by the UDITPA is as follows

"SEC 10 The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

SEC 11. Property owned by the taxpayer is valued at its original cost Property rented by the taxpayer is valued at eight times the net annual rental rate Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals

COMMENT

This section is admittedly arbitrary in using original cost rather than depreciated cost, and in valuing rented property as eight times the annual rental. This approach is justified because the act does not impose a tax, nor prescribe the depreciation allowable in computing the tax, but merely provides a basis for division of the taxable income among the several states The use of original cost obviates any differences due to varying methods of depreciation, and has the advantage that the basic figure is readily ascertainable from the taxpayer's books No method of valuing the property would probably be universally acceptable

SEC. 12 The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the [tax administrator] may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property "

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol II, p A229 88th Congress, 2d Session, House Report No 1480 (Washington, D C, 1964)

A last, but not necessarily minor consideration is that the elimination of the leased property exclusion will according to the Franchise Tax Board slightly decrease the tax revenue realized from the corporation income tax and the franchise tax Nevertheless, elimination of the leased property exemption would improve tax neutrality and equity and represent a move toward greater uniformity

2 The sales activity standard which California employs in the sales factor of the apportionment formula is also quite unsatisfactory It is a standard which is quite difficult to apply in many cases It often makes the taxpayer quite uncertain as to the exact extent of his liability

As has been stated previously, the destination standard is quite attractive It provides an easily verifiable standard since the destination of a particular sale is seldom difficult to determine It provides the tax administrator with a means of offering lower tax bills to local manufacturers whose products are shipped out of the state At the same time it provides a means of attributing to the state income from sales destined into the state from manufacturers based elsewhere The increase in tax revenue that would result if this standard were to be adopted is also quite important Based on the recent level of revenue from this tax of $400 million, a 2½-percent increase would result in an additional revenue of $10 million annually with no increase in rates Finally, the adoption of the destination standard would be an important step toward uniformity

If PL 86-272 should be overturned by the Supreme Court, or rescinded by Congress, the destination standard might be adopted by Congress Since the driving force behind such legislation as P L 86-272 is the lack of uniformity in state laws on the subject and since the UDITPA contains the destination standard, it is quite likely that new federal legislation would favor this standard

The principle, at least, of the Uniform Division of Income for Tax Purposes Act should be adopted in California for the sales factor. The wording proposed by the UDITPA is stated as follows:

"SEC 15 The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period

SEC 16 Sales of tangible personal property are in this state if

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f o b point or other conditions of the sale, or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser

COMMENT

Sales to the United States Government are treated separately because they are not necessarily attributable to a market existing in the state to which the goods are originally shipped

SEC. 17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance."

SOURCE Committee on the Judiciary, *State Taxation of Interstate Commerce*, Report of the Special Subcommittee on the State Taxation of Interstate Commerce, Vol II, p A230 88th Congress, 2d Session, House Report No. 1480 (Washington, D C, 1964)

As Chart 3 has shown, at the present time the California standards for nexus and for "reverse nexus" are not consistent. If a particular activity on the part of a taxpayer is sufficient grounds for a jurisdictional claim, then it should also be sufficient grounds to permit a California firm to apportion out some of its income However, California firms are presently being allowed to apportion out part of their income for activities which are not considered grounds for a jurisdictional claim This inconsistency should be eliminated. This would be particularly important if the destination sales standard is adopted and P.L. 86-272 remains in effect.

APPENDIX

Areas of Substantive Nonconformity Between Federal Corporation Tax Laws and California Bank and Corporation Tax Law

SOURCE: State Franchise Tax Board, August 1964

BANK AND CORPORATION TAX LAW— INTERNAL REVENUE CODE COMPARISON

(Differences in effective dates not noted)

IRC	STATE	
11	23151, 23181, 23501	Contains federal rate State rates are different
12		Cross-references only
21	23058, 24251	Federal law applies to rate changes State law applies where the law "applicable to the computation of taxes" is different Effective date of rate changes generally specified
32		Federal allows a credit for taxes withheld on foreign corporations No withholding under state law
33		Federal law allows a credit for taxes imposed by foreign countries and U S possessions
38, 46, 47 and 48		Federal allows a tax credit up to 7 percent for investments in certain depreciable property State regulations provide for options to maintain same depreciable basis, but no credit
39		Cross-reference only
63		Federal tax is based on "taxable" income State tax on "net" income
72	24302	Federal law permits lump-sum amounts received under insurance contracts other than life to be taxed over a three-year period Also permits lump-sum proceeds to be received as an annuity State law provides proceeds are not taxable until consideration is recovered, thereafter all is taxable
74		Federal law permits certain prizes and awards to be received tax free Little if any application in the case of corporations
75		Federal law requires dealers in tax-exempt municipal bonds to amortize the premiums on tax-exempt securities Not necessary under state law as the interest on the bonds is taxable
76		Federal law exempts income except interest on obligations issued by a joint-stock land bank No specific provision, but controlled by federal law (12 U S C 931)
78		Requires domestic corporations receiving dividends from a foreign corporation which claim a foreign tax credit to increase (gross-up) their income by amount of foreign taxes paid Foreign tax credit not allowed, therefore provision is not applicable
101(a)(1)	24304, 24305	Federal law permits insurance policies to be transferred tax free to a corporation in which the insured is a shareholder or officer State law also permits transfer of endowment or annuity contracts
102		Federal law specifically exempts from income property acquired by gift, bequest, devise or inheritance No specific state provision
103		Federal law exempts interest on certain governmental obligations Section 24272 specifically taxes such interest
110		Federal law provides that if a lessee corporation is obligated to pay federal income tax with respect to rentals, tax is not included in gross income Exclusion is for federal taxes No comparable state provision
114		Permits corporation to exclude expenses attributable to sports program conducted for the Red Cross No comparable state provision
115		Federal law exempts income derived from any public utility operated by a state, etc , or from the exercise of any governmental function No comparable state provision Controlled by general law
118		Federal law excludes from income contributions to capital Same result reached under case law
121		Cross-references
162(a)		Federal specifies conditions under which expenses in connection with legislation and traveling, etc , expenses are deductible No state provision
163	24344	State law contains special rules which may limit the interest deduction

BANK AND CORPORATION TAX LAW— INTERNAL REVENUE CODE COMPARISON—Continued

(Differences in effective dates not noted)

IRC	STATE	
164		Difference in language, but deduction generally same because taxes are allowed as business expenses However Section 164(e) allows a corporation a deduction for taxes it pays on behalf of its shareholders No comparable state provision
165(d)		Federal law denies a deduction for wagering losses Probably does not apply to corporations
165(f), (g)		Federal limits capital loss deduction No limit under state law
165(h)		Federal allows certain disaster losses to be claimed in the prior year
165(i)		Cross-references
166	24348	Federal treats bad debt losses on securities as capital losses State allows unlimited deduction State requires consistency in claiming partial worthlessness of a debt, federal does not
167(e)(2) & (f)		Federal permits taxpayers to change depreciation methods without prior approval, notwithstanding a prior agreement not to change and disregard amounts as salvage value up to 10 percent of the basis of the property with respect to "Sections 1245 and 1250 property" Sections 1245 and 1250 are not applicable under this law
170(b)		Federal law permits excess charitable contributions to be carried forward five years
170(e)		Special rule regarding "Section 1245" property See Section 167(e)(2)
170(i)		Cross-references
171(c)(1)		Relates to partially taxable bonds No bonds are partially taxed under state law
172		Net operating loss deduction Not added to state law Carryback of losses to state law would jeopardize the financial rate
175	24369	Federal law restricts deduction for soil and water conservation expenditures to 25 percent of farming gross income No state limitation
176		Permits a domestic corporation to deduct payments where it has entered into an agreement to extend social security benefits to citizens employed by its foreign subsidiaries Deduction is for the "burden of the payment"
181		Allows a deduction for any unused investment credit
182		Allows a deduction for expenditures incurred by farmers for clearing land.
242		Allows a deduction for certain partially tax-exempt interest Interest is taxable under franchise tax, but is exempt under Corporation Income Tax Law.
243-247	24402	Allows a deduction for dividends received Section 24402 of state law relates to dividends, different concept
263(a)(1)(E)		Allows a deduction for expenses incurred by farmers for clearing land See Section 182
263(b)		Relates to certain expenditures for advertising and goodwill if claimed for purpose of computing excess profits tax credit Not applicable
264(a)(3) & (c)		Prohibits an interest deduction if amount equal to surrender value of insurance premiums is borrowed under a systematic plan
265	24425	Relates to amounts allocable to tax-exempt income See Section 24425
268		Federal disallows expenses incurred in connection with an unharvested crop State law contains no comparable provisions, but taxes gain as ordinary income
272		Relates to the disposal of coal and iron ores under certain contracts See Section 268
273		Federal law disallows a deduction for shrinkage in value of a life or terminable interest

BANK AND CORPORATION TAX LAW—
INTERNAL REVENUE CODE COMPARISON—Continued
(Differences in effective dates not noted)

IRC	STATE	
274		Disallows certain entertainment, travel, etc , expenses
275		Disallows deduction for certain taxes
281		Contains special rules relating to terminal railroad corporations Insofar as is known such corporations are not operating in this state
301(b)(1)(C)		Special rule relating to certain corporate distributees of foreign corporations
301(d)(3) & (e)		Relates to certain corporate distributees of foreign corporations and personal service corporations.
301(f)		Relates to distributions of antitrust stock to corporations (Christiana Corporation—DuPont distribution)
301(g)		Cross-reference
302	24455	Relates to distributions in redemption of stock Section 24455 contains similar provisions
304		Relates to the redemption of stock through use of related corporations
305(c)		Cross-reference
312(h)		Relates to earnings and profits of personal service corporations
312(j)		Increases earnings and profits of corporation in case of distribution of proceeds of loan insured by the United States
312(k)		Relates to distribution of General Motors stock by DuPont Corporation
312(l)		Relates to earnings and profits of foreign investment companies
316(b)		Special rules relating to dividends paid by certain insurance companies and personal holding companies
318(b)		Cross-reference
331(c)		Cross-reference.
333(g)		Special rule permitting corporations which will be classified as personal holding companies to liquidate on favorable tax terms
337(d)		Special rule relating to liquidation distributions made to certain minority shareholders.
338		Cross-reference
341-342		Collapsible corporation provisions No special treatment under state law (P I T only)
351(d)		Cross-references
356(f)		Cross-references
368		Cross-reference
368	24562-24563	Federal definition of a "B" reorganization is broader than state's
381		Relates to carryover of items or tax attributes from a corporation transferring its property to another corporation in liquidation or reorganization
382		Contains special limitations on carryover of net operating losses
391-395		Special rules relating to effective dates of corporate reorganization provisions
404(a)(2)		Permits a deduction for contributions to employee medical benefit plans.
421(a)(2)		See Section 24435 Change in language to conform to 1964 Revenue Act required
421(a)(3)	24621	See Section 24621 Some technical differences.
443(b)	24636	See Section 24636 Special provisions in state law to adjust for financial offset.

BANK AND CORPORATION TAX LAW— INTERNAL REVENUE CODE COMPARISON—Continued

(Differences in effective dates not noted)

IRC	STATE	
443(d)		Cross-references.
P L 86-459		Dealer Reserve Income Adjustment Act of 1960
453(d)	24670	See Section 24670 Special state provisions required because franchise tax is a prepaid tax
454(a)		Special provisions relating to U S savings bonds Not required for franchise tax purposes as interest is included in the measure of the tax.
456		Permits prepaid dues of certain membership organizations to be reported as earned.
461(e)		Disallows as a deduction interest paid by a savings and loan association or mutual savings to the extent paid or credited for a period of more than 12 months To be allowed as a deduction for proper year instead of year paid or credited.
472(f)		Cross-reference
501(c)(1)		Exempts corporations organized under act of Congress, if exempt from federal income taxes.
501(c)(3)	23701d	See Section 23701d Federal law specifically precludes charitable, etc., organizations from participating in political campaigns
501(c)(5)	23701a	Federal law exempts labor, agricultural, or horticultural organizations State law exempts same organizations unless they are cooperatives
501(c)(12)		Federal law exempts benevolent life insurance companies of a purely local character, mutual ditch or irrigation companies, etc
501(c)(14)		Exempts credit unions State-taxed under state law, but are allowed to deduct income from business done with members
501(c)(15)		Exempts certain small mutual insurance companies
501(c)(16)		Exempts corporations organized for the purpose of financing crop operations
503(c), (f)		Federal law disallows a charitable deduction if made to an organization while denied an exemption for having engaged in a "prohibited transaction"
512(b)(6)		Relates to the net operating loss deduction.
513(b)		Federal law provides that unrelated business tax imposed on trusts includes any trade or business carried on by the trust or a partnership of which it is a member
514		See Sections 23734a to 23735b Some difference in language
515		Allows a credit for foreign taxes paid by taxable exempt organizations
521-522	24404-24406	Relates to federal treatment of farmers' cooperatives Tax treatment differs under state law, see Sections 24404 to 24406, inclusive
526		Exempt receipts of shipowner's protection and indemnity associations
531-537		Imposes an additional tax on corporations accumulating surplus to avoid tax
541-547		Imposes a special tax rate on personal holding companies
551-558		Special provisions regarding foreign personal holding companies
561-565	24402	Special rules relating to dividends eligible for the dividends paid deduction State law differs, see Section 24402
581-584		Rules of application to banking institutions Banks taxed in a different manner under state law
591-595		Special provisions relating to mutual savings banks, savings and loan associations, etc Taxed in the same manner as banks under state law.
601		Allows a special deduction for bank affiliates.

BANK AND CORPORATION TAX LAW—INTERNAL REVENUE CODE COMPARISON—Continued

(Differences in effective dates not noted)

IRC	STATE	
611-613, except 613(c)	24834	Provides for the depletion deduction State provisions are based on 1939 Code provisions See Sections 24831 to 24835, inclusive
614		Relates to the treatment of property in the case of oil and gas wells
615	24837	Federal law permits a deduction of up to $400,000 incurred while exploring for ores or minerals Under Section 24837 deduction is $75,000 for year for a maximum of four years
621		Permits payments to encourage exploration, development, and mining for defense purposes to be excluded from gross income
631		Treats gain or loss in the case of dispositions of timber, coal, or iron ores as a capital gain Capital gain provisions have not been extended to franchise tax law
632		Limits federal income tax to 30 percent of the selling price when oil or gas properties are sold
732		Relates to the basis of partnership property distributed in kind
801-842		Special rules applicable to life insurance companies Life insurance companies are not subject to the franchise tax
851-858		Special rules applicable to regulated investment companies and real estate investment trusts Section 23701m exempts diversified management companies No provisions regarding real estate investment trusts
861-912	25101	Relates to the determination of sources of income, foreign corporations, and income from sources without the United States Section 25101 is the franchise tax allocation section Provisions, however, are different
921-922		Special provisions relating to western hemisphere trade corporations
931-934		Provisions regarding income from possessions of the United States.
941-943		Provisions regarding China Trade Act corporations
951-964		Provisions regarding income of controlled foreign corporations
970-972		Provisions regarding export trade corporations
1014		Relates to the basis of property acquired from a decedent
1016(a)(2)		Federal law does not require basis of property to be decreased by allowed depreciation unless a tax benefit results therefrom
1016(a)(3)		Federal law specifically requires basis of property to be reduced for depreciation while owned by an exempt organization
1018		Relates to adjustment of capital structure in connection with proceedings under the Bankruptcy Act occurring before September 22, 1938
1020		Relates to an election in respect of depreciation, etc , allowed before 1952
1021		Provides that the basis of annuity contracts shall not be less than zero See Section 72
1022		Permits basis of stock in a foreign personal holding company to be increased by amount of federal estate tax
1023		Cross-reference
1036(b)		Cross-references
1037		Permits certain U S obligations to be exchanged tax-free
1051	24961	Relates to the basis of property acquired from an affiliated corporation during a period of affiliation
1055		Relates to the treatment of redeemable ground rents
1056		Cross-references

**BANK AND CORPORATION TAX LAW—
INTERNAL REVENUE CODE COMPARISON—Continued**

(Differences in effective dates not noted)

IRC	STATE	
1081-1083	24981, 24988	Relates to the basis of stock or securities in cases involving an order of the S E C Sections 24981 and 24988 contain similar but less detailed rules
1111		Relates to DuPont distribution (Christiana Corporation)
1201-1250		Provisions relating to capital gains and losses Capital gains and losses are taxed in the same manner as other items of income under state law
1311-1315	26073c	Provisions relating to the mitigation of the effect of limitations and other provisions Section 26073c contains related provisions
1321		Provisions relating to involuntary liquidation of Life inventories Applied to years ending before January 1, 1955
1341-1342		Provisions which permit the tax to be recomputed where taxpayer recovers or restores substantial amount held by another or held under claim of right
1346		Provisions relating to time for taxing recovery of unconstitutional federal taxes
1347		Relates to amount of tax imposed where claims were filed against United States before January 1, 1958, involving acquisition of property
1361		Permits certain unincorporated business enterprises to elect to be taxed as corporations
1371-1377		Permits certain corporations to elect to be treated for tax purposes somewhat as partnerships
1381-1388	24273 5 24404-24406	Provisions relating to patronage dividends declared or paid by cooperatives State provisions are in Sections 24404 to 24406, inclusive and 24273 5
End of substantive taxing provisions		

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CAPITAL GAINS, DEATH AND GIFT TAXATION

A Major Tax Study

Part 11

Published by the
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APRIL 1965

PUBLISHER'S NOTE

This report on capital gains, death and gift taxation is the 11th in a series of studies to be published this interim by the Committee on Revenue and Taxation The recommendations in this report are those of the researcher and should not be construed as representative of the views or decisions of the committee The committee recommendations will be made in due course.

ABOUT THE AUTHOR

This report on capital gains, death and gift taxation was prepared by Dr. Harold M Somers, Chairman of the Department of Economics at U.C L A Dr. Somers received his Ph D in economics from the University of California, Berkeley, and his LL B from the Law School of the State University of New York at Buffalo

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Compendium, issued by the House Ways and Means Committee Among his contributions to professional publications since 1950 are.

"A Theory of Income Determination," *Journal of Political Economy*, December 1950

"Government Expenditures and Economic Welfare," *Revue de Science et de Législation Financière*, January 1951

"What Generally Happens During Business Cycles—and Why," *Journal of Economic History*, summer 1952

"The Place of the Corporation Income Tax in the Tax Structure," *National Tax Journal*, September 1952

"'Cost of Money' as the Determinant of Public Utility Rates," *Buffalo Law Review*, spring 1955

"Estate Taxes and Business Mergers," *Journal of Finance*, May 1958

"Reconsideration of the Capital Gains Tax," *National Tax Journal*, December 1960

"Theoretical Framework of Sales and Use Taxation," *Proceedings of the Fifty-fourth National Tax Conference: 1961* (National Tax Association)

"Capital Gains Tax Significance of Changes in Holding Period and Long-term Rate," *Vanderbilt Law Review*, June 1963

"Economic Implications of an Income Tax Reduction," *Rivista Internazionale di Scienze Economiche e Commerciali*, April 1964

"Problemas fiscales de países en desarrollo" ["Fiscal Problems of Developing Countries"], *Impuestos*, April 1965

Dr. Somers prepared an earlier study in this series, *The Sales Tax*, coauthored one on *Taxation of Corporate Income in California* with David R Doerr and contributed to one on *Taxation of Property in California* by David R Doerr and Raymond R Sullivan

Dr Somers was assisted in the preparation of this report and the earlier studies by Joseph J Laume, who is a teaching assistant and Ph D candidate at U C L A Mr Laume was previously a member of the research staff of the Bureau of Business and Economic Research at the University of Nevada and has an M A degree from the latter institution

CAPITAL GAINS, DEATH AND GIFT TAXATION

by

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I. INTRODUCTORY NOTE

There are a great many "taxable events" that provide the occasion —or perhaps the excuse—for taxation It may be the manufacture or sale of a commodity, as in excise or sales taxation; it may be the accretion of economic power, as in income taxation, it may be the gratuitous transfer of wealth, as in estate, inheritance and gift taxation, or it may be the realization of an appreciation in one's assets, as in capital gains taxation In this study we are concerned primarily with taxes on the gratuitous transfer of wealth at time of death or gift We necessarily become involved with the capital gains tax because some of the assets transferred may have appreciated in value since they were originally acquired The capital gains tax is technically part of the income tax, yet it is essentially a form of taxation of wealth, hence resembles the gratuitous transfer taxes in that respect Accrued capital gains at time of death and at time of lifetime gift present a common problem. In neither case has there been an actual sale or "realization" Under present law, the capital gain that has accrued on an asset transferred at death is not taxed as a capital gain but the asset is put in at its full value at death for California inheritance tax purposes In the case of a gift between living persons, there is no capital gains tax at the time of gift but the receiver of the gift must use the donor's basis (or market value at time of gift, if lower) whenever he sells the property Thus capital gains, death and gift taxation are closely intertwined

The California inheritance tax is described in Chapter II and the incidence and effects of death taxes generally are considered briefly in Chapter III. Inheritance tax provisions in the various states are outlined in Chapter IV. A revision of the discount period and the grace period is considered in Chapter V. The taxation of capital gains at death is covered in Chapter VI An excellent historical review of the California inheritance and gift tax law, which was prepared by Charles J. Barry, Chief Inheritance Tax Attorney, State of California, is included as an Appendix which begins on page 61

II. TAXATION OF GIFTS AND INHERITANCES IN CALIFORNIA

California's inheritance and gift taxes impose rates ranging from 2 to 24 percent on the market value of the gift or inheritance, with many significant exemptions These taxes are administered by the State Controller and contribute directly to the General Fund of the state. In 1962–63, they together constituted 5 0 percent of the General Fund revenue and 3 5 percent of total state revenue They play a slightly more important role in California's revenue system than in the average of all other states, having contributed 2 8 percent of California's total revenue in 1961–62 while the average of all states using death and gift taxes was 2 2 percent The inheritance tax yielded $86 8 million and the gift tax yielded $5 6 million in 1962–63 [1]

Background

California adopted an inheritance tax in 1905 patterned to a large extent on a Wisconsin law of 1903 Inheritance taxes go far back into antiquity several hundred years before the Christian era and were well

[1] See *California's Tax Structure 1964*, Part 1, pp 18–28 (Assembly Interim Committee on Revenue and Taxation, Sacramento, January 1964)
This summary is derived from testimony of Charles J Barry, Chief Inheritance Tax Attorney, State of California, before Assembly Interim Committee on Revenue and Taxation, Hon Nicholas C Petris, Chairman, and discussion by Assemblymen Petris, Tom Carrell, and William Stanton, at a hearing held at Metropolitan Oakland International Airport, October 3 and 4, 1964, as reported in *California's Tax Structure 1964*, cited above

established in Egypt They were found in Rome, throughout Europe in the modern era and appeared in the United States at an early date. The first state of the United States to adopt such a tax was Pennsylvania in 1820 The first well-planned and workable inheritance tax law appeared in Wisconsin in 1903 It provided initial exemptions for widows and children By 1952 all of the states had adopted some form of death tax Nevada, however, dropped its tax in 1925 The death taxes are of two forms on the estate itself or on the inheritances In some states the rates are just sufficient to pick up the credit allowed under the federal estate tax law through Section 2011(b) of the Internal Revenue Code

The Present Tax in California

The 1905 California law has served as the model for all subsequent death tax laws in this state It was codified in 1943, effective July 1, 1945

California's inheritance tax is collected from the transferee who "is strong and healthy, and ready and willing to battle "[2] This is because the California tax is on the privilege of receiving property on the death of another, as opposed to those death taxes that are on the privilege of transmitting the property The latter type is the estate tax where the number and relationship of the beneficiary is wholly immaterial; and, aside from a spouse or a charity, it makes no difference who the beneficiaries are or how many there are in an estate, the tax is identical. For example, if a man died and left 10 children, the estate tax would be exactly the same as though he left his whole estate to one stranger in blood, such as a friend of his Under the California type of inheritance or succession tax, the various beneficiaries pay the tax out of their respective shares Each beneficiary receives his assigned exemption and the rates are calculated as per schedule See Table 1

Relation to Federal Estate Tax

The initial exemption for the Federal Estate Tax Law is $60 thousand If the estate nets less than $60 thousand, there is no federal estate tax, but there could be a California inheritance tax because the exemptions under the inheritance tax law for each individual are lower than the $60 thousand For example, a minor child gets a $12 thousand exemption, an adult child or spouse or a grandchild a $5 thousand exemption The further away they get the less the exemption and the higher the tax But with an estate tax, there is one exemption and the rates are applied to the net estate after that exemption If you give it all to one person, he would just have a single exemption in California The size of the exemption would depend upon his relationship If he were a class A beneficiary, it would probably be $5 thousand, a class B would be $2 thousand If he is no relation, the exemption would be $50 with 10 percent as the rate from zero to $25 thousand The top rate is 24 percent But there is an interesting feature in comparing the federal estate tax with the California inheritance tax If a man were left a $10 thousand bequest out of an estate of that amount, he would be paying no estate tax Since the whole estate is less than $60 thousand there would be no estate tax, and there would be no appor-

[2] Barry, *op cit.*, p 58.

TABLE 1

CALIFORNIA INHERITANCE TAX—RATES AND EXEMPTIONS
Effective as to Decedents Dying After 12:01 a.m. September 15, 1961

CLASSIFICATION			EXEMPTION	Rate of Tax on amount left after deducting exemption from $25,000 00	$25,000 to $50,000	$50,000 to $100,000	$100,000 to $200,000	$200,000 to $500,000	$300,000 to $500,000	Over $500,000
A	HUSBAND or WIFE	Community Property	All Exempt*							
		Decedent's Separate Property	One-half of Separate Property Plus $5 000 00	2%	3%	4%	7%	9%	9%	10%
A	Minor Child—Including Adopted		12,000.00	2%	3%	4%	7%	9%	9%	10%
A	Adult Child Grandchild (Adopted or Acknowledged) Parent—Grandparent		5,000.00	2%	3%	4%	7%	9%	9%	10%
B	Brother—Sister—Nephew—Niece Son-in-Law—Daughter-in-Law		2,000.00	6%	10%	13%	15%	15%	17%	18%
C	Uncle—Aunt—Cousin		500.00	7%	12%	15%	15%	15%	18%	18%
D	Strangers in Blood—including Brothers- and Sisters-in-Law—Fathers- and Mothers-in-Law		50.00	10%	15%	18%	18%	18%	22%	24%

It is unlawful (1) For anyone to enter a safe deposit box after the death of any person who had a right of access to that box, during lifetime, without first having it examined by a representative of the County Treasurer's Office
(2) For anyone to use a joint bank account or to transfer any personal property held in joint tenancy where one of the joint tenants is deceased without first obtaining a release from the County Treasurer's Office

*If a decedent husband gives his wife a Life Estate or Power of Appointment in his half of the community property, said half is subject to tax at the rates indicated with a $5,000 exemption allowed.
SOURCE Alan Cranston, State Controller

tionment of a tax, because there is no tax prorated to this $10 thousand beneficiary. But if the decedent were worth a million dollars, that $10 thousand bequest is dischargeable with a prorated federal estate tax of $3,257.[3]

Prior to 1959, under the California law, from about 1921 to 1959, the state of California allowed a deduction against the estate for federal estate taxes paid, but that was repealed in 1959, and now there is no federal estate tax deduction allowable under the California law. This is a tax on a tax but it has been upheld by the courts of this state, *Estate of Fabris* in 1962 In the beginning, there was no allowance for the federal estate tax, and until 1921, there was no provision in the Inheritance Tax Law at all for any deduction, even for funeral expenses. They were allowed on the basis that it was a succession tax, and beneficial succession was the measure of the tax, but there was no provision in the law, and it was not until 1921 that any provision was put in the law to permit deductions to be allowed [4]

Details of California Law

The California law is broken down first according to whose estate comes under the inheritance tax; then what property is taxable and what transfers are taxable, then what deductions are allowed Next, what exclusions are allowed under the law, for example, community property exclusions. And then the computation of the tax And, of course, the payment features of it· the payment of the tax to the county treasurer, the discounts and the refund provision.[5]

A. PROPERTY TAXABLE

Jurisdiction to tax depends upon residence, i e., domicile of the decedent in California or the presence of real property or tangible personal property in this state. All real property in the state of California is subject to tax under the law, irrespective of the domicile of the owner. It is within the borders of the state The law also taxes all tangible personal property within the borders of this state, irrespective of domicile. With respect to intangible personal property—bank accounts, securities, promissory notes—these depend upon the residence or domicile of the deceased If the decedent were domiciled in another state, California would not attempt to tax a bank account that he had on deposit in a California bank, or attempt to tax stock that he held in a California corporation Other states accord a like exemption to California residents with respect to intangible personal property Residence is not defined in the statute, but it is equated with domicile for the present purpose. The laws of Oregon and Washington do not use the word resident or domicile They use the word inhabitant The law is nicely vague in this area, but the courts have tied it down to domicile [6] In a state like California, there are quite a number of disputed domicile cases These cases could result in a double taxation, that is, taxation by two different states. We have provisions in our law to preclude this by virtue of a right to compromise a disputed domicile case, and also

[3] Barry, *op cit*
[4] *Ibid*
[5] *Ibid*
[6] *Ibid.*

specific provisions for arbitration We have never utilized the arbitration provisions, but they are there, nevertheless [7]

If a decedent is a nonresident of the United States, the law says California will tax any intangible personal property in the state of California. The state will also tax stock in a California corporation, which the 1963 session defined precisely, and any other tangible personal property. The law exempts bank deposits and deposits in the savings and loan associations belonging to a deceased nonresident of the United States, so long as the accounts are not used in connection with a business conducted in whole or in part in California.[8]

B. TRANSFERS TAXABLE

Any transfer by will or the laws of succession is subject to the inheritance tax law. Probate homesteads, family allowances, and civil code homesteads, i e , the declared homesteads, are taxable If this were all, many transfers would escape tax. For example, inter vivos transfers, a deed of gift, and blanket gift from a parent to a child are subject to tax so long as the transfer was made without valuable and adequate consideration equal in money or money's worth; and the courts say partial consideration in such instances is not consideration. The law taxes any transfer made in contemplation of death. California is one of the relatively few states that defines the term, and contemplation of death means in California with a "testamentary intent or a testamentary flavor." [9] It does not mean a deathbed transfer as it does in some jurisdictions It means a transfer that would be a substitute for testamentary disposition including a transfer with a reserved life estate. For example, a parent deeds his home to the child, reserving to the grantor a life estate. This type of a transfer is taxable under the California Inheritance Tax Law.

C. JOINT TENANCIES

Some 75 percent to 80 percent of all homes in California are held in joint tenancy, and the law taxes the termination of a joint tenancy by the death of one of the joint tenants on what is called a contribution theory. Code Section 13671 states that on a death of one of two joint tenants, the whole of the joint tenancy property is taxable, except that which the survivor may prove originally belonged to him, and never came from the deceased. This is satisfactory in many ways but with respect to a husband and wife difficulties arose, so the Legislature in 1955 amended the law to provide that a joint tenancy held by a husband and wife which had its source in community earnings would be treated for inheritance tax purposes as community property In other words, if the home was bought with community earnings, on the death of either husband or wife, it would be treated as community property, and since 1961, all community property passing outright to the survivor is free of inheritance tax. There are also such things as three-way joint tenancies, and there was created by the Legislature in 1961 a new type of property which was acquired in some state other than California which would have been community property had it been acquired in California. With respect to that, if it is held in joint tenancy, the

[7] Barry, *op. cit.*
[8] *Ibid.*
[9] *Ibid.*

statute provides that it shall be considered as though each was a contributor of one-half [10]

D. POWERS OF APPOINTMENT

As for powers of appointment, the Legislature from time to time has changed its position At one time it taxed a creation of a power of appointment to the donee of the power Subsequently, the law was changed to tax the exercise of the power by the donee Since 1935 California has been taxing the creation of the power of appointment again, but not the exercise of the power of appointment on the death of the donee. For example, A gives to B an estate for life with a power to say how that property shall go on the death of B, the donee B, the donee, exercises the power at his death, and gives the property to X California does not tax that last transfer "We tax the first one but not the last, although the donee of the power has what the cases and the taxwriters say can amount to absolute ownership" [11] He has the enjoyment of the property during his life and the right to say who shall have it after his death "This is an area that should be explored in the future" [12] Powers of appointment are not as popular as joint tenancies nor as popular as ordinary life estates, but they have become more important since 1954 when the Internal Revenue Code was amended With the marital deduction in the Federal Estate Tax Law, if it is separate property and the husband dies first, assume that he has created Trust A and Trust B the latter being the so-called marital deduction trust He has to give the surviving spouse the power of appointment in Trust B in order to gain the advantage of the marital deduction under the federal law to exclude half of the property from the estate tax, that is, the property in Trust B The use of the power of appointment has accordingly grown considerably in the last eight or nine years In large estates, the people who have a great deal of property are able to avail themselves of the services of estate planners who will arrange their affairs so as to minimize the tax "There is nothing evil in this but there are some loopholes that come up" [13] In the Federal Estate Tax Law, it is provided not alone that the exercise of the power of appointment be taxed on the death of the donee, but possession of the power as well. If the donee had the power at the time he died, whether he exercised it or not, the transfer is subject to tax [14]

E. INSURANCE

The next type of property transfer which is subject to tax is insurance. It has to be genuine insurance, not a single premium policy that is brought by, say, an elderly person in conjunction with an annuity contract The risk-sharing feature must be present The federal law a few years ago eliminated the payment-of-premiums test The state looks to incidents of ownership If the decedent has the incidents of ownership, we considered the transfer taxable We have not in our law eliminated the payments-of-premiums test But if the premiums were paid with community earnings and the spouse is the beneficiary

[10] Barry, *op cit*
[11] *Ibid*
[12] *Ibid*
[13] *Ibid.*
[14] *Ibid*

of the policy of insurance, the community exclusion applies to it, and, of course, as it stands now it is not taxable There is in the state law a $50 thousand insurance exemption There was up until 1942 a $40 thousand insurance exemption in the federal law. At that time, it was repealed. California did not repeal its $50 thousand insurance exemption.[15]

The payment-of-premiums test relates to the continuance of paying the premiums by the insured The insured transfers the policy to the beneficiary, for example, and then each continues to pay the premiums on it Formerly, if he continued to pay the premiums under the federal law, it was considered that he was still the owner of the insurance, and it was still subject to tax But if the policy was transferred, or, if, for example, the wife took out the policy of insurance on her husband's life, and she paid all premiums, he was not the owner of the policy, and it was not something that was passing from him to her. This was her own investment If it was a partnership, a beneficiary could well be an owner of the policy, but if it were a corporation and the corporation took out the policy of insurance on the life of its president or its general manager and the corporation paid all the premiums and the proceeds were payable to the corporation as beneficiary, then it would not be subject to tax. If it were payable to the wife of the corporation president and if the decedent were not the owner of it, then it would not be subject to tax In other words, the corporation pays it and the wife, or the estate, is the beneficiary "But we have to be careful here because if it goes into the estate proper, the decedent's estate, and is subject to the terms of his will and subject to the claims of creditors, it does not qualify for the exemption, and it would be taxable But if it goes directly to the beneficiary—if he were not the owner of the policy—it would not be subject to tax If he were the owner of the policy, then the $50 thousand exemption would apply "[16] If a partner takes out insurance to pay off his equity in the business and if the proceeds go into the partnership as of the moment of death, his interest has been enriched to that extent and would be subject to tax[17]

Gift Tax

The gift tax rates and specific exemptions in California (as distinguished from "exclusions") are the same as under the inheritance tax. In the federal law, gift tax rates are lower than estate tax rates[18] and a different scheme of exemptions applies.

Further details of the California taxes are provided in the Appendix.

[15] Barry, *op cit*
[16] *Ibid*
[17] *Ibid*
[18] The disparity between federal estate and gift tax rates may be criticized as being in violation of tax neutrality, but see Robert N Miller, "The Federal Gift Tax Rate Revision," *American Bar Association Journal*, April 1965, vol 51, pp 333–336 For a useful summary of federal estate and gift tax provisions see Alfred D Youngwood and John W Galanis, "Estate and Gift Taxation in the United States of America," pp 83–104 of G S A Wheatcroft (ed) *Estate and Gift Taxation A Comparative Study* (London Sweet and Maxwell, 1965)

III. INCIDENCE AND EFFECTS OF DEATH TAXES*

Inheritance and estate taxes have the peculiarity that they are not paid by the person who earns the income or accumulates the wealth out of which the tax is paid This fact requires a different approach to the question of incidence and effects from that employed in the discussion of other taxes.

There is an interesting difference of opinion on the shiftability of inheritance and estate taxes in the traditional literature on the subject. Two well-known authorities may be cited as a basis for discussion. Seligman says, "A tax on inheritance or bequests cannot be shifted, for evidently there is *no* one to whom it could be transferred The ulterior effects of which some writers speak, such as the influence of inheritance taxes on the accumulation of capital, do not really illustrate the process of shifting. *They are, moreover, of such doubtful validity that they may be neglected* "[1] Brown claims that the amount of capital might decrease because of lessened motive for accumulation and that, "so far as such a tax did operate to decrease the volume of saving and raise interest rates, its *burden* would be upon laborers or landowners or both and not upon owners or inheritors of capital."[2]

* Derived, with revision, from Harold M Somers, *Public Finance and National Income*, pp 291–295 (Philadelphia Blakiston Company, 1949) and "Estate Taxes and Business Mergers", *Journal of Finance*, May 1958.

[1] E. R. A. Seligman, *Shifting and Incidence of Taxation*, p 371 (New York: Columbia University Press, 1921). [Italics added]

[2] H. G Brown, *Economics of Taxation*, p. 209. (New York: Henry Holt and Co., 1924). [Italics added]

In the narrowest sense any impact on the accumulation of capital does not illustrate the process of shifting. Whether an analysis of such impact is of "doubtful validity," however, will be considered below. The fact that interest rates may rise does not remove the *burden* from the inheritors of capital in any substantial degree The inheritors give up a capital sum; they may regain some of their loss through higher interest rates, but any such effect would benefit the inheritors to only a small extent relative to the capital loss All interest receivers share part of the gain resulting from the capital loss borne by the inheritors alone. When it is considered that the extent of any rise in interest rates would depend on prevailing credit conditions and would generally be small, it seems reasonable to conclude that any shifting of the tax by the inheritors through higher interest rates would be negligible.

The economic effects of inheritance and estate taxes are peculiar in that in most cases, at any rate, the inheritance is in the nature of a windfall, hence we cannot attribute to the tax any insidious effect on economic motives of the recipient Nevertheless, effects may result from two considerations. (1) the tax reduced the amount received by the inheritor and (2) the anticipation of the necessity of paying the tax may have influenced the decedent in various ways.[3]

An ingenious device for reducing some of the arbitrary effects of inheritance and estate taxes has been proposed by Dr William Vickrey. Under this plan the tax would be cumulative and would be graduated according to the difference in age between donor and recipient.[4] Another interesting suggestion is that of Eugenio Rignano who proposed that that part of an estate that had in turn been inherited by the legator would be taxed more heavily than that part which had been built up by the legator himself.[5] Finally, there is the plausible suggestion of Professor W. J. Shultz that there be a "vanishing" exemption. Under this plan a large estate would have a smaller absolute exemption than a small estate [6] These proposals could readily be adapted to California's inheritance tax scheme.

It is reasonable to assume that some of the money inherited will be used for consumption purposes and some will be saved. The supply of "capital" is therefore diminished by the tax insofar as it absorbs savings that might have been invested The basic study of these effects was undertaken in Great Britain in 1927. There the Colwyn Committee found considerable disagreement but expressed the opinion that agricultural landowners and private businesses experienced inconvenience and hardships, and that in some cases considerable damage was done Public companies, moreover, were affected insofar as the supply of

[3] The area of estate planning (including investment decisions made with a view toward death tax consequences) appears to be a major exception to the generalization that tax considerations do not dominate the activities of high-income individuals See James N Morgan, Robin Barlow and Harvey E Brazer, "A Survey of Investment Management and Working Behavior Among High-Income Individuals" Paper presented at seventy-seventh annual meeting of the American Economic Association, Chicago, Illinois, December 1964 (To appear in *American Economic Review*, May 1965)

[4] William Vickrey, *Agenda for Progressive Taxation*, Chapters 8 and 9 (New York: Ronald Press, 1947)

[5] See Eugenio Rignano, *The Social Significance of the Inheritance Tax*, p 115 (New York Alfred A Knopf, 1924) Tax concessions for successive estates in the California inheritance tax law and the federal estate tax law tend to act slightly in the opposite direction

[6] See William J Shultz, "Death Tax Exemptions," Chapter 9 in *Tax Exemptions* (New York: Tax Policy League, 1939).

capital from the public was decreased.[7] The Colwyn Committee also says of both inheritance and income taxes that "both forms of taxation alike prevent a certain amount of new capital from coming into being, the ultimate effect depending very largely on the direction of government expenditure".[8] Some years ago Colm and Lehmann estimated the reduction in savings in the United States resulting from the 1936 Revenue Act rates on personal estate and gift taxes:[9]

$130–$170 million—compared with 1932 rates
300– 330 million—compared with 1928 rates
350– 390 million—compared with no tax

These are substantial magnitudes for that time

The federal estate tax and California's inheritance tax undoubtedly have an unfavorable effect on the availability of capital for investment purposes. The government (federal or state) could, of course, use the funds to augment the supply of savings Examples would be veterans' and housing loans of various sorts under either federal or state auspices.

The deterrent to capital formation is not necessarily of the same magnitude as the reduction in "savings" in any case The availability of credit from the banking system and other sources may be ample[10] The possible effect which the anticipation of the tax may have on the accumulation of capital should also be taken into account It is conceivable that a person would be so spiteful of the state or federal government as to reduce the amount of wealth he will pass on to others (either while he is alive, i e through gifts, or after his death) but it is also conceivable that consideration for his heirs will make him more eager than ever to increase the size of his estate We have no reason to assume any net effect in either direction.

The direct impact of inheritance and estate taxation on business operations is deferred to Part VI, below, where it is discussed in the context of the taxation of capital gains at death

[7] Report and Appendices of the Committee on National Debt and Taxation (Colwyn Report), p 172 (Great Britain, 1937)
[8] *Ibid*., p 198
[9] Gerhard Colm and Fritz Lehmann, "Economic Consequences of Recent American Tax Policy," *Social Research*, 1938, Supplement I, p 33
[10] This is one instance of the necessary interrelation of tax and credit policies See, for example, James R Schlesinger, "A Suggested Framework for Monetary-Fiscal Analysis," *Review of Economics and Statistics*, February 1961, pp 44–50

IV. INHERITANCE TAX PROVISIONS IN THE VARIOUS STATES

The state inheritance tax laws vary widely in their major provisions. Some of the most important of these provisions are summarized in the following tables for purposes of comparison

Application of the Tax

Table 2 illustrates some of the important provisions regarding application of the inheritance tax in the various jurisdictions

California is one of 25 jurisdictions out of the 52 considered that give a full exemption to nonresident estates With the exception of Pennsylvania, where no exemption is allowed, the other jurisdictions apportion the exemption Legacies to nonresident charities are taxable in California, with certain exceptions, which is the case in thirty other jurisdictions as well California's taxation of assets transferred under power of appointment is followed in 48 of the other jurisdictions Thirty-two jurisdictions, including California, make allowance for property recently taxed Tax on remainder interests can be deferred in California as it can in twenty-seven other jurisdictions

Deductibility of the Federal Estate Tax and Inheritance Taxes Paid to Other Jurisdictions

In California there is, in effect, a tax on a tax because federal estate tax is not deductible and neither are inheritance taxes paid to other

TABLE 2

APPLICATION OF THE INHERITANCE TAX IN VARIOUS JURISDICTIONS

QUERIES	*Is exemption given nonresident estates in full or apportioned?	Are legacies to nonresident charities taxable?	Are assets transferred under power of appointment taxable?	Is allowance made for property recently taxed?	Can tax on remainder interests be deferred?
Alabama	Apportioned	No	Yes	Yes	No
Alaska	Apportioned	No	Yes	No	Yes
Arizona	Apportioned	No	Yes	Yes	No
Arkansas	Apportioned	No	Yes	Yes	No
California	Full	Yes [1, 2, 4, 7]	Yes [8]	Yes	Yes [13]
Colorado	Apportioned	Yes [1, 2, 7]	Yes	Yes	Yes [13]
Connecticut	Full	Yes [1, 13]	No	No	No
Delaware	Full	No	Yes	Yes	No
Dist of Columbia	Full	No	Yes	Yes	Yes [13]
Florida	Apportioned	No	Yes	Yes	No
Georgia	Apportioned	No	Yes	Yes	No
Hawaii	Full	No	Yes	Yes	Yes [10]
Idaho	Full	Yes [1, 2]	Yes	Yes	Yes [10]
Illinois	Full	Yes [1 16]	Yes	No	No
Indiana	Full	Yes [1 2 16]	No	No	Yes
Iowa	Full	Yes [4, 7]	Yes	Yes	Yes [11]
Kansas	Apportioned	Yes [2 5, 4, 7]	Yes	Yes	Yes [10]
Kentucky	Apportioned	No	Yes	Yes	No
Louisiana	Full	Yes [1]	No	No	No
Maine	Apportioned	Yes [1, 2 7]	Yes [8 17]	No	Yes [10]
Maryland	Full	Yes [2 5 7]	Yes [6]	No	Yes
Massachusetts	Full	Yes [2, 16]	Yes [8]	No	Yes
Michigan	Full	Yes [4, 7]	Yes	No	Yes [11]
Minnesota	Full	Yes [1 2, 7, 16]	Yes	Yes	Yes [12]
Mississippi	Apportioned	No	Yes	Yes	No
Missouri	Full	Yes [1, 7]	Yes	No	Yes [10]
Montana	Apportioned	Yes [1, 2, 7 16]	Yes	Yes	Yes [10]
Nebraska	Full	Yes [1, 2, 7]	Yes [8]	Yes	Yes [13]
New Hampshire	Full [14]	Yes [1, 7]	Yes [8]	No	No
New Jersey	Full [15]	Yes [15]	Yes [8]	No	Yes [13]
New Mexico	Apportioned	Yes [1 2 4, 7]	Yes	No	No
New York	Apportioned	No [1]	Yes	Yes	Yes [10]
North Carolina	Apportioned	Yes [2, 7]	Yes	Yes	No
North Dakota	Apportioned	No	Yes	Yes	No
Ohio	Apportioned	Yes [2, 7]	Yes [9]	No	Yes [13]
Oklahoma	Apportioned	Yes [1 7 16]	Yes	Yes	No
Oregon	Full	Yes [3, 7]	Yes	Yes	Yes [10]

TABLE 2—Continued

APPLICATION OF THE INHERITANCE TAX IN VARIOUS JURISDICTIONS

QUERIES	*Is exemption given nonresident estates in full or apportioned?	Are legacies to nonresident charities taxable?	Are assets transferred under power of appointment taxable?	Is allowance made for property recently taxed?	Can tax on remainder interests be deferred?
Pennsylvania	None allowed	No	Yes [6]	No	Yes
Puerto Rico	Full	No	Yes	Yes	No
Rhode Island	Apportioned	Yes [1]	Yes	No	No
South Carolina	Apportioned	No	Yes	Yes	No
South Dakota	Apportioned	Yes [1]	Yes	No	Yes [12]
Tennessee	Apportioned	Yes [1, 19]	Yes [6]	Yes	Yes [12]
Texas	Full	Yes [1, 2, 7]	Yes	Yes	No
Utah	Full	No	Yes [6]	Yes	No
Vermont	Full	No	Yes [9]	No	No
Virginia	Apportioned	No	Yes [2]	Yes	Yes
Washington	Full	No	Yes	Yes	Yes [13]
West Virginia	Apportioned	Yes [7]	Yes	Yes	Yes
Wisconsin	Apportioned	Yes [2, 6, 18]	Yes	Yes	No
Wyoming	Full	Yes [1, 2, 7]	Yes [6]	No	Yes [13]

*This does not refer to taxable status of intangible personal property of nonresident decedents
[1] Unless the other state has a reciprocal exemption provision
[2] Unless used within the state
[3] Unless principally used within the state
[4] Unless existing under the laws of the U S
[5] Unless to veterans' organizations
[6] Unless to American Red Cross
[7] Unless the other state does not impose a death tax in respect to a charity of this state
[8] Taxed to the estate of the donor
[9] Taxed to the estate of the donor as to nonresidents
[10] If bond is filed
[11] If bond is filed where interest consists of personal property
[12] If contingent and the value is undeterminable
[13] Same, provided bond is filed
[14] Full exemption as to real property, no exemption as to personal property
[15] If property is specifically devised, apportioned if not specifically devised
[16] Unless operating under the laws of the state
[17] Taxable in estate of donee if an unconditional general power
[18] Unless other state grants a like, equal or similar exemption
SOURCE *Inheritance, Estate and Gift Tax Reporter*, State Vol 4, Commerce Clearing House, Inc Chicago, 1964
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states, with the exception that taxes paid other states on the transfer of stock are deductible in computing the value of such stocks. Twenty-one other states also do not permit the deduction of the federal estate tax. See Table 3.

Discount and Interest Provisions

To encourage early payment of inheritance taxes, many of the states have discount provisions in their laws The amount of the discount and the time period after death that the discount applies vary widely from one state to another. California and two other states provide for a 5 percent discount within six months of death. Discounts of varying amounts with periods of from 3 to 18 months are given by 10 other

TABLE 3

DEDUCTIBILITY OF THE FEDERAL ESTATE TAX AND INHERITANCE TAXES PAID TO OTHER JURISDICTIONS

State	Federal Estate Tax	Inheritance Taxes Paid Other States
Alabama	No[1]	No[1]
Alaska	Deductible	Yes
Arizona	Not deductible	No[2]
Arkansas	No[1]	No[1]
California	Not deductible	No[2]
Colorado	Not deductible	No[2]
Connecticut	Not deductible	No[2]
Delaware	Not deductible	No[2]
District of Columbia	Deductible (apportioned)	No[2]
Florida	No[1]	No[1]
Georgia	No[1]	No[1]
Hawaii	Deductible	No[2]
Idaho	Deductible	Yes
Illinois	Deductible	No[2]
Indiana	Not deductible	Yes, as to intangible personal property
Iowa	Deductible	No[2]
Kansas	Deductible	No[2]
Kentucky	Deductible (apportioned)	No[2]
Louisiana	Not deductible	No[2]
Maine	Deductible	No[2]
Maryland	Deductible	Yes
Massachusetts	Deductible	Yes
Michigan	Not deductible	No[2]
Minnesota	Deductible	Yes
Mississippi	No[1]	No[1]
Missouri	Deductible	Yes
Montana	Deductible	No[2]
Nebraska	Deductible	No[2]
Nevada	No inheritance tax law	No inheritance tax law
New Hampshire	Deductible	Yes, except in case of tax on a specific bequest of property in another state[3]
New Jersey	Not deductible	Yes, to the extent that they are paid on property taxable in New Jersey
New Mexico	Not deductible	No[2]
New York	Not deductible	No[2]
North Carolina	Not deductible	Yes
North Dakota	Deductible	Yes, as to intangible personal property
Ohio	Deductible	Yes Credit allowed for taxes paid to other states
Oklahoma	Not deductible	No[2]

TABLE 3—Continued

DEDUCTIBILITY OF THE FEDERAL ESTATE TAX AND INHERITANCE TAXES PAID TO OTHER JURISDICTIONS—Continued

State	Federal Estate Tax	Inheritance Taxes Paid Other States
Oregon	Not deductible	No[2]
Pennsylvania	Not deductible	Yes
Puerto Rico	Not deductible, but credit allowed	No[3], but credit allowed
Rhode Island	Not deductible	Yes
South Carolina	Not deductible	Yes, on death taxes on charitable transfers
South Dakota	Not deductible	No[2]
Tennessee	Not deductible	Yes, as to intangible personal property.
Texas	Not deductible	No[2]
Utah	Not deductible	No[2]
Vermont	Deductible	Yes, if made a charge on the residuary estate.
Virginia	Deductible	No[2]
Washington	Not deductible	No[2]
West Virginia	Deductible	No[2]
Wisconsin	Deductible	No[2]
Wyoming	Deductible	No[2]

[1] These states levy estate taxes based on the credit allowed against the federal estate tax toward state death taxes, so the question of deducting the federal estate tax does not arise Where a portion of the decedent's property is in another state, the tax levied is the proportionate amount of the federal credit based upon the ratio of the property within the state to the entire estate

[2] Taxes paid other states on the transfer of stock are deductible in computing the value of such stocks. *Frick v. Pennsylvania*, (1925) 268 U S 473

[3] Allows only a credit against local taxes on *same* transfer

SOURCE *Inheritance, Estate and Gift Tax Reporter*, State Vol 4, Commerce Clearing House, Inc Chicago 1964

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states. Some states, of which Montana is representative, have an interesting method of inducing early payment. In Montana the estate is granted a 5 percent discount for 18 months after death. After that time a 10 percent annual interest charge is made. The estate is never taxed at "par." Thirty-seven states provide no discount for early payment. See Table 4.

Interest provisions vary widely. In some states, interest charges begin as early as six months after death. California, in charging interest after 24 months, together with Alaska and Vermont, has the longest grace period of any of the jurisdictions.

Gifts Made in Contemplation of Death

If a transfer of property is made *inter vivos*, but made in contemplation of death and in lieu of disposition by will or descent, then this transfer of property is taxable unless it is a bona fide sale for adequate consideration in money or money's worth. Many of the states have statutes defining the term "contemplation of death" as being the state of mind of a person executing his will For the most part these statutes state that if the transfer is made within a certain period prior to the

TABLE 4

DISCOUNT AND INTEREST PROVISIONS IN STATE INHERITANCE TAX LAWS

State	Discount	Interest
Ala	None	If time of payment extended, 6% per annum charged from 15 months after death to time of payment Penalty of 1% per month after 6 months notice or 15 months after death if enforcement by levy and sale is necessary No interest or penalty shall accrue for any period prior to final assessment
Alaska	None	7% from death if tax is not paid within 2 years of death [1]
Ariz.	None	6% annually from due date, 15 months after death, and 4% annually during period of extension, if granted.
Ark.	None	6% per annum from extended date, where an extension, not to exceed 18 months, has been granted Additional tax found to be due more than 18 months after decedent's death is subject to interest at 10% per annum if not paid within 30 days after notice and demand
Cal	5% within 6 months of death	10% annually from date of death if not paid within 2 years of death, if delay is excused, 7% from expiration of 2 years (as to estates of decedents dying prior to September 22, 1951), 6% annually from date of delinquency [2 years after death] (as to estates of decedents dying on or after September 22, 1951)
Colo.	5% within 6 months of death	10% annually from date of death, if not paid within 1 year of death, unless delay is unavoidable, in which case interest may be reduced or waived In case of installment payments, 7% until expiration of time limited for payment and 10% thereafter
Conn.	None	9% annually from 14 months after death If extension is granted, rate is 4% until expiration of extension In case of estate tax, extension may be with or without interest at 9%
Del.	None	4% from 15 months after death Where there is litigation interest begins 1 month after adjudication
D C.	None	½ of 1% a month from 18 months after date of death
Fla	None	6% per annum from 15 months after death
Ga.	None	1% a month if not paid within 6 months after notice of assessment
Hawaii	None	8% per annum from 18 months after death, unless delay is unavoidable, in which case 5% is charged
Idaho	5% within 6 months of death	10% per annum from 1 year after date of death, unless delay is unavoidable, when 7% is charged
Ill.	None	7% from date of death if not paid within 18 months after date of death, 10% if not paid within 20 months of death
Ind	5% within 1 year of death	10% per annum after 18 months from date of death [1]
Iowa	None	8% annually after 18 months from date of death, 6% if extension of time for payment is granted Extension may not be more than 3 years after date of death
Kan	None	6% annually after time of distribution, after 18 months from date of death or after determination of beneficiaries' shares, where shares cannot be determined within 18 months
Ky.	5% within 9 months of death	10% annually from date of death if not paid within 18 months of death [1]
La	None	1% a month after 6 months from date of death and 2% a month after 12 months from date of death [2]
Me	None	6% annually after 15 months from date of death unless secured by cash deposit
Md.	None	6% annually from 15 months and 30 days after issuance of letters of administration
Mass	None	6% annually after 15 months from date of death of the decedent, If at least ⅘ths of tax is paid on or before due date, no interest is chargeable on balance until 30 days after notice for taxes is sent. 4% interest rate between election and final determination where there is a domiciliary dispute.

TABLE 4—Continued

DISCOUNT AND INTEREST PROVISIONS IN STATE INHERITANCE TAX LAWS

State	Discount	Interest
Mich	5% within 12 months of death	8% annually from date of death, if not paid within 18 months of death [1] 5% on delayed payments where bond is furnished
Minn.	None	6% annually after 18 months from date of death
Miss	None	6% annually after 15 months from date of death
Mo	None	6% from date of death for 1 year and 1% per month thereafter. Interest remitted if tax paid within 9 months of date of death [1]
Mont	5% within 18 months of death	10% annually if not paid within 18 months after date of death unless bond is given for deferred payment, in which case the rate is 6% per annum [1]
Neb.	None	7% annually from date of death if not paid within 16 months of death 6% annually from 16 months after death in case of estate tax.
Nev		No inheritance tax law
N H	None	10% annually after 15 months from date of death
N J	None	10% annually after 8 months from date of death [1]
N. Mex	None	10% annually after 12 months from qualification of executor.
N. Y	None	If payment is not made within 6 months of the date of the decedent's death, interest will be assessed against the estate The interest rate begins at ½% on the unpaid amount if paid in the seventh month and increases ½% for each month until the fifteenth If not paid within fifteen months, a rate of 10% per annum till the date of payment will be charged If extension is granted the rate is 6% from expiration of 6-month period until expiration of extension period, but if payment is not made within extension period 10% is charged from due date until paid In certain cases, where time for payment has not been extended, surrogate may reduce the rate to 6% Interest on additional estate tax is chargeable from date of final determination of federal estate tax, although no interest is chargeable if the additional tax is paid within 60 days of date of determination
N Car	None	6% per annum from 15 months after date of death If not paid within 2 years of date of death, an added 5% is incurred [2] ½% per month from date due until date paid (exclusive of penalties) as to additional assessments
N Dak	None	6% per annum after 15 months from date of death
Ohio	1% a month for each full month prior to expiration of year after "succession"	8% annually after 1 year from date of "succession," unless delay is unavoidable in which case no interest is charged until the cause of delay is removed
Okla	None	1% per month from 15 months after date of death, unless determination is impossible, in which case it is ½ of 1% per month
Ore.	5% within 8 months of death	8% annually from 8 months after date of death [1] If bond is given for deferred payment of tax, rate is 6% per annum from 8 months after date of death
Penn	5% within 3 months of death	6% annually after 1 year from date the tax becomes delinquent in case of inheritance tax and after 18 months from date of death in case of estate tax, unless delay is unavoidable, when interest is at productive rate if such rate is lower than 6%
P R.	None	6% per annum after 180 days from date of notice to interested parties.
R I	None	8% from 9 months after appointment of first executor or administrator [1]
S Car.	None	6% annually after 15 months from date of death
S Dak.	None	6% from date of death if not paid within 1 year after date of death.[2]
Tenn.	None	6% annually from 15 months after date of death and penalty of ½ of 1% per month unless delay is unavoidable when penalty may be suspended.

TABLE 4—Continued

DISCOUNT AND INTEREST PROVISIONS IN STATE INHERITANCE TAX LAWS

State	Discount	Interest
Tex.	None	2% per month from date of notice if not paid within 3 months after date of notice of assessment If not paid within 9 months after date of notice, lien is foreclosed
Utah	None	8% annually from date of death, or in case of extension from date of expiration of extension if not paid within 1 year of date of death, unless delay is unavoidable when the interest may be reduced or waived
Vt.	None	6% annually after 2 years from date of death
Va.	None	1% a month from 1 year after date of death Where tax is not determinable until more than 11 months after date of death interest begins 30 days after determination
Wash.	None	6% annually from date of death if tax is not paid within 15 months from date of death [2] Interest may not be tolled for more than 3 years and minimum tax must be paid within 15 month period. Where bond is given for deferred payment of tax, rate is 8% from 60 days after possession.
W. Va	3% within 13 months of death	10% annually from 14 months after death and in addition thereto, a 5% penalty, unless delay is unavoidable, when penalty and interest may be suspended
Wis.	5% within 1 year of death	10% annually from date of death if tax is not paid within 18 months.[1] If bond is given for deferred payment of tax 6% from date of death to date of payment.
Wyo.	5% within 16 months of death	8% annually after 16 months from date of death [2]

[1] Unless unavoidable delay, when only 6% is charged
[2] Unless delay is unavoidable, when no interest is charged
SOURCE *Inheritance, Estate and Gift Tax Reporter*, State Vol 4, Commerce Clearing House, Inc (Chicago, 1964)
NOTE Reproduced from INHERITANCE TAX REPORTS, published by and copyright 1964, Commerce Clearing House, Inc , Chicago, Illinois.

transferor's death, the transfer is deemed to have been "in contemplation of death" and is includible in decedent's gross estate. This presumptive period is listed in Table 5 for the various states. The period is three years under California law without presumption; and no transfer made more than three years prior to death is taxable as having been made in contemplation of death.

TABLE 5

GIFTS MADE IN CONTEMPLATION OF DEATH—PRESUMPTIVE PERIOD IN VARIOUS STATES

State	Presumptive Period
Alabama	3 years, but no transfer made more than 3 years prior to death is taxable
Alaska	No period specified
Arizona	3 years, but no transfer made more than 3 years prior to death is taxable
Arkansas	3 years, but no transfer made more than 3 years prior to death is taxable
California	3 years if transfer is proved by the State to have been made in contemplation of death (there is no presumption), but no transfer made more than 3 years prior to death is taxable
Colorado	2 years
Connecticut	3 years, but no transfer made more than 3 years prior to death is taxable
Delaware	6 months
District of Columbia	2 years
Florida	3 years, but no transfer made more than 3 years prior to death is taxable
Georgia	3 years, but no transfer made more than 3 years prior to death is taxable
Hawaii	No period specified
Idaho	No period specified
Illinois	2 years
Indiana	2 years
Iowa	2 years
Kansas	1 year
Kentucky	3 years
Louisiana	1 year
Maine	6 months, but no transfer made more than 2 years prior to death is taxable
Maryland	2 years
Massachusetts	1 year, but no transfer made more than 2 years prior to death is taxable
Michigan	2 years
Minnesota	3 years, but no transfer made more than 3 years prior to death is taxable
Mississippi	2 years
Missouri	2 years
Montana	3 years, but no transfer made more than 3 years prior to death is taxable
Nebraska	3 years, but no transfer made more than 3 years prior to death is taxable
Nevada	No inheritance tax
New Hampshire	2 years
New Jersey	3 years, but no transfer made more than 3 years prior to death is taxable
New Mexico	1 year, and an additional tax is imposed on such transfer according to the relationship of the parties
New York	3 years, but no transfer made more than 3 years prior to death is taxable
North Carolina	3 years, if the transfer exceeds 3% of the estate
North Dakota	2 years
Ohio	2 years
Oklahoma	2 years
Oregon	3 years, but no transfer made more than 3 years prior to death is taxable if all gift taxes assessed were paid or if no gift taxes were due
Pennsylvania	2 years
Puerto Rico	2 years, where the transferor is over 50 years of age
Rhode Island	2 years
South Carolina	3 years
South Dakota	No period specified
Tennessee	2 years
Texas	2 years
Utah	3 years
Vermont	No provision for taxing absolute inter vivos transfers
Virginia	3 years, but no gift made more than 3 years prior to death is taxable
Washington	2 years
West Virginia	3 years
Wisconsin	2 years
Wyoming	6 months, but no transfer made more than 2 years prior to death is taxable

SOURCE *Inheritance, Estate and Gift Tax Reporter*, State Vol 4, Commerce Clearing House, Inc (Chicago, 1964)
NOTE Reproduced from INHERITANCE TAX REPORTS, published by and copyright 1963, Commerce Clearing House, Inc, Chicago, Illinois

V. REVISION: CHANGES IN THE DISCOUNT PERIOD AND THE GRACE PERIOD OF THE INHERITANCE TAX LAW

Two aspects of California's inheritance tax law that require attention are the discount period and the grace period. One possibility is to shorten the grace period from the present 24 months to 15 months, thus speeding up a certain percentage of the inheritance tax payments Another is to extend the time period for the 5 percent discount from the present six months to eight months, which would postpone some tax collections

The Controller's office has estimated the 1965–66 direct revenue effect of these proposals as follows:

	1965–66
Speedup of payments	$8,600,000
Payments postponed	−8,400,000
Additional discount	−200,000
Net change	0

The Controller estimates that the state will lose approximately $300,000 per year thereafter because more taxpayers will be in a position to take advantage of the discount. The Controller also finds that any interest value of the earlier tax receipts will be offset almost exactly by the interest loss on the delayed tax collections resulting from the extension of the discount period.

Advantages of the Changes

Amendment of Section 14103 of the Revenue and Taxation Code to shorten the grace period from 24 months to 15 months will speed up tax collections

Amendment of Section 14161 of the Revenue and Taxation Code would extend the time period of the discount from the present six months to eight months keeping the discount at 5 percent. This change would have the advantage of permitting the personal representative to make a closer estimate of the actual tax because by the end of eight months from the date of death the six months' notice to creditors would normally have expired and all claims would be in. Another advantage would be to give the personal representative an additional two months to make his decisions.

It has been stated that this time extension would give the estates the advantage of long term capital gains on their investments. It would encourage prompt investment of the funds by the executor in order to take advantage of the long term capital gains feature This would aid the more liquid estates.

Disadvantages of the Changes

Charles J. Barry, chief inheritance tax attorney, lists the following disadvantages of the discount provision: [1]

1. The discount presents an administrative problem. Accounts must be set up when the payment initially is received When the inheritance tax appraiser's report is filed the entry must be checked Since the prepayment is almost invariably made before the report is filed, it is nearly always over or under the amount of the tax, necessitating an adjusting ledger entry to correct the allowable discount.

2. There are a great many overpayments since all prepayments are based on an estimate of the tax In his opinion, 95 percent of the refunds paid in any year are the direct result of personal representatives and survivors endeavoring to take advantage of the discount provision before the tax liability is known In the fiscal year 1962–63 his office processed 1,335 refunds.

3. The refunds require a substantial portion of the tax collected each year to be paid back to personal representatives and survivors In the fiscal year 1962–63, the total amount paid out of inheritance tax revenue as refunds was $2,265,926 75.

4. The discount causes substantial tax loss In the fiscal year 1962–63 the total discounts amounted to $2,899,582 17 compared with total tax collections of approximately $89,000,000. If the discount period is extended to eight months, there would be an additional tax loss of approximately $300,000 each year due to the two months' additional delay

5. The discount is discriminatory in that it places a premium on liquidity in an estate. It favors the estate which consists largely of ready cash The discount discriminates against the estate which was almost wholly invested in California real estate or a closely held business interest.

[1] Letter by Charles J Barry, chief inheritance tax attorney, Office of the Controller, to the Honorable Nicholas C Petris, Chairman, Assembly Commitee on Revenue and Taxation, May 15, 1964

6. The federal estate tax law does not allow a discount.
7. It may be argued that the presence of a discount provision in the inheritance tax law constitutes a threat to other California taxes. Since the discount in the inheritance tax law encourages early payment of the tax, a discount offered in other California taxes might encourage prepayment of such taxes as the personal income tax, insurance gross premiums tax, and bank and corporations franchise tax

It should also be noted that one of the advantages of an extension of the discount period is held to be that it would permit the personal representative two additional months in which he would be able to make a closer estimate of the actual tax In most cases and in all large estates there would continue to be no more than an estimate This results from the length of time involved in the probate process, the preparation of documents and affidavits for the appraiser, the computation of the tax and the audit of the report.

Granting eight months rather than six months for the discount period would result in a slowdown of payments At present, most payments are made at the end of the six-month period; under the proposed revision, a substantial portion of the payments would be made in the last week of the eighth month.

The length of time which elapses under existing law from date of death to date of approval of the appraisal report and to date of first tax payment is shown in Tables 6 and 7 and Figures 1 and 2.

Net Effects of the Changes

It would appear that the net result of both changes would ultimately be a loss in revenue to the state on the order of some $300,000 a year.

The proposal to shorten the grace period from 24 months to 15 months is extremely sound and long overdue The original grace period was 18 months and it was lengthened during the depression of the 1930's and never revised Fifteen months is the grace period extended by the federal government and appears to be about the modal grace period for the various states

The proposal to lengthen the discount period from six months to eight months would appear to have much less to recommend it. Consideration of this proposal calls for a consideration of the entire matter of a tax discount. The purpose of the tax discount is to accelerate tax payments to the state While it cannot be denied that the state receives some advantage in early rather than late tax payments in terms of the interest accruing on the funds, there is a question as to whether the game is worth the candle.

Under the eight-month discount period with a 5 percent discount, the state would lose revenue of about $3,000,000 on total tax collections of roughly $90,000,000. In return for this, the state would receive some 65 percent of the tax funds at the end of the eighth month with the rest coming in some time later If the grace period were amended to 15 months and the discount provision completely eliminated, a very large percentage of the tax payments would be made at the end of the 15th month. In rough terms, the state would be paying $3,000,000 interest to obtain, at the most, $58,000,000 seven months early under an eight-month discount and 15 months grace period provision. While

TABLE 6

CALIFORNIA: TIME INTERVAL FROM DEATH TO REPORT APPROVAL
Taxable California State Inheritance Tax Reports Approved, 1961 [a]

Time interval [b]	Size of estate [c]								
	All estates	Less than $1,949	$1,950–$4,949	$4,950–$9,949	$9,950–$24,949	$24,950–$49,949	$49,950–$74,949	$74,950 and over	$0 or not determined [d]
	Number of estates								
Total	22,483	527	14,891	2,634	3,402	539	218	224	48
Less than 3 months	2,136	99	1,747	167	116	6	1	--	--
3 to less than 6 months	5,495	99	3,961	595	742	75	13	9	1
6 to less than 9 months	5,034	99	3 349	643	813	78	31	17	4
9 to less than 12 months	3,312	37	2,215	436	389	75	34	21	5
12 to less than 18 months	3 021	134	2,125	430	717	112	50	62	11
18 months to less than 2 years	1,307	31	558	206	318	100	30	59	5
2 to less than 3 years	689	12	270	103	192	44	22	37	9
3 to less than 4 years	199	6	90	24	35	10	5	12	11
4 to less than 5 years	292	6	180	8	20	--	3	4	1
5 years or more	180	--	128	8	40	--	2	3	1
Not reported	388	12	270	24	20	31	28	--	--
	Percent of estates								
Total	100 0	100 0	100 0	100 0	100 0	100 0	100 0	100 0	100 0
Less than 3 months	9 7	19 3	12 0	6 4	3 4	1 2	5	--	--
3 to less than 6 months	24 9	19 3	27 1	22 8	22 8	14 8	6 8	4 0	2 1
6 to less than 9 months	22 8	19 3	22 9	24 6	24 0	15 4	16 3	7 6	8 3
9 to less than 12 months	14 5	7 2	15 2	16 7	11 5	14 8	17 8	9 4	10 4
12 to less than 18 months	16 4	24 2	14 5	16 1	21 2	22 1	26 2	27 7	22 9
18 months to less than 2 years	5 9	6 0	3 8	7 9	9 4	19 8	15 7	26 3	10 4
2 to less than 3 years	3 1	2 3	1 8	4 0	5 7	8 7	11 5	16 5	18 8
3 to less than 4 years	9	1 2	6	9	1 0	3 2	2 6	5 4	22 9
4 to less than 5 years	1 0	1 2	1 2	3	6	--	1 6	1 8	2 1
5 years or more	8	--	9	3	1 2	--	1 1	1 3	2 1
Median time interval (in months)	8 0	7 8	7 4	8 5	9 3	13 0	14 0	18 3	21 6

[a] Based upon a stratified random sample of estates for which the first taxable inheritance tax report was audited by state examiners during calendar year 1961

[b] The time interval figures contain some upward bias Report approval date represents the date of the most recent 1961 amendment or supplement, in instances where reports first approved in 1961 were subject to amendment or supplement during the course of the year Cases involved ranged from about 4 percent of estates in the smallest size group to about 13 percent of those in the largest size category

[c] Size of estate equals clear market value

[d] Estates in which there was no taxable property according to California law, or the clear market value of taxable property could not be determined State tax assessed in these estates was either a "pickup" tax or the result of an interstate compromise

NOTE Detail may not add to total due to rounding

SOURCE State of California, *Statistical Report, California Inheritance Tax Cases, 1961*, p 50, Inheritance and Gift Tax Division, Sacramento 1964.

TABLE 7

CALIFORNIA: TIME INTERVAL FROM DEATH TO FIRST PAYMENT Taxable California State Inheritance Tax Reports Approved, 1961 [a]

Time interval	Size of estate [b]								
	All estates	Less than $1,949	$1,950–64,949	$64,950–99,949	$99,950–299,949	$299,950–499,949	$499,950–749,949	$749,950 and over	$0 or not determined [c]
	Number of estates								
Total	22,483	527	14,891	2,634	3,402	539	218	224	48
3 months or less	1,528	68	1,278	95	76	9	1	1	--
More than 3–6 months	9,479	118	5,492	1,222	1,999	343	150	151	4
More than 6–9 months	3,000	74	2,251	325	278	47	10	12	3
More than 9–12 months	2,666	56	2,107	325	156	12	4	2	4
More than 12–18 months	2,916	143	2,035	309	348	44	15	10	12
More than 18 months–2 years	1,509	25	846	190	323	59	24	36	6
More than 2–3 years	653	19	396	71	121	19	7	11	9
More than 3 years	530	6	414	43	45	3	4	1	9
Not reported	200	19	72	48	55	3	2	--	1
	Percent of estates								
Total	100 0	100 0	100 0	100 0	100 0	100 0	100 0	100 0	100 0
3 months or less	6 8	13 4	8 6	3 7	2 3	1 7	5	4	--
More than 3–6 months	42 5	23 2	37 1	47 3	59 7	64 0	69 7	67 4	8 5
More than 6–9 months	13 5	14 5	15 2	12 6	8 3	8 8	4 6	5 4	6 4
More than 9–12 months	12 0	11 0	14 2	12 6	4 7	2 2	1 9	9	8 5
More than 12–18 months	13 1	28 1	13 7	11 9	10 4	8 2	7 0	4 5	25 6
More than 18 months–2 years	6 8	4 9	5 7	7 3	9 7	11 0	11 2	16 1	12 8
More than 2–3 years	2 9	3 7	2 7	2 7	3 6	3 5	3 2	4 9	19 1
More than 3 years	2 4	1 2	2 8	1 9	1 3	6	1 9	4	19 1
Median time interval (in months)	6 1	6 8	6 9	5 9	5 4	5 3	5 1	5 2	18 5

[a] Based upon a stratified random sample of estates for which the first taxable inheritance tax report was audited by state examiners during calendar year 1961

[b] Size of estate equals clear market value

[c] Estates in which there was no taxable property according to California law, or the clear market value of taxable property could not be determined State tax assessed in these estates was either a "pickup" tax or the result of an interstate compromise

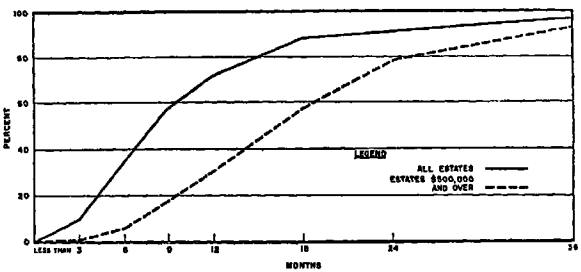
NOTE Detail may not add to total due to rounding

SOURCE State of California, *Statistical Report, California Inheritance Tax Cases, 1961*, p 51, Inheritance and Gift Tax Division, Sacramento, 1964.

FIGURE 1

CALIFORNIA INHERITANCE TAX CASES, 1961

TIME FROM DEATH TO REPORT APPROVAL

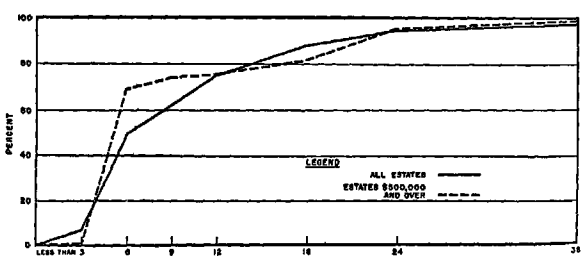


SOURCE State of California, *Statistical Report, California Inheritance Tax Cases, 1961*, p 32, Inheritance and Gift Tax Division, Sacramento 1964.

FIGURE 2

CALIFORNIA INHERITANCE TAX CASES, 1961

TIME FROM DEATH TO FIRST TAX PAYMENT



Source State of California *Statistical Report California Inheritance Tax Cases 1961* p 32 Inheritance and Gift Tax Division Sacramento 1964

it is clear that this is far above the usual borrowing rate for the state, this is not the entire cost of the discount provision by any means. The making of early payments on the basis of tax estimates imposes a very large administrative burden. The additional recordkeeping and the large number of refunds involved probably imposes a much greater cost on the state than can be realized from the interest earned by the state on the moneys paid in overpayments.

The eight-month rather than six-month period may make it possible for some estates to realize capital gains on their funds before they pay their taxes but in order to do this on new investments the estate would have to be quite liquid The estate's representative would have to invest the earmarked tax funds within two months of the date of death

in order to obtain capital gains treatment on the liquidating transaction undertaken to make payment to the state.

The entire discount provision seems to be at variance with the economic objective of tax neutrality. The discount provision places a premium on liquidity of assets. It therefore imparts a distortion into the decision as to whether wealth should be held in a liquid or illiquid form The estate that consists chiefly of real estate, for instance, would not be in a good position to take advantage of the discount provision. For this reason the discount provision makes the possession of large liquid assets an important part of estate planning for large estates. This cannot but affect the allocation of resources between liquid and nonliquid asset holding.

A fifteen-month grace period, with no discount period, would have considerable advantages, in terms of more revenue to the state, the elimination of discriminatory treatment of liquid as against illiquid estates and the resulting greater tax neutrality. There might be a revenue loss in the particular year the revisions are instituted because delay in payment resulting from elimination of the discount might outweigh speed-up in payment resulting from reduction in grace period.

VI. REVISION: TAXATION OF CAPITAL GAINS AT DEATH *

A taxpayer can die to avoid the capital gains tax. This is true whether he dies under California law or under federal law, or both. Should he be allowed such an easy way out? "No" was the answer given to this question by the Administration in Washington in its proposals for tax revision in 1963 Congress had its own ideas, however, and decided to leave the law on this point unchanged in the Internal Revenue Act of 1964 The federal provisions and proposals are of particular concern in California because of the question of federal-state conformity

Federal Provisions and Proposals

A summary of the Administration's plan as presented by President Kennedy follows [1]

> Impose a tax at capital gains rates on all net gains accrued on capital assets at the time of transfer at death or by gift.
>
> Adoption of this proposal is an essential element of my program for the taxation of capital gains; certainly in its absence there would be no justification for any reduction of present capital gain rate schedules

* The federal portion of this part is derived from a chapter by the present writer in a forthcoming collection of essays in memory of C Ward Macy (P L Kleinsorge, ed) to be published by the University of Oregon Press The author is indebted to attorneys Donald C Lubick and Albert R Mugel for discussion of the federal issues They should not, however, be held responsible for the views expressed here

[1] See "President's 1963 Tax Message" (January 24, 1963) in *Hearings Before the Committee on Ways and Means*, (beginning February 6, 1963) Vol. 1 (revised) p 24.

A number of exceptions would limit the applicability of this proposal to fewer than 3 percent of those who die each year. These exceptions would provide special rules for the transfer of household and personal effects, assets transferred to a surviving wife or husband, and a certain minimum amount of property in every case. Appreciation on property subject to the charitable contribution deduction would continue to be exempt both on gift and at death.

For those who would have a substantial amount of appreciation taxed upon transfer at death, a special averaging provision should prevent the application of higher rates than would have applied upon disposition over a period of years. In addition, it should be clearly understood that the tax upon transfer at death would reduce the size of the taxable estate, and thereby reduce the estate tax. The present provisions for extended payment of estate taxes would apply to the new taxes upon appreciated property transferred at death and would be liberalized

My proposal, if enacted, would apply to gifts made after this date, but would be phased to apply fully to transfers at death only after three years. The Secretary of the Treasury will present a technical elaboration of this proposal and its relationship to the existing rules for the taxation of various kinds of assets transferred at death.

This recommendation is a reflection of a serious problem at both federal and state levels At the time of death, property takes on a basis equivalent to market value, and any appreciation in value that occurred in the hands of the decedent is forever forgotten as far as the capital gains tax is concerned. The property at its new value is subject to the federal estate tax and the state inheritance tax but in view of the many exemptions and deductions in both types of taxes, a particular capital gain may, in fact, escape all taxation. This has important economic implications

The close relation between current questions in the capital gains tax itself and the taxation of capital gains at death and by gift has been stated succinctly by Walter Heller.[2]

> . . . Instead of lowering the capital gains barrier at the front door marked 'market transactions', it may be just as effective—and more desirable on equity grounds—to close the back door marked 'tax-free transfers at death' and the side door marked, 'tax-deferring transfers by gift'

The prevailing situation is well summarized by Seltzer[3]:

> Most commonly, in both law and ordinary speech, a distinction is made between 'realized' and 'unrealized' capital gains or losses. An owner who does not sell or enter into an exchange legally equivalent to a sale is said not to 'realize' a capital gain or loss, however big the change in the market value of his holdings, however marketable

[2] Walter W Heller, "Investors' Decisions, Equity, and the Capital Gains Tax," *Federal Tax Policy for Economic Growth and Stability*, papers submitted by panelists appearing before the Subcommittee on Tax Policy, Joint Committee on the Economic Report, November 9, 1955, pp 381–394, at pp 381–382 (Washington: Government Printing Office, 1956).

[3] Lawrence H Seltzer, *The Nature and Tax Treatment of Capital Gains and Losses* (New York, National Bureau of Economic Research, Inc, 1951) p 4.

they are, and regardless how long he has owned them The change in market value, commonly referred to as an 'unrealized' capital gain or loss is not taken into account in computing taxable income. *Very substantial proportions of the increases in the value of lands and corporate securities are never 'realized' in the current legal sense because the law does not regard transfers of property at death as occasioning 'realization'* The difference between the cost of the property to a decedent and its value on the date of his death is not regarded as a capital gain or loss to either the decedent or his heirs. The latter put the property on their books at the value on the date of transfer (or other date chosen by the executor for the purpose of the estate tax) and measure their capital gains or losses on it from the value on that date [Emphasis supplied]

Tax advisers make a point of this method of avoiding the capital gains tax, as illustrated by the following [4]:

You can get capital gain on your share when you retire and receive it all within one year If company contributions are invested in company stock, appreciation on the stock is not taxed until you finally sell the stock *If you hold the stock until death, there may be complete avoidance of income tax* [Emphasis supplied]

Treatment of Capital Gains in California

Capital gains are not accorded any special treatment for tax purposes in California under the provisions of the Franchise Tax Law or the Bank and Corporation Income Tax Law Capital gains are afforded special tax treatment under the provisions of the Personal Income Tax Law [5] Here it is provided that net long-term capital gains are effectively taxable at 50 percent of the tax rate that would otherwise apply There is no ceiling rate in the California statute to correspond to the federal 25-percent ceiling While the California personal income tax code currently has seven different rates ranging from 1 percent to 7 percent in a progressive manner, the top 7-percent rate applies to all income of $15,000 or over for a single person and $30,000 or over for joint returns

In effect then, net long-term capital gains in California are presently taxed at a maximum of 3½ percent in most cases rather than the 7-percent rate which would apply if they were taxed as ordinary income. The California definition of what constitutes a capital gain follows very closely upon the federal statute In 1961 the Senate Fact Finding Committee on Revenue and Taxation issued a report entitled *Conformity of California Personal Income and Bank and Corporation Franchise Taxes with the Federal Internal Revenue Code* which noted several minor differences between the federal code and the California Personal Income Tax Law Conforming legislation was suggested in this report and much of it was adopted in 1961, particularly in the capital gains area.

[4] *How to Prepare Now for Tax-saving Opportunities in the Golden Sixties—1960–69* (New York J K Lasser Tax Institute, 1959) p 6

[5] See *California's Tax Structure 1964*, pp 41–42 (Part 1, Tax Study, Assembly Interim Committee on Revenue and Taxation, January 1964)

TABLE 8

SELECTED PROVISIONS OF STATE INDIVIDUAL INCOME TAX LAWS, BY STATES, 1960

State	Income-splitting provision granted to *married* couples	Federal income tax allowed as a deduction	Federal income definition used as *state* tax base	Capital gains and losses given special treatment	Optional standard deduction granted	Withholding used
Alabama	No	Yes	No	No	Yes	Yes
Alaska	Yes	No	Yes	Yes	Yes	Yes
Arizona	Yes	Yes	No	Yes	Yes	Yes
Arkansas	No	No	No	No	Yes	No
California	Yes	No	No	Yes	Yes	Yes [a]
Colorado	No	Yes	No	Yes	Yes	Yes
Delaware	No	Yes [b]	No	Yes	Yes	Yes
D C	No	No	No	Yes	Yes	Yes
Georgia	No	No	No	Yes	Yes	Yes
Hawaii	Yes	No	Yes	Yes	Yes	Yes
Idaho	Yes	Yes	Yes	Yes	Yes	Yes
Iowa	No	Yes	Yes	Yes	Yes	Yes [a]
Kansas	Yes	Yes	No	Yes	Yes	No
Kentucky	No	Yes	Yes	Yes	Yes	Yes
Louisiana	Yes	Yes	No	Yes	Yes	No
Maryland	No	No	No	Yes [c]	Yes	Yes
Massachusetts	No	Yes	No	Yes	No	Yes
Minnesota	No	Yes	No	Yes	Yes	No
Mississippi	No	No	No	No	Yes	No
Missouri	No	Yes	No	Yes	Yes	No
Montana	No	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	No	No	No	No
New York	No	No	Yes	Yes	Yes	Yes
North Carolina	No	No	No	No	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes	No
Oklahoma	Yes	Yes	No	Yes	Yes	No
Oregon	Yes	Yes	No	Yes	Yes	Yes
South Carolina	No	Yes [d]	No	No	Yes	Yes
Utah	No	Yes	No	No	Yes	Yes
Vermont	No	No	Yes	Yes [c]	Yes	Yes
Virginia	No	No	No	No	Yes	No
Wisconsin	No	Yes [e]	No	No	Yes	No

[a] Withholding is required only on incomes of nonresidents of the state
[b] The deduction of federal income tax paid allowed in Delaware is limited to $300 on returns of individuals and $600 on joint returns of husband and wife
[c] Capital gains and losses are not considered in determining net taxable income in Maryland and Vermont
[d] The deduction of federal income tax paid allowed in South Carolina is limited to $500
[e] The deduction of federal income tax paid allowed in Wisconsin is limited to 3 per cent of the net income of the taxpayer
SOURCE Emanuel Melichar, *State Individual Income Taxes*, p 52, University of Connecticut, Storrs Agricultural Experiment Station, (Storrs 1963)

As Table 8 shows, California is one of the 23 states affording special treatment to capital gains in its Personal Income Tax Law out of the 32 states that have personal income taxes

No capital gains tax is assessed on an asset that is held until death This provides some incentive (although only to the extent of a maximum 3½-percent rate in California under present law) to avoid selling the asset at a gain during the life of the owner It also provides a possible tax loophole due to the difference in the treatment of capital gains in the franchise tax and corporation tax on the one hand and the personal income tax on the other A closely held corporation might have a capital gain under either the franchise tax or the corporation tax, whichever applied If, however, the principals of the corporation were able to manipulate the asset so that it became their own property rather than corporate property, they would be able to avoid the capital gains tax entirely on the asset merely by the expedient of holding until the time of death or gift (There is no capital gains tax imposed at time of gift but the donee takes the donor's base for future capital gains tax purposes.)

Background of the Federal Exemption of Capital Gains at Death

What stands out sharply from the legislative and court history [6] of the early federal income tax laws is that no deliberate decision to exempt unrealized gains was necessary; rather, the courts early interpreted the general income tax provisions (under which capital gains are taxed) to cover realized income only This showed up first in areas outside capital gains and was firmly entrenched before any special treatment was accorded long-term gains In other words, it would have required special and very explicit enactment to have imposed a tax (under the income tax) on unrealized income, including gains on property passing by gift or death. Whether such a tax would have been constitutional is another matter, which is discussed in a later section of this study.

The 16th Amendment refers to the imposition of a tax on "income from whatever source derived" The early decisions established that the "income" had to be "realized;" and "realized" meant "sale or exchange" [7] The concepts of "realization" and "sale or exchange" have been stretched considerably by both court interpretation and legislative action They have not, however, been stretched to the point of declaring that a "realization" or a "sale or exchange" occurs when a person dies Hence, the capital gains tax has not been imposed on appreciated property left by a decedent

A related concept is that of "severability" of the thing taxed—the income, including capital gain—from the corpus That concept, too, has gradually been eroded so that physical severability is not required [8] Nevertheless, under present thinking, the transfer of property at death does not constitute realization or severance of any appreciation in the property so as to subject it to the income tax It must constantly be remembered that the federal capital gains tax is simply a part of the income tax. If the constitutional requirements of "income" are not met, neither are those of capital gains Once the constitutional requirements are met, we must look to the Legislature to determine whether the item is to be covered by the income tax at all, and to legislative, administrative and judicial definitions of "capital assets" to determine whether the special treatment accorded the capital gains form of income should apply.

Mertens emphasizes the importance of looking to the substance of a transaction to determine whether a sale has occurred [9].

> Whether or not a sale or exchange took place is to be determined from a consideration of the substance of the transaction and

[6] For historical material see *Internal Revenue Bulletin Cumulative Bulletin*, 1939-1 (Part 2) (January–June 1939—Committee Reports), *Seidman's Legislative History of Federal Income Tax Laws 1938–1861* (New York Prentice-Hall, 1939) and *1862–1939* (1951), and Surrey and Warren, *Federal Income Taxation* (Brooklyn The Foundation Press, Inc., 1953, 1955 and 1960 eds.)

[7] "Under present law, gains accruing on capital assets are taxed only when realized by sale or exchange of the property" *The Federal Revenue System Facts and Problems 1961*, p 49, (Washington Government Printing Office, 1961)

[8] In a different area, income assignments to avoid taxation, the Supreme Court has refused to recognize severance even where it existed See Paul F Icerman "Separation of Tree and Fruit," *Michigan Business Review*, May 1965 (forthcoming).

[9] Mertens, *Law of Federal Income Taxation*, § 22 92, vol 3B, p 343

not merely its form.[a] The entries made upon the books of the parties to the transaction, while of some evidentiary value, are not controlling.[b]

[a] Conrad N Hilton, 13 TC 623, 630 (1949)
[b] Estate of Clarence B Lehr, 18 TC 373 (1952) Cf. Fidelity-Philadelphia Trust Co, 23 TC 627 (1954)

The respective treatments accorded the taxation of transfers by gift and at death are closely intertwined. The question of "realization" arises in both cases and in both cases there is no capital gains tax at time of transfer. A divergence lies in the basis of the property in the hands of the transferee: gifts retain the original donor's basis or market value at time of gift, whichever is lower; death transfers acquire the fair market value at death (or optional date, in the federal law).

The basis acquired by property left in an estate is initially a matter of the estate tax rather than income tax. For purposes of the estate tax the property is given a basis equal to its full market value at the date of death (or optional valuation date) This is the basis of the property in the hands of the estate and generally in the hands of any beneficiary of the estate It can readily be seen that for purposes of imposing the estate tax a single (or one alternative) date of valuation is more practical than an attempt to trace back a variety of different valuations of the respective pieces of property, to say nothing of the possible evasions and inequities which might result from such practice.

It is important to note for our later discussion of the constitutional issue that in *Eisner* v *Macomber* (1920)[10] the Court gave as reasons for unconstitutionality of a tax on unrealized gains: (1) necessity of converting capital to pay the tax; and (2) mere increase in value is not income.

Arguments For and Against Taxing Capital Gains at Death

We may now turn to the pros and cons of the proposal that capital gains be taxed at death. In technical terms, there would be constructive realization at death, subjecting the appreciation in value to the capital gains tax. There has been legislative debate on this issue from time to time: for taxing the increment at time of death at the one extreme and for confining the basis to the valuation used for estate tax purposes at the other.[11]

A. Arguments For Taxing Capital Gains at Death

There are three main arguments in favor of taxing capital gains at death: (1) *welfare*—the present arrangement encourages holding onto a piece of appreciated property until death, thereby interfering with the mobility of capital and the optimum allocation of economic resources; (2) *equity*—the present arrangement is grossly inequitable in that it permits families to become richer and richer without paying the capital gains tax; and (3) *revenue*—the present arrangement results in a substantial loss in tax revenue.

[10] 252 U S 189, 40 S Ct 189.
[11] *1947 Bill: Hearings—Senate Finance Committee (H R 1, 80th Cong, 1st Sess)*—Taxing increment at time of death (S Ruttenberg, p 253) and *1951 Act Hearings—Senate Finance Committee*—Confining basis to valuation used for estate tax. (E C Alvord, p. 665)

(1) Welfare Argument for Taxation of Capital Gains at Death

Heller reaches the conclusion, "Constructive realization at gift or death would serve both equity and economic objectives." [12] He supports his conclusion as follows [13]:

> The inviting option of tax-free transfer of appreciated assets by gift or death may well have more to do with the undesirable pinning down of investment funds than any other single aspect of the gains tax. If the investor knew that there would surely be a day of reckoning on his unrealized gains, he might press the search for improved investment opportunities more actively than he does today. This move would tend to convert passive into active investors rather than investors into speculators, thus not merely promoting financial activity but improving the allocation of resources.

Tax-free transfer at death means that an individual can forever avoid the capital gains tax. Thus he is tempted to stay with his appreciated investment rather than switch and incur the capital gains tax. This supports the argument for a "rollover" provision during life (discussed later) thereby making investment switches free of the tax penalty.

A large volume of transactions gives the stock market "liquidity" which, in turn, is a favorable element in the inducement to invest.[14] Steger has argued that increased mobility of capital is not an unmixed blessing: a certain willingness to "stay put" is desirable.[15] It is difficult to accept the view, however, that barriers should deliberately be placed in the way of sale so as to encourage stability of investments. If the tax-induced rigidity is known in advance, it may act as a deterrent to investment.

Reduction of the "lock-in" effect and increased "liquidity" in the market for capital assets would tend to improve the allocation of economic resources and raise the level of economic welfare

(2) Equity Argument for Taxation of Capital Gains at Death

Randolph Paul has stated the argument in favor of taxation of capital gains at death as follows: [16]

> If a stockholder sells his stock, the undistributed profits are at least indirectly subject to capital gains taxation. But if the stockholder does not sell his stock, a potential capital gain escapes taxation. Although in many instances this gain will ultimately be subjected to *estate* tax, our tax structure should contain a provision to stop this serious *income* tax leak. I believe the most feasible technique would be a tax upon the gain—with perhaps a corresponding treatment of any loss—at the time of any gift of the stock, even to a charity, and at the time of death. A provision of this kind would capture the tax in the end, although somewhat tardily if no gift were made. [Emphasis in original]

[12] Heller, *op. cit.*, p. 394
[13] *Ibid.*, p. 390
[14] See Harold M. Somers, "Capital Gains Tax Significance of Changes in Holding Period and Long-Term Rate," *Vanderbilt Law Review*, June 1963
[15] Wilbur A. Steger, "The Taxation of Unrealized Capital Gains and Losses: A Statistical Study," *National Tax Journal*, September 1957, p. 280
[16] Randolph Paul, *Taxation for Prosperity* (New York: Bobbs-Merrill Company, 1947) p. 376.

This suggests that the present exemption is inequitable as between those who sell and those who do not sell at a capital gain before death.

(3) Revenue to Be Derived From Taxation of Capital Gains at Death

It is evident that federal tax revenue would increase as a result of the taxation of capital gains at death. The Administration's proposal, which included many deductions, exemptions and allowances, would have increased revenue by $300 million at the low long-term rates included in the tax message [17] Senator Douglas has stated that the prevailing exemption allows $12 to $13 billion of gains to escape taxation.[18]

The revenue gain in California is of a rather low order of magnitude (perhaps one million dollars in 1965–66 and $5 million in 1966–67) because of the relatively low level of income tax and capital gains tax rates in California The maximum rate on capital gains is 3½ percent whereas the maximum inheritance tax rates range from 10 percent to 24 percent.[19] If the portion of the asset that is made subject to the capital gains tax were to be exempted from the inheritance tax completely there might be a serious revenue loss. The most that could be done would be to allow the capital gains tax due at death to be treated as a liability of the estate (as in the federal proposal) thereby reducing the amount that is subject to the inheritance tax to the extent of the capital gains tax due.

B. *Arguments Against Taxing Capital Gains at Death*

The current discussion of taxing capital gains at death has been mainly at the federal level and telling arguments have been raised against the proposal at that level These arguments do *not* apply in California In order to make this clear, we will review the federal case and indicate the differences in the California situation. The federal prospects are important also in estimating the likelihood of federal-state conformity in this area.

The main arguments against taxing capital gains at death in the federal law are (1) *constitutionality*—such taxation would be beyond the power of Congress; (2) *hardship*—a hardship would result in that there is actually no "realization" from which the tax could be paid; (3) *structure*—business structure and practices would be changed.

(1) Constitutionality of the Taxation of Capital Gains at Death

In *Eisner* v. *Macomber* [20] the U S Supreme Court refused to permit the taxation of stock dividends It found that the prohibition against direct taxation in Article I was not voided by the 16th Amendment in

[17] Hearings (1963) *op cit*, pp 67, 708. Harold Groves has claimed that probably four-fifths of capital gains now "accrue outside the tax system," "Taxation of Capital Gains," *Tax Revision Compendium*, vol 2, November 16, 1959, pp 1193–1201 at p 1194 (Compendium of Papers on Broadening the Tax Base, Submitted to the Committee on Ways and Means) Referring to the proposal to tax gains at death, Peckman has said, "This reform was intended to close a loophole that permits many billions of dollars of capital gains to go untaxed" Joseph A Peckman, "Individual Income Tax Provisions of the Revenue Act of 1964," paper presented at the twenty-third annual meeting of the American Finance Association, Chicago, Illinois, December 1964 (to be published in *Journal of Finance*, May 1965) There would also be important consequences for the cyclical flexibility of the revenue For effects of the existing tax see Harley H Hinrichs, "Dynamic-Regressive Effects of the Treatment of Capital Gains on the American Tax System During 1957–1959," *Public Finance*, vol 19, no 1, 1964, pp 73–88.

[18] *Congressional Record*, January 1964, pp. 1040–1043 at p 1043

[19] See Table 1, above

[20] 252 U S 189, 40 S Ct 189 (1920), 212–215

this case The grounds were that the taxpayer had "not realized or received any income in the transaction " The Court was also concerned with the fact that "in the nature of things it [the stock dividend] requires conversion of capital in order to pay the tax." The Court emphatically said, " enrichment through increase in value of capital investment is not income in any proper meaning of the term."

These views of the Supreme Court raise serious doubts as to whether Congress can enact a tax on unrealized gains at death (under the income tax) even if it wants to Congress' entire power to tax income without state apportionment or population census derives from the 16th Amendment. Yet it is in interpreting that amendment that the Supreme Court decided that income must be realized in order to be taxable That being the case, we may ask, would "constructive realization" at death be constitutional?

Randolph Paul believes that a tax on capital gains at death would be upheld [21]

> Under present law ordinary income can be converted into capital gains by allowing profits to remain in corporations As a matter of fact, the tax can be wholly avoided by holding stock until death or to some degree, by making gifts of property which has appreciated in value While some doubts have been raised as to its constitutionality, I believe that the most promising remedy for avoidance of this type is to impose a tax upon gains accrued to the date of any gift of the stock or at the time of death I believe that such a tax would be upheld.

Stanley Surrey, too, has argued strongly in favor of the constitutionality of a tax on capital gains at death.[22] The General Counsel of the Treasury has also rendered an unequivocal opinion in favor of constitutionality.[23]

It is true that, in some respects, the Supreme Court has been liberal in its interpretation of the constitutional authorization to tax "income from whatever source derived " It is likely that some way could be found to include the taxation of the appreciation in property passing at death The transfer that occurs at death may possibly be considered a form of "exchange" which constitutes "realization" so as to have been "derived" in the constitutional sense The property may be regarded as being transferred to the distributee in "exchange" for the distributee's rights under the will or the interstate share The exchange that occurs may then be considered a "taxable exchange."

The tax law now contains a concept of "constructive receipt" of income which might possibly be applied to the taxation of unrealized gains Interest accruing in a bank account, or an uncashed check, are examples of constructive receipt The appreciated value is available to the estate and might thereby be regarded as being constructively received by it, hence taxable as income The General Counsel of the

[21] Randolph Paul, *Taxation for Prosperity,* (New York Bobbs-Merrill Company, 1947) p 275

[22] Quoted in Surrey and Warren, *Federal Income Taxation,* pp 1183–1184 (Brooklyn The Foundation Press Inc , 1953 ed), pp 1518–1519 (1960 ed) [Extract from Surrey, "The Supreme Court and the Federal Income Tax Some Implication of the Recent Decisions," 35 *Illinois Law Review* 779 (1941)]

[23] Contained in *Hearings* (1963) *op cit*, pp 596–602

Treasury feels that Congress can decide what is a "taxable event" and can tax the unrealized capital gain at death. He says.[24]

> To recapitulate, it is my opinion that *Eisner* v. *Macomber* has limited, if any, application and does not stand in the way of the present proposals; that the transfers of appreciated property by gift or by death present appropriate occasions to measure the increase in the value of the property and to tax the capital gain to the donor or decedent, and that such a tax would be constitutional The constitutionality of the tax can be supported by the conclusions that an appreciation in property may be taxed upon the occurrence of an appropriate taxable event, which event is for Congress to determine, and that the taxpayer has realized the appreciation in value by his exercise of control over it and by his accomplishment of his economic objective with respect to that income

One would have to be rash indeed to disagree with such eminent authorities One would have to be equally rash, however, to take it for granted that a favorable decision by the Supreme Court is a certainty.

It is difficult to read the history of the "realization" doctrine without serious doubts as to the constitutionality of the taxation of unrealized capital gains at death at the federal level. In particular, it must be recalled that in *Eisner* v *Macomber* the Supreme Court gave two reasons against the taxation of the unrealized gain (a stock dividend): (1) the necessity for converting capital in order to obtain the funds to pay the tax; and (2) the mere increase in value is not income Both points can be made with respect to the taxation of unrealized gains at death It is true that the first point can be made about many aspects of tax laws whose constitutionality is no longer in question. The second point has also been whittled away in several instances. Nevertheless, the two points were made, have not been overruled in principle and might be invoked in the specific case of taxing capital gains at death.[25]

For constitutional reasons it may be wise to drop the idea that the capital gains tax is part of the income tax If the tax were simply a property tax or a capital tax the problem of fitting into the judicially established concept of "income" would be avoided Article I of the Constitution requires that "direct taxes" be apportioned among the several states according to an enumeration. The 16th Amendment removes taxes on "income" from this restriction Thus all other "direct" taxes remain subject to the restriction The question is whether any tax imposed on or measured by an appreciation in value must be classified as "direct" within the meaning of the Constitution. Taxes which are not "direct" are not restricted by Article I nor affected by the 16th Amendment This raises the possibility of some kind of excise or use tax or even a special estate tax, the measure of which is the capital gains portion of the property value

None of these problems arises in connection with the taxation of capital gains in California There is no constitutional restriction on "direct taxes" except in the area of property tax exclusions and ex-

[24] Hearings (1963) *op cit*., p 602

[25] See Morton A Smith, "The Constitution Revisited· The Power of Congress to Levy a Tax," *American Bar Association Journal*, May 1960, Vol 46, pp 559–561.

emptions. The Legislature could undoubtedly impose a tax on the accretion in value of an asset at any time, including transfer at death. Article XIII, Section 1 of the California Constitution, which excepts certain property from taxation does not impose limitations on inheritance taxes (*Estate of Watkinson*, 191 Cal. 591) or income taxes (*Weber* v *Santa Barbara County*, 15 Cal 2d 82). There do not appear to be any pertinent constitutional prohibitions If an unexpected constitutional barrier does exist, the greater ease of amendment of the state constitution suggests that the barrier could be removed more readily than at the federal level.

(2) Hardships Involved in Taxing Capital Gains at Death

The imposition of a tax on capital gains inherent in property passing at death would impose a burden on the estate or the distributee in finding the money with which to pay the tax It may be necessary to sell the property and realize the gain in order to obtain the cash necessary to pay the tax. There would thus be a forced sale with all its unfavorable consequences. Taxation of capital gains at death would actually impose a burden on the distributee, not the decedent

If capital gains are to be taxed at death there remains the question whether the entire appreciated value should be taxed in the year of death. In view of the progressive rates, this may appear to be an undue burden. Even for the ordinary capital gains tax there is a proposal for spreading the tax over the period of appreciation or a period in gross (e g , five years) The argument is much stronger in case of taxation at death · the entire appreciation becomes taxable in one year without any choice on the part of the decedent-taxpayer. At least during life he might have had an opportunity (depending on the assets involved) to spread the gain over a number of years by selling off over a period of years

Steger highlights the liquidity problem [26] ·

> *Effect of constructive realization at death on the liquidity of the estate tax population.* One of the most specific economic effects of constructive realization of gains and losses at death would be the effect on the liquidity position of estates The effect as most clearly seen by comparing the liquid and near-liquid asset positions of various size estates, as reported in 1949 estate tax returns,[a] with the liquid and the near-liquid asset positions of these estates if unrealized gains had been constructively realized at death.[b] For the purposes of the analysis, federal, state, and municipal bonds were considered "very liquid," as were two-thirds of "other bonds," taxable insurance and cash. Fifty percent of common stock was defined as "liquid "[c]
>
> The computation revealed that, whereas very liquid assets were 262 percent of the estate tax and very liquid plus liquid assets were 427 percent of the estate tax for all estates in 1949, these rates would have fallen to 186 percent and 305 percent, respec-

[26] Steger, *op cit*, pp 279–280

tively, had gains been constructively realized in these 1949 estates. In estate size classes greater than $300,000 (net estate before exemption) all the ratios were lower than these In the $1,000,000–$1,500,000 size class, for example, the very liquid ratio would have decreased from 127 percent to 104 percent and the very liquid plus liquid ratio from 261 percent to 215 percent

When shrinkage in the size of the estate from probation and administration expenses is considered along with the subsequent increase (about 15 percent on the average) in tax liability for these estates after audit, it can be seen that the change in the tax law under consideration would cause significant difficulties, particularly in the case of estates of more than $300,000 Most of these estates certainly would be forced to liquidate assets of less than the highest liquidity. Since many of the medium-size estates hold stock in only one corporation, this would severely intensify the problems of small businesses on the death of one of the owners.[d] At the very least, taxing unrealized gains at death would severely increase the liquidity problems of many estates.

[a] *Statistics of Income* 1949
[b] From Table 1 on p 272 of *Steger's* article
[c] The procedure used follows that in C L Harris, 'Liquidity of Estates," *Political Science Quarterly*, v 64 (1949) p 533–39
[d] See Butters, J K., Lintner, J., and Cary, W., *Effects of Taxation on Corporate Mergers*, Boston, Harvard Business School, 1951, Ch 2

Even Pechman, who argues strongly for taxation at death, recognizes the need for some method of easing the burden of payment[27]:

> Unrealized capital gains transferred by gift or at death —The omission of capital gains transferred by gift or at death is a by-product of the use of the realization principle in the tax law Actually, this omission acts as a great deterrent to transfers of assets, since taxpayers are encouraged to retain assets on which large gains have been realized so that they can be transferred tax free by bequest It is also inequitable because it benefits those who can arrange their affairs to avoid realizing gains If these gains were made subject to tax, some form of averaging would be needed, or, as an alternative, the gains might be taxed at a flat rate with a tax-free allowance to all taxpayers to avoid the problems of averaging.

The possibility of paying the government in kind or in notes has been suggested[28]:

> Professor Paul Studenski, New York University: I'd like to ask Professor Eisner whether in proposing by indirection that capital gains on noncash assets be taxed, he had in mind that such gains on noncash assets be paid to the government in cash; or whether perhaps he suggested or had in mind the possible innovation in our tax system that the tax on the gains should be paid in the form of the noncash assets, so that the government then would have the problem of converting these noncash assets into spendable cash.

[27] Joseph A Pechman, "What Would a Comprehensive Individual Income Tax Yield?", *Essays in Federal Taxation*, (New York Committee for Economic Development, December 1959) p 30
[28] "Discussion of Tax Differentials and Their Effect on Investment", in *Income Tax Differentials*, Tax Institute Symposium, November 21–22, 1957, (Princeton: Tax Institute, Incorporated, 1958) pp 180–181

Professor Eisner. This is a nice question if you want to pursue the matter seriously As an economist, I am not sure what I can say about it I suppose offhand I'd be happy to let the people sell the stock, if they have to, and pay it in cash, but I don't see any serious objection to having some kind of a scheme where the individual accepts an obligation to the government, if you wish, and on which due interest is paid I think Mr Vickrey has some interesting schemes on this score That, to me, is a detail The important thing is to recognize that in a meaningful sense income is nothing but what you consume plus what you add to your net worth or wealth and it doesn't make any difference in a meaningful sense whether this is in the form of a capital gain or whether it is in the form of something like what the poor professor has to declare as a taxable income It's still income

The administration recognized the hardships involved in the tax plan in 1963 and proposed several forms of relief: averaging the gain (in effect) over a five-year period, and making exceptions for personal and household effects, a personal residence, property transferred to a surviving spouse, property transferred to charity, and a minimum of $15,000 in every case [29] The estate would be reduced by the amount of the capital gains tax liability There was no provision for payment in kind or notes

The same problems would arise, in principle, in California but the much lower prevailing capital gains tax rates, ranging from ½ percent to 3½ percent, make the practical burden much smaller Moreover, the inheritance taxes would be reduced slightly if the capital gains tax were deductible as a liability of the estate There could, of course, be various relief provisions comparable to those in the federal proposal

(3) Effect on Business Structure and Practices

The problems which would arise in the taxation of capital gains at death are similar in form to those which now exist with respect to the estate tax. The required solutions are also of the same type [30] The essence of the problem is this since there is no actual sale there are no funds released with which to pay the tax and there is no certainty as to what value should be placed on the property, hence what tax should be paid The consequence is a serious impact on business structure and practices in order to avoid a forced sale of the ownership interest to pay the tax.

The taxation of capital gains at death would become a factor contributing to the merger of small businesses into large corporations [31]

[29] Hearings, 1963, *op cit*, p 128

[30] The problems with respect to estate taxes are discussed in Harold M Somers, "Estate Taxes and Business Mergers," *Journal of Finance*, May 1958

[31] An illustrative statement on the effect of the estate tax was made by a private investment banker who said, " The business slowdown fires the merger trend Another factor is that aging owners of some companies want to sell out to mitigate the effect of estate taxes" (*Wall Street Journal*, December 19, 1957), p 1 Studies that point in the direction of an impact of estate taxes on investment and merger decisions include J Keith Butters, Lawrence E Thompson, and Lynn L Bollinger, *Effects of Taxation Investments by Individuals* (Boston Harvard University, 1953) pp 3½, 171, Dan Throop Smith, *Effects of Taxation Corporate Financial Policy* (Boston Harvard University, 1952) pp 184, 188, 225, J Keith Butters John Lintner, and William L Cary, *Effects of Taxation Corporate Mergers* (Boston Harvard University, 1951) *passim* C Lowell Harriss, "Economic Effects of Estate and Gift Taxation," *Federal Tax Policy for Economic Growth and Stability* (Washington, D C Joint Committee on the Economic Report, 1955) pp 860-62 Most of these findings would apply to the taxation of capital gains at death

In order to see this we must review the effects of the estate tax on business operations.

There are two aspects of the estate tax that affect business structure and practices in closely held corporations. (1) *uncertainty* as to how much the tax will be and (2) fear of *insufficient liquidity* to pay the tax One of the major elements of uncertainty in the estate tax lies in the valuation of closely held securities The illiquidity results from the fact that shares in closely held corporations may be hard to sell on the death of one of the owners; and even when a buyer is available there is the danger of bringing in a stranger who may disrupt the operation of the business to the detriment of surviving owners or heirs. (The problem of illiquidity was discussed in Section 2, above, but it has special significance where business firms are involved.)

The taxation of capital gains at death would likewise result in uncertainty and illiquidity and would encourage practices to overcome or avoid their unfavorable effects

Under the existing estate tax, attempts are made to ensure the continuity of the business firm after the death of a major stockholder or partner through the use of a stock-redemption plan or a cross-purchase agreement. When the stock cannot be redeemed by the company or bought out by surviving stockholders, the survival of the firm may be seriously jeopardized The widow may try to run the firm or sell her interest to a stranger who will do likewise. Under a stock-redemption plan the company agrees to buy the stock of the deceased. Under a cross-purchase agreement the surviving stockholders or partners agree to do so Either may obtain the necessary funds through life insurance on the stockholder or partner. There are many legal pitfalls ready to trap the unwary under either arrangement.

These are the ways in which business firms try to respond to the estate tax (and would similarly have to respond to the capital gains tax) in order to insure the survival of the business after the death of the major owners. The complicated nature of these arrangements, however, and the persistent residue of uncertainty and illiquidity may drive the owner to yield to a much simpler solution: sell out during life, possibly to a larger company. The taxation of capital gains at death would greatly encourage this solution by removing the prevailing temptation to avoid the tax by holding on to the property until death.

Sale or merger during the lifetime of the principal owner offers an attractive way for the individual to minimize the problems of uncertainty and illiquidity involved in the estate tax and in any capital gains tax that may be imposed at death. The owner receives either cash or the listed securities of the large corporation. If he receives securities he pays no capital gains tax at that time His estate would, however, be subject to tax Nevertheless, neither he nor his heirs need face the more serious problems which are associated with the estate tax or which would have to be faced if capital gains were taxed at death. Cash, of course, leaves no problem of valuation or capital gains tax. Securities of a public corporation minimize the problem of valuation and of partial liquidation to pay taxes.

The result of this type of sale or merger is that the small company disappears as a separate entity [32] It is either absorbed indistinguishably into the large corporation or becomes one of its subsidiaries or divisions. Thus estate taxes drive small business into the arms of the big corporations The taxation of capital gains at death might accelerate the movement unless precautions are taken.

In order to avoid or reduce the absorption of small companies by large ones, some relief must be provided from uncertainty and illiquidity The estate tax is not solely responsible for the trend, but it does aggravate the difficulties involved; taxation of capital gains at death would aggravate them still more Revisions in the estate tax, which would apply equally to the taxation of capital gains at death, can accordingly relieve or eliminate the problems to some degree

Uncertainty can be relieved by having the tax-collecting agency give rulings on the application of a taxpayer on either the method of valuation used in a particular stock-redemption or cross-purchase agreement or on the actual value set by such agreement. Approval of the method would at least narrow the range of valuation uncertainty. Approval of the actual value would, of course, eliminate uncertainty as to value. This would require an increase in the number of revenue agents but would be of invaluable help to small business.

The problem of illiquidity can be partly solved by allowing the capital gains tax if imposed on family businesses to be spread over a 10-year period as a matter of right A proposal of this sort has been adopted for the estate tax. This provision should apply only where the redemption privilege is not exercised This should not be discretionary with the tax authority; nor should collateral be required in the case of family businesses As pointed out above, the Administration's proposals of 1963 included various devices for easing the problem of liquidity.[33]

These recommendations should have the effect of reducing the potential impact of a capital gains tax at death as a contributing factor in the merger of small businesses into large companies. The existing federal death tax, the estate tax, has been an artificial factor distorting economic decisions in questions of merger A tax on capital gains at death would become an additional death tax By removing any death tax as an element of uncertainty and illiquidity we may be said to be strengthening a "free market" in mergers whereby a proposed merger will be accepted or rejected on its economic merits by the parties involved without the bias introduced by the peculiarities of the death tax We must make sure that the capital gains tax, if imposed at death, does not simply add another factor of distortion in the merger market There will be a greater tendency to sell out during life but the preference in favor of a large buyer can be reduced

California's inheritance tax undoubtedly has some of the consequences of the federal estate tax The low rates applied to children and a surviving spouse, however, reduce the likelihood of loss of a family business to strangers Low rates are also applicable to capital

[32] One important finding of Steger (*National Tax Journal*, September 1957, p 276) is "Due to the large amounts of unrealized gains in unincorporated enterprises, self-employed individuals would be the occupational group absorbing the heaviest impact of the proposed tax revision" Thus the taxation of capital gains at death runs counter to the current emphasis on helping small, particularly unincorporated, business

[33] Hearings (1963), *op cit*, pp 24 (President's 1963 tax message) 54–56 (presentation of Hon. C Douglas Dillon) and 128–140 ("Technical Implementation").

gains. Relief provisions to prevent a forced sale could be enacted if the rates are ever raised substantially and a tax is imposed on capital gains at death.

C. Arguments (Pro and Con) Concerning Prices and Risky Investments

The capital gains tax as we know it tends to have a "lock-in" effect on investors—they hold their securities in order to avoid paying a tax on the gain This has a destabilizing effect on securities prices and tends somewhat to discourage risky investments [34] Steger has suggested tentatively that taxation of capital gains at death would have a stabilizing effect on prices [35] This conclusion is consistent with the analysis of the effects of the existing capital gains tax. One inducement to being "locked in" is the prospect of avoidance of all capital gains tax at death. Removal of this prospect removes part of the "lock-in" problem and its consequences [36] On the other hand, inability to avoid the tax in a risky investment that really "pays off" (at death) would remove one incentive to making such investment. Thus the proposal could have a stabilizing effect cyclically but might have an unfavorable growth effect. Any existing capital resources would be better allocated (see "welfare" argument, above) but the growth in such resources might be hampered in the private sector of the economy.

Various Combinations of Taxes on Realized and Unrealized Capital Gains in California

The California tax code provides an incentive of a maximum 3½-percent tax saving if an asset whose value has appreciated is held until death or gift rather than sold after having been held more than six months It would certainly be possible to affect this incentive by changing either the treatment of realized capital gains or the treatment of capital gains at the time of death or gift, or both. Various possibilities are summarized in Table 9 [37]

Table 9 shows the treatment of capital gains at realization, the treatment of capital gains at the time of death or gift, and the possible "lock-in" effect of different tax treatment combinations For the sake of simplicity in the table and the following discussion the illustration is based on single persons in the $15,000 and over tax bracket or married taxpayers in the $30,000 and over bracket filing a joint return.

The first possibility considered is the one that prevails in California today (A). Under the present statute a capital gain is subject to a maximum 3½-percent income tax at the time of realization and there is no capital gains tax at the time of death or gift The degree to which this "locks in" the taxpayer is indicated in the final column The rankings shown are relative and refer only to the other possibilities shown,

[34] Harold M. Somers, "An Economic Analysis of the Capital Gains Tax," *National Tax Journal* (September 1948), "Reconsideration of the Capital Gains Tax," *National Tax Journal*, (December 1960), and "Capital Gains Tax Changes in Holding Period and Long-term Rate," *Vanderbilt Law Review*, (June 1963).

[35] Steger, *op cit*, p. 280.

[36] For measurement of the lock-in effect of the existing exemption see Charles C Holt and John P Shelton, "The Lock-in Effect of the Capital Gains Tax," *National Tax Journal*, December 1962, pp 337–352, especially pp 340–349, Charles C Holt and John P Shelton, "The Implications of the Capital Gains Tax for Investment Decisions," *Journal of Finance*, December 1961, pp 559–580, especially pp 571–575 See also Beryl W Sprinkel and B Kenneth West, "Effects of Capital Gains Taxes on Investment Decisions," *Journal of Business of the University of Chicago*, April 1962, pp 122–134

[37] Developed by Joseph J. Launie.

TABLE 9

CALIFORNIA: CAPITAL GAINS TAXATION IN VARIOUS COMBINATIONS

	Capital gains taxation at realization	Capital gains taxation at death or gift transfer	"Lock-in" effect†	
			Factor	Rank
A	R/2*	E*	Save 3½% by holding to transfer	3
B	R/2	R/2	Lock-in 3½% in either case	5
C	R/2	R	Save 3½% by realizing before transfer	7
D	R	E	Save 7% by holding to transfer	1
E	R	R/2	Save 3½% by holding to transfer	2
F	R	R	Lock-in 7% in either case	4
G	E	E	None	6
H	E	R/2	Save 3½% by realizing before transfer	8
I	E	R	Save 7% on realization before transfer	9

*Present California law
† 1 represents maximum "lock-in"
5 represents neutrality
9 represents maximum "negative lock-in" or "lock-out"
Key R = ordinary income tax rate.
E = tax exempt

not to any absolute The strongest lock-in is ranked "1"; the weakest, "9." These represent our estimates of the probable effects, not empirical findings.

The next possibility considered (B) is the taxation of capital gains at 50 percent of the ordinary income rate both at time of realization and at time of gift or death The "5" ranking given to this proposal illustrates that this would constitute less of a "lock-in" than the previous proposal which ranked "3" In effect the taxpayer would be subject to a 3½-percent capital gains tax on realization and this tax could not be avoided by holding the asset until the time of death or gift In terms of achieving the maximum tax neutrality between realized and unrealized gains and providing incentives for capital investment while still obtaining the necessary revenue, this proposal would appear to be the most advantageous of the nine considered.

The next combination (C) has the capital gains taxed at 50 percent of the ordinary income tax rate at the time of realization and the full ordinary income tax rate at the time of death or gift This proposal has a "negative lock-in" effect or a "lock-out " What this would do is to provide an incentive of 3½ percent for the taxpayer to realize the capital gain before the time of death or gift

The maximum possible degree of "lock-in" is contained in the next proposal (D). Here the capital gain would be taxed at ordinary income tax rates at realization but it would be tax exempt at the time of death or gift This provides an incentive for the taxpayer not to realize the capital gain (in the form of a 7-percent tax saving). Viewed

in comparison with the other proposals in this manner, the extreme "lock-in" effects of this type of proposal can be easily seen. It should be noted, however, that this type of legislation is not inconceivable. The California corporate income tax assesses capital gains at ordinary income tax rates (5 5 percent). To extend this type of tax treatment to the California personal income tax in an effort to increase the tax yield would be quite undesirable and possibly self-defeating. The taxpayer's incentive to hold the asset until the time of death or gift would be doubled.

The next proposal (E) would be to tax the capital gain at ordinary income tax rates at the time of realization but at 50 percent of the ordinary income tax rates at the time of death or realization. This proposal would double the present incentive to avoid realization and also provide the same 3½-percent tax savings for holding the asset until the time of death or gift The "lock-in" effect of this proposal would undoubtedly be stronger than at present.

The next proposal (F) provides for taxation of capital gains at ordinary income tax rates at either realization or time of death or gift Here the taxpayer would be subject to a 7-percent capital gains tax which he would not be able to avoid by holding until the time of death or gift The "lock-in" factor at work here would be determined by the individual taxpayer's rate of time preference. He is able to postpone but not avoid the fateful day of the reduction in his wealth through the capital gains tax. The 7-percent tax rate at the time of death or gift poses other problems however. If the capital gain is the result of the increase in the value of the stock of a closely held company, the taxpayer may have the very serious liquidity problems discussed earlier. It may be that this tax will force the liquidation of the company in some cases This complete elimination of the favorable treatment of capital gains will increase tax revenue but it will have adverse effects upon incentives to undertake capital investment.

On the other hand, the next proposal (G) contains a large incentive to seek risky, capital gains-yielding ventures since it provides for the tax exemption of capital gains both at realization and at the time of gift or death There would be no "lock-in" effect as the taxpayer would be under no penalty if he realized his capital gain at any time. (Presumably there would be a six-month retention period since all these provisions would apply only to long-term capital gains but this factor is common to all the proposals under discussion) While this proposal would have the virtue of tax neutrality between realized and unrealized gains it would also result in a substantial drop in tax yield

The next proposal (H) provides for the exemption of capital gains at realization and the taxation of capital gains at the time of death or gift at 50 percent of the ordinary income tax rate. This proposal would have a "lock-out" effect in that the taxpayer would be able to effect a 3½-percent tax savings by realizing his capital gain rather than having it subject to tax at the time of death or gift.

The final proposal (I) provides for the exemption of capital gains at realization and their taxation at ordinary income tax rates at the time of death or gift. This proposal would have a much stronger "lock-out" effect than the previous one; in fact, it would have the strongest "lock-out" effect of all the proposals. The taxpayer would be able

to avoid the capital gains tax and save 7 percent by realizing his capital gain before death or gift. In addition to this "lock-out" effect, this proposal, as well as the preceding one, would raise liquidity problems

There are some interesting possibilities involved in switching a capital gain between an individual and his closely held corporation If the second proposal considered above (B) were adopted, that is, taxing capital gains at 50 percent of the ordinary income tax rate both at realization and at time of death, then the most that could be gained through a switch would be a saving of 2 percent (5 5% minus 3 5%).

If the sixth proposal (F) were adopted, that of taxing the capital gain at the ordinary income rate both at realization and at the time of death or gift, then the corporate rate would be 1½ percent lower than the maximum personal income tax rate (7 0% minus 5 5%).

Other Proposals

In view of some of the arguments that can be made against the taxation of capital gains at death, a search for alternatives and modifications is in order Four are considered here (1) crediting capital gains tax against inheritance and estate tax; (2) taxation of unrealized appreciation on an accrual basis, (3) carryover of decedent's basis for property passing at death; and (4) integration of the tax at death (or changed basis) with the "roll-over" proposal. Some of these alternatives are fully consistent with the proposal to tax capital gains at death and serve primarily to soften the impact on the taxpayer.

A. Credit Against Inheritance or Estate Tax

Jonathan Brown suggests that there be "some form of estate-tax credit for all capital gains taxes paid after age 65, or perhaps within five years of death "[38] He states:

> Such a tax credit would be an equitable improvement in our tax laws that would go a long way toward unlocking the older investor. Moreover, it would almost certainly occasion very little loss in revenue, because older investors can't afford to sell anyway under the present law.
>
> Under the proposed credit, there would be larger tax revenues from the larger estates which would be left, from the fact that some older unlocked investors would pay a capital gains tax but outlive the credit period, and because of the general benefit to the economy of the country.

This proposal would remove some of the disadvantages of the existing situation by inducing some investors to sell before death The tax-free privilege now accorded capital gains at death would be extended forward to some years before death The prevailing inducement to remain locked in to the bitter end would thus be removed or reduced

The Administration in Washington proposed a reduction of the estate, hence of the estate tax, as part of the plan to tax capital gains at death.

[38] Jonathan A Brown, "The Locked-in Problem," in *Federal Tax Policy for Economic Growth and Stability*, pp 379–380 84th Congress, 1st Session, Papers Submitted by Panelists Appearing Before the Subcommittee on Tax Policy, Joint Committee on the Economic Report, November, 1955 (Washington, Government Printing Office, 1956), pp 367–381.

This was *not to* be a tax credit whereby the gains tax would be deducted from the estate tax The Administration's proposal of 1963 included the following:[39]

> The income tax on the gain at death would constitute a debt of the estate, be deductible from the gross estate for estate tax purposes, and thus reduce any estate tax liability The treatment here follows automatically under present estate tax rules dealing with debts of an estate Further, the income tax on the death transfer of property has the same tax consequences as would the income tax on a sale or exchange of the property by the decedent during his last taxable year.

In absence of a credit, the capital gain portion of an asset is taxed twice, once under the income (capital gains) tax and again under the estate or inheritance tax A credit would thus avoid double taxation of the capital gain at death The Administration's proposal would merely have avoided an estate tax on the gains *tax*, not on the gain itself It is not so much the "doubleness" *per se* that is at issue as the fact that the two taxes together might lead to an exorbitant combined rate If there is no relief provision, the decedent will be better off dead.

Either of the above proposals could readily be adapted to California's inheritance tax. Under the full credit plan, the capital gains tax paid could be allocated *pro rata* among all the inheritances; presumably with a refund due in those cases where the credit exceeds the tax liability Similarly, under the Administration plan, the allocated gains tax paid could constitute a deduction in computing the taxable portion of each inheritance

If a too-simple tax credit plan were followed, a new lock-in might be created A tax on capital gains at death would be credited against the inheritance or estate tax but a tax paid on a capital gain realized in the years before death would not be so credited This would again induce a holding until death and put us back to the present situation Thus Jonathan Brown's proposal, described above, would be useful in reducing the lock-in effect whether or not capital gains are taxed at death It is quite a dilemma Without a capital gains tax credit against the inheritance or estate tax we would be taxing the gain twice (and, in some extreme instances, at a total combined death tax rate [of all kinds] close to 100 percent) With a capital gains tax credit only on the gain that is taxed at death, we would be restoring the inducement to remain locked in until death By crediting earlier capital gains tax payments we can avoid both evils

B. Taxation of Unrealized Appreciation on a Year-to-year Accrual Basis

The possibility of taxing unrealized gains from year to year has been advanced The nature and defects of the proposal have been summarized by the staff of the Joint Economic Committee:[40]

> Since the realization principle in the present law has been generally identified as the principal source of difficulty in capital gains taxation, the taxation of gains on an accrual basis has been pro-

[39] Hearings (1963), *op cit*, p 139

[40] *The Federal Revenue System Facts and Problems 1961*, Materials Assembled by the Committee Staff for the Joint Economic Committee, Congress of the United States (Washington Government Printing Office, 1961) p 69

posed as an ideal solution. Under this proposal, taxable income would include the net change in the value of the property owned between the beginning and end of the taxable year, whether or not realized Tax at ordinary income tax rates would be applied to such changes in value. Where net capital losses accrued over the year, they would be deducted in full from ordinary income. This approach would also eliminate the problems resulting from the lack in the present law of a constructive realization on transfers by gift or at death.

Numerous objections are raised against this proposal In addition to the difficulties attendant upon establishing reliable values for property in the absence of a sale or exchange, the proposal would also frequently result in forced realizations in order to provide the means for payment of the tax. Moreover, this treatment would eliminate the present tax bias in favor of so-called growth investments as compared with safer income investments, and would, in fact, introduce an opposite bias

There are some serious difficulties in the valuation and taxation of any assets in absence of a sale, including unrealized gains.[41] These difficulties of uncertainty and liquidity are faced at the present time in inheritance and estate tax valuations, as pointed out in an earlier section of this study. The prospect of facing these problems every year would be enough to bring on premature death.

C. Changing the Basis Requirements

The greatest prospect of improvement in the near future lies in changing the basis of inherited property. At the present time, the person who gets the property from the decedent takes it with a basis which is generally the same as the value that is used for inheritance or estate tax purposes If, instead, he took the decedent's basis there would be some possibility, at least, of taxing the appreciation in the future The tax would not be completely lost but there would be a postponement until the property was sold Presumably the new basis would be either cost or value at death, whichever is lower There would be loss of revenue from the inheritance and estate tax if the decedent's basis (or value at death, if lower) is used for inheritance and estate tax purposes also If the value at death is used in evaluating the property for inheritance and estate tax purposes it will be argued that the distributee should be given the benefit of that same value for later capital gains tax purposes The appreciation would otherwise be subjected to both the death tax and the subsequent capital gains tax. A solution to this problem might be to allow either a partial or total credit or deduction of death tax paid on the appreciated portion of the estate This credit or deduction would become effective at the time that the capital gains tax becomes due.

The changed basis would bring death taxes in line with gift taxes. The donor's basis (or market value if lower than donor's basis) is currently used for gifts The basis device is less drastic or more palatable

[41] See Harold M Somers, "Valuation of Property for Purposes of Taxation and Legal Proceedings," in *Capital Investment and Asset Valuation* (University of Buffalo Industrial Liaison Office Publications, 1954, litho), and Harold M Somers (ed) *Estate Taxes and Business Management* (University of Buffalo Industrial Liaison Office Publications, 1957, litho).

than taxation of the gain at the time of death There is then at least the option of retaining the appreciated property and thereby further postponing the payment of the capital gains tax Such "carryover of basis" was one of the possibilities considered during the Congressional tax discussion of 1963.

The carryover of decedent's basis, rather than taxation of the gain at the time of death, is consistent with the general policy embodied in the income tax The State Legislature and the Congress have apparently been anxious to avoid taxation on improvements in economic power which do not provide the means of paying the tax The treatment of "fringe benefits" is a good example In particular, the employer's contribution to a qualified pension fund is not taxed in the current year, presumably because no funds are currently released to the employee taxpayer.

There is, of course, the remote chance that the particular asset will not be sold by those who inherit it, nor by those who inherit it from them, etc. In that case, the capital gains tax will be deferred until the asset is sold A period in gross (e g 30 years) could be used to ensure payment of a capital gains tax within a generation after the death of the first owner. Some lock-in will remain but it will not be so strong as at present.

D. Integration of Changed Basis With "Roll-over" Proposal

Constructive realization at death is closely related to what is known as the "roll-over" proposal [42]:

> Proposals have been made to provide for tax-deferred exchanges of nonbusiness capital assets held in an individual's personal investment account in a manner similar to that now provided for gains on the sale of personal residences.[a] Taxation of gains would be deferred until final realization of the assets, either by diversion of the proceeds to consumption or to investments of an entirely different character. Realization would also be provided for at the transfer of the property by gift or at death, or even at the election of the taxpayer. In general, an investor would not be taxed if the gains on the sale of an eligible asset were reinvested in similar assets within the same income period. A tax would be imposed, at ordinary income rates, on that portion of the gains not so reinvested. Capital losses could be carried over without limit for offset against capital gains.
>
> This proposal, it is maintained, would completely eliminate the deterrent of current taxation on transfers of investable funds. Moreover, though it would afford some benefits to taxpayers reinvesting gains by virtue of deferral of tax, it would nevertheless provide for ultimate and complete taxability as ordinary income of all gains realized by the taxpayer.
>
> Practical problems of administration and enforcement are suggested in criticizing this proposal Proponents, on the other hand, maintain that the proposal would involve little more difficulty than the present law in compliance and administration.

[a] See statement of Reuben Clark, attorney at law, Washington, D C , in hearings before the Committee on Ways and Means, House of Representatives, 85th Cong , 2d Sess , pt II, pp 2272–2281 .

[42] *The Federal Revenue System: Facts and Problems 1961* (Washington: Government Printing Office, 1961), p. 68. See also Dan Throop Smith, *Federal Tax Reform* (New York: McGraw-Hill, 1961), pp 151–155.

The administrative difficulties for both the taxpayer and the tax collector are not negligible. For one thing, "running capital accounts would have to be kept for all taxpayers who were property owners." [43] For another "since there would clearly be an incentive to borrow in order to live off untaxed capital gains, net contraction of debts during the tax period would have to be subtracted from the total value of the purchases of that period." [44] These difficulties can be overcome without insuperable complexity.

This proposal arises from the claim that the capital gains tax on certain transactions is really a "wallet-shifting tax." If the taxpayer has a certain amount of his wealth in a number of shares of a certain stock and he sells that stock in order to purchase another security, then the capital gains tax that he must pay as a result of this transaction is really a tax on his shifting his wallet from one pocket to another. It would be possible to avoid the "wallet-shifting" feature of the capital gains tax by exempting from capital gains taxation that amount of the sales price of the security or the property that is reinvested within a one year period in securities or property of the same or similar nature.

It should be emphasized that the roll-over proposal (also known as the Full Reinvestment Proposal) does not necessarily involve exemption from capital gains tax during life: only an exemption in those cases where there is a reinvestment of the proceeds in similar assets. Other realization would remain taxable, as at present.

If the roll-over proposal is adopted, some form of taxation of capital gains at death becomes essential if there is to be any taxation of capital gains at all. The roll-over must stop at the time of death. If the decedent was allowed to roll over when he was alive, he cannot be permitted to do so when he is dead.

The Issue and a Solution

The basic issue is simple. Those who realize their capital gains during their lifetime are penalized by having to pay a capital gains tax whereas those who hold their appreciated property until death avoid the tax. One extreme possibility is to remove all taxation of gains during life and the other is to impose a gains tax at death. An intermediate possibility is to treat a gift at death the same as a gift during life, with the donee taking on the donor's base for capital gains tax purposes.

VII. CONCLUSIONS

The inheritance-gift-capital gains tax complex is one of the most intricate in California's entire tax structure. Innumerable reforms, some of them purely legalistic in nature, could be proposed. In this study, we have confined ourselves to the following.

[43] Ursula K. Hicks and Herschel I. Grossman, "Lessons from America's Capital Gains Tax," *The Bankers' Magazine (England)*, February 1962, Vol. 193, pp. 85–91 at pp. 88–90.

[44] *Ibid.* *Cf. The Federal Revenue System: Facts and Problems 1964*, p. 85.

1. Removal of the discount provision and reduction of the grace period.
2. Removal of the tax-free treatment of capital gains at death.

The proposal to remove the discount provision would withdraw the preference that is currently granted to liquid estates At the present time, a 5-percent discount is given on payment in six months Coupled with this is a proposal to reduce the grace period from 24 months to 15 months. This would increase revenue in providing earlier payment of funds on which interest could be earned by the state. The dropping of the discount would undoubtedly slow down payments to some extent. The state would lose the interest that can now be earned on funds paid early; but it would also be relieved of the necessity of paying a 5-percent discount on those funds. The state would also be spared the expense of making refunds to those who pay an estimated tax early in order to take advantage of the discount provision before the exact tax liability can be ascertained.

The proposal to remove the tax-free treatment accorded capital gains at death has both economic and equitable origins At issue is the fact that property that has appreciated in value during the lifetime of the owner is not subject to the capital gains tax if the owner holds the property until he dies. Those who inherit from the owner take the property at the value it has at time of death; and this is the basis used in case of any future capital gains.

The result is an inducement to hold property until death, with unfavorable consequences for the securities market and other asset markets and for the free flow of investment capital into new companies and industries. There is also the inequity involved as between those who sell their appreciated assets during life and those who hold them until death. In both cases, the cash and/or assets are subject to the inheritance tax but in the former case a capital gains tax is also imposed.

Solutions to the problem are complicated by the necessity of having enough liquidity in the estate to pay any new tax imposed. There are also difficulties involved in providing appropriate deductions or credits as between the capital gains tax and the inheritance tax In the case of gifts during life, there is no capital gains tax at the time of donation but the donee takes the donor's base for capital gains tax purposes Thus a more moderate proposal suggests itself· Have the inheritances take on the decedent's base This ensures that there will ultimately be a day of reckoning even if it does not coincide with the day of death.

APPENDIX

CALIFORNIA INHERITANCE AND GIFT TAX LAW*

CALIFORNIA INHERITANCE TAX

* SOURCE Written by Charles J Barry, Chief Inheritance Tax Attorney, State of California Originally published by the University of California Extension, Continuing Education of the Bar Reproduced with permission

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- D Interest
- E Payment of Tax and Interest, a Prerequisite to Distribution
- F. Refund

XI Practice and Procedure
- A Appraisers
- B Normal Probate Procedure
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- D Miscellaneous

XII Administration

XIII Additional References

CALIFORNIA INHERITANCE TAX

I. Historical Background

California's first inheritance tax law (Stats 1853, Ch 167, p 233) was never really effective, for it was repealed the following year (Stats 1854, Ch 74, p 103)

A. *The Inheritance Tax Act of 1893*
(Stats 1893, Ch 168, effective March 23, 1893)

1 The act taxed transfers by will or interstate laws of California and inter vivos transfers made in contemplation of death or intended to take effect in possession or enjoyment at or after death Transfers to father, mother, husband, wife, lawful issue, brother, sister, wife or widow of a son, husband of a daughter, adopted children, and charities were exempted The tax was payable to the treasurer of the county wherein the probate proceedings were pending

2 Amendments
(Stats 1895, Ch 28, effective March 9, 1895, Stats 1897, Ch 83, effective March 9, 1897, Stats 1899, Ch 85, effective March 14, 1899, Stats 1903, Ch 228, effective March 20, 1903 The act was repealed by Stats 1905, Ch 314, Sec 27, effective July 1, 1905)

B *The Act of 1905*
(Stats 1905, Ch 314, effective July 1, 1905) This was the predecessor of all state inheritance tax acts up to and including the Inheritance Tax Act of 1935 It was founded on the Wisconsin Act of 1903 Differences from the 1893 act included

(1) Broadening of the base to include all transferees, direct descendants as well as collaterals,
(2) Varying of exemptions and rates according to degree of blood relationship,
(3) Progressive rates

C *The Act of 1911*
(Stats 1911, Ch 395, effective July 1, 1911) This act was a complete rewriting of the 1905 Act, and all parts of the latter in conflict with the 1911 Act were repealed Important changes consisted of

(1) Limitation of lien for tax to five years as to a bona fide purchaser;
(2) Addition of penalty for unauthorized transfer, and
(3) Provision for appointment of appraisers

Contemporaneous amendment of the then Section 1440 of the Code of Civil Procedure (now Prob C Sec 605)

D *The Act of 1913*
(Stats 1913, Ch 595, effective August 15, 1913) The 1913 act was primarily a reenactment of the act of 1911, substantially increasing the rates in the upper tax brackets, but not changing the 1911 exemptions It taxed the creation of powers of appointment, rather than their exercise, and provided that an inheritance tax appraiser must be appointed in every probate proceeding
The 1915 amendments (Stats 1915, Chs 189 and 198, effective August 8, 1915), provided for
(1) Taxation of joint tenancies (Sec 1(g)),
(2) Compensation of appraisers out of inheritance tax receipts,
(3) A change in classes of beneficiaries from five to four

E *The Act of 1917*
(Stats 1917, Ch 589, effective July 27, 1917) This was a reenactment with certain changes of the 1913 act It granted the surviving wife exclusion equal to one-half the community property

F *The Act of 1921*
(Stats 1921, Ch 821, effective August 2, 1921.)
1 While primarily a reenactment of the act of 1917, the 1921 act
(a) Granted a deduction for federal estate tax paid, upon prescribed formula,
(b) Provided for shifting a tax lien from property sold on probate sale to proceeds of such sale,
(c) Reduced rates of the tax,
(d) Introduced the "previously taxed property" (five-year) exemption, applicable to class A transferees,
(e) Provided that the tenant of a safe deposit box must agree to notify depositary of the death of any other person having access to said box
2 The 1923 amendment (Stats 1923, Ch 337, effective August 17, 1923) redefined community exclusion
3 One of the 1925 amendments (Stats 1925, Ch 238, effective July 23, 1925) provided for deposit of taxes collected in the general fund
4 The other 1925 amendment (Stats 1925, Ch. 284, effective July 23, 1925)
(a) Provided for treatment of the community property exclusion where the husband's will forces the wife to an election,
(b) Introduced the Prob C Sec 201 5 concept as to personal property into inheritance tax law,
(c) Taxed family allowance
5 The 1927 amendment (Stats 1927, Ch 646, effective July 29, 1927) established the intangibles exemption based on reciprocity, and introduced the additional (pickup) tax
6 The 1929 amendment (Stats 1929, Ch 844, effective August 14, 1929),
(a) Provided that transfers to take effect in possession or enjoyment at or after death would be valued as of the date of death,
(b) Provided that failure by a donee to exercise power of appointment would not be a taxable transfer,
(c) Added the insurance exclusion,
(d) Changed certain exemptions and rates,
(e) Added reciprocal exemption as to foreign charities,
(f) Exempted proceeds from war risk insurance payable to the estate,
(g) Extended intangibles reciprocity to foreign states and countries,
(h) Authorized compromise of contingent interests,
(i) Revised the "previously taxed property" exemption
7 The 1933 amendment (Stats 1933, Ch 1048, effective October 25, 1933) changed the specific exemption of the wife

G *The Act of 1935*
(Stats 1935, Ch 358, effective June 25, 1935) This act was primarily a reenactment of the 1921 act as amended The 1935 act was amended three times in 1937, twice in 1941, and in 1943

H *Inheritance Tax Law Codified*
Inheritance tax law was codified in 1943 (Stats 1943, Ch 658, operative July 1, 1945) and incorporated into the Revenue and Taxation Code

II. Persons and Property Subject to the Tax

A *Where Decedent Owner Is a Resident of the State*
("Residence" is not defined in the statute *Estate of Bloom* (1931) 213 C 575, 2 P. 2d 753)

1 Real property situated in California is subject to the tax Under the doctrine of equitable conversion, real property located elsewhere, subject to a contract of sale might be subject to the tax depending upon the law of the state in which the real property is located
2 Tangible personal property located in California is subject to the tax
3 Also subject to the tax is intangible personal property in California irrespective of location of evidence of ownership *Estate of Dillingham* (1925) 196 C 525

B *Where Decedent Is a Nonresident of California, but a Resident of the United States*
The tax is levied on real and tangible personal property located in California Intangible personal property is exempt under Rev & Tax C Sec 13851,* based upon reciprocity

C *Disputed Domicile Cases*
In cases of disputed domicile the Controller may compromise (Secs 14195 and 14195 4) or arbitrate (Secs 14197 and 14197 13) the question of domicile An alternative method of arbitration is provided by Secs 14199 to 14199 13 (added 1957)

D *Where Decedent Is a Nonresident of the United States*
The tax is levied on real and tangible and intangible personal property located in California (Sec 13303(b)) Included under the category "intangible personal property" is
(1) Stock in a California corporation;
(2) Stock in a federal corporation or a national bank which has its principal place of business in California,
(3) All other intangible personal property in California (Sec 13602) Bank deposits and deposits in a savings and loan association are not subject to the tax unless used in connection with a business operated in whole or in part in California (Sec 13303(b), 1956 and 1963 as amended)

III. Transfers Taxable

A. *In General*
All transfers by will or the laws of succession are taxable (Secs 13601 and 13602) Also taxable are transfers of a statutory and probate homestead (Secs 13621 and 13622) and transfers of a family allowance (Sec 13623).

B *Inter Vivos Transfers*
An inter vivos transfer without valuable and adequate consideration (Sec 13641 and Stats 1959, Ch 485); *cf Estate of Stevens* (1958) 163 C A. 2d 255, 329 P 2d 337, *Estate of Hyde* (1949) 92 C A 2d 6, 206 P 2d 420) is taxable if made
(1) In contemplation of death (Sec 13642), Barr, *Taxation of Transfers in Contemplation of Death,* (1959) 10 Hastings Law Journal 370,
(2) As a substitute for a testamentary disposition (Sec 13648), *Estate of Newman* (1942) 52 C A 2d 126, 125 P 2d 908, *Estate of Adams* (1952) 39 C 2d 309, 246 P 2d 625; or
(3) To take effect in possession or enjoyment at or after death (Sec 13643), *Estate of Madison* (1945) 26 C 2d 453, 159 P 2d 630, *Estate of Hyde* (1949) 92 C A 2d 6, 206 P 2d 420

* Unless otherwise noted, all further code references are to the California Revenue and Taxation Code

Such a transfer is taxable even though the transferor retains a life income or interest (Sec 13644, *Estate of Thurston* (1950) 36 C 2d 207, 223 P 2d 12), or extracts a promise from the transferee to make payments to or care for the transferor (Sec 13645) Such a transfer by way of revocable trust (Sec 13646) Totten trust (*Estate of Goldfader* (1955) 131 C A 2d 533, 280 P 2d 799, or advancement (Sec 13647 and Prob C Sec 1050) is also taxable

C *Joint Tenancies*

1 A joint tenancy is wholly taxable to the survivor, except for that part which the survivor may prove originally belonged to him or was not received from the decedent for less than adequate and full consideration (Sec 13671), *United States* v *Jacobs* (1939) 306 U S 363; *Harvey* v *United States* (7th Cir 1950) 185 F 2d 463 See also, *Estate of Darby* (1949) 93 C A. 2d 96, 208 P 2d 689.

2 A husband and wife joint tenancy having its source in community earnings is treated on the death of either as community property (Sec 13671 5) For further treatment see this outline VI A

3 In the case of a three-way joint tenancy (husband, wife and third person) created with community earnings, a post 1927 community, husband or wife deceased, one half of the property is charged to each survivor The result is that the surviving husband or wife is considered as contributor to the extent of three-fourths so that on the death of the surviving husband or wife, the third person is considered to be contributor to the extent of one-fourth

4 Section 13672, added 1961, provides that if the joint tenancy had its source in quasi-community property, upon the death of either spouse, the property shall be treated as if each spouse was the contributor of one-half Quasi-community property is defined by new Sec 15300 See Gift Tax VI

D *Powers of Appointment*

(Secs 13691 to 13698) If created prior to June 25, 1935, the tax is levied upon the exercise of the power by the donee (Sec 13693) *Estate of Newton* (1950) 35 C 2d 830, 221 P 2d 952, *Estate of Baird* (1953) 120 C A 2d 219, 260 P 2d 1052; (1955) 135 C A 2d 343, 287 P 2d 372 If created on or after June 25, 1935, the tax is levied upon the creation of the power A charitable exemption is applicable in any of the following situations

(1) Where the power is limited to a charitable beneficiary (Sec 13694),
(2) Where the power is exercised in favor of a charitable beneficiary either before or after the tax is fixed, (order fixing tax subject to modification (Sec 13696)),
(3) Where a charity takes upon the nonexercise of power, (order fixing tax subject to modification).

E *Insurance*

(Secs 13721 to 13724)

1 To qualify proceeds of contract as insurance, the elements of risk sharing and risk shifting must be present *Helvering* v *LeGierse* (1941) 312 U S 531 "Incidents of ownership" is the test employed although the statute does not use the term However, payment of premiums test has not been eliminated If the premiums are paid with community earnings and husband or wife is beneficiary, the community exclusions apply *Estate of Marson* (1930) 30 C A 2d 566, 86 P 2d 922, *Estate of Compton* (1962) 198 C A 2d 766

2 Proceeds of the insurance policy or policies up to $50,000 are excluded from the tax if payable to a named beneficiary (Sec 13724(a)) If there is more than one beneficiary, the $50,000 exclusion is prorated among the beneficiaries (Sec 13724(b)) *Estate of Marson*, supra If premiums are paid with community earnings and spouse and another person are beneficiaries, that payable to spouse is excluded from tax, and the $50,000 exemption is applied to the balance of proceeds

Estate of Compton, supra Annuity contracts and supplemental contracts are not insurance, consequently the $50,000 exclusion is not applicable *Estate of Barr* (1951) 104 C A 2d 506, 231 P 2d 876, *Estate of Loewenstein* (1951) 37 C 2d 843, 236 P 2d 566

3. With respect to death benefits payable under retirement or pension plans of public (governmental) or private business systems some uncertainty as to taxability has existed *Estate of Simpson* (1954) 43 C 2d 594, 275 P 2d 467, involved a county employee, and *Estate of Richartz* (1955) 45 C 2d 292, 288 P 2d 857, involved a school teacher The Government Code exempts retirement fund contributions of public employees from taxation The Supreme Court of California held in these cases that this exemption referred to property taxes, whereas the inheritance tax is a privilege tax and decided (1) the return of employee contributions plus interest and (2) payment of the lump sum death benefit, were taxable transfers The 1955 session of the Legislature immediately added Sections 31452 and 21200 5 to the Government Code and Section 14278 to the Education Code, specifically exempting such payments from inheritance tax The 1956 session of the Legislature added Section 13880 to the Revenue and Taxation Code exempting death benefits and payments under any public retirement system from inheritance tax

The law is now clear as to payments under a California public retirement system, but the taxability of similar payments under a private governmental plan is still an unanswered question It is the Department's position that the reasoning of the *Richartz* and *Simpson* cases is sound and applicable and might well render pension payments under a private system, taxable In *Estate of Wyman* (1962) 208 C A 2d 489 it was held that death benefits payable to a beneficiary under U S civil service retirement plan were exempt under the provisions of Sec 13880

IV. Valuation (Sec 13951)

A. *In General*

(Sec 13951) The market value is the price that a willing buyer would pay to a willing seller of property, neither being under any compulsion to buy or sell (Admin C, Title 18, Reg 13951(a)*) Valuation is made by an inheritance tax appraiser (Secs 14771 to 14774) appointed by the court (Prob C Secs 605, 1174; Rev & Tax C Sec 14051 and following) Valuation date is the date of the transferor's death, regardless of whether the transfer was made during life or at death (Sec 13951) *Riley* v *Zellerbach* (1942) 53 C A. 2d 196, 127 P 2d 597. The federal optional or alternative valuation date is not recognized or permitted

B *Real Property*

For valuation of real property, recognized appraisal methods are used taking into consideration all relevant facts and circumstances acceptable (Reg 13951(b)) *Estate of Ross* (1915) 171 C 64, 151 P 1138 The assessed value for ad valorem taxation is not acceptable (Reg 13951(c))

C *Securities*

1 *Listed*

The valuation of this type of securities in the mesne between high and low quotations on the principal market (Reg 13951(e)(1)) If there are no sales on date of death, the mesne is determined from quotations on the nearest date before and after death (Reg 13951 (e)(2).)

2 *Unlisted, but traded over the counter*

(Same as above)

3 *Closely Owned Securities*

The appraiser must be furnished with a balance sheet as of, or near the date of, death, as well as profit and loss statements for the five years preceding the date of death If average net profits exceed a

* Unless otherwise noted all further regulation references are to Title 18 of the Administrative Code

"fair return" or net worth, there may be "good will" or "intangible value" present, which is added to "net worth" The balance sheet is adjusted to reflect the true market value of underlying assets There are three methods of arriving at a per share valuation

(1) (Untraded securities) divide net worth by number of shares outstanding, *Estate of Felton* (1917) 176 C 663, 169 P 392,

(2) (Untraded securities) in addition to the *Felton* rule, other influencing factors must be considered, *Estate of Rowell* (1955) 132 C A 2d 421, 282 P 2d 163,

(3) (Traded securities) Sales at or near the date in question persuasive, *Estate of Goodhue* (1932) 127 C A 283, 15 P 2d 771

4 Blockage is not recognized under Reg 13951(f), *but see* this Outline V C 5 d (7).

D *Future Interests—Life Estates and Remainders*

To determine the value of a remainder the corpus is first multiplied by 4 percent (Sec 13953) to determine the annual income, the annual income is multiplied by the factor assigned in Table A(1), Admin C, Title 18, Reg 13952-13954(1), for the age at the nearest birthday for the life tenant or annuitant The result is the value of the life estate or annuity For value of the remainder subtract the life estate or annuity value from the corpus If the life tenant or annuitant should die before the tax is fixed, the value of his life estate or annuity is the sum actually paid him, and the remainder interest is correspondingly increased (Sec. 13955) *Estate of Knapp* (1951) 37 C 2d 827, 236 P 2d 372 When the valuation of the future interest has been determined in accordance with the statute and rule, no further reduction may be made for a contingency which might abridge, defeat or diminish such interest (Sec 13956)

V. Deductions

A *In General*

1 Deductions are a matter of legislative grace and not a matter of right *Estate of Watkinson* (1923) 191 C 591, 217 P 1073, *aff'd sub nom Stebbins* v *Riley* (1925) 268 U S 137

2 The first specific provisions relating to deductions were included in the 1921 Inheritance Tax Act (Stats 1921, Ch 821, Sec 2(10)) Deductions are allowed on the theory that the inheritance tax is a succession tax upon the beneficial interest of the heir or legatee *Estate of Miller* (1921) 184 C 673, 195 P 413 See also *Estate of Rath* (1937) 10 C 2d 399, 75 P 2d 509, and *Riley* v *Zellerbach* (1942) 53 C A 2d 196, 198, 127 P 2d 597, 598-599 "Clear market value" is defined by Sec 13312 as the "value of any property included in any transfer, less any deductions allowable by this part"

3 A person claiming a deduction must point out the applicable statutory provision and show that the claimed deduction falls within its terms *New Colonial Ice Co* v *Helvering* (1934) 292 U S 435 The rule that taxing statutes are to be construed in favor of the taxpayer does not generally apply to statutory provisions dealing with exemptions or deductions *Estate of Steehler* (1925) 195 C 386, 396, 233 P. 972, 977, *Estate of Bull* (1908) 153 C 715, 96 P 366

B *General Requirement*

A deduction may not be taken unless the debt, obligation, or expense actually reduces the amount of the inheritance or transfer It is not necessary that the amount to be deducted be actually physically paid at the time of deduction, but it must be finally fixed and enforceable at that time *Estate of Slack* (1948) 86 C A 2d 49, 53, 194 P 2d 61, 64 The deduction must be an obligation of the decedent or his estate, and it must be paid by the estate or the transferee (Sec 13982)

C *Particular Deductions*

1 Last illness expenses

Only those expenses paid after death are allowable since those paid before death had the effect of depleting decedent's estate in his lifetime (Sec 13956) If paid by another before death, such person should file a claim against the estate

2 Funeral Expenses

a Funeral expenses must be reasonable having regard for the station in life of the decedent and the custom of the community of which he was a resident (Sec 13986) Such expenses may include
(1) Costs for burial,
(2) Costs for burial plot, either for decedent alone, or for decedent and members of his family,
(3) Costs for tombstone, monument, or other memorial,
(4) Costs for perpetual care of burial plot,
(5) Donations to officiating clergyman,
(6) Costs for transportation of body to burial place

b Funeral and last illness expenses of a deceased wife are deductible from her estate even though she be survived by a husband financially able to pay those expenses (Sec 13986) *Riley* v *Robbins* (1934) 1 C 2d 285, 34 P 2d 715 (See also Prob C Sec 951 1)

3 Debts owed by decedent at death

a The debt should be based upon a claim timely and properly filed, allowed, and approved, but neither Sec 13983 nor the regulations use the word "claim" A claim formally presented, allowed, and approved may not be allowed as a deduction, if not actually a bona fide debt of the decedent A claim upon which the statute of limitation has run is not an allowable deduction (Reg 13983(e))

b Contingent obligations of the decedent are not allowable as deductions (Reg 13983(d)) If subsequently established and paid, however, the order fixing the tax may be modified equitably and a refund obtained if petition for refund is filed within one year after the establishment or payment There is no limitation of time within which the debt must be paid after the order fixing the tax is made (Sec 13985)

c A debt secured by a mortgage may properly be deducted even though not actually paid, distribution subject to the mortgage will suffice. (Reg. 13983(b)) See also *Estate of Slack* (1948) 86 C A 2d 49, 194 P 2d 61

4 Property taxes
Property taxes which are a lien at the date of death may be properly deducted (Sec 13986, Reg 826) Property taxes become a lien as of the first Monday in March so that if the decedent dies between that date and the date of the December payment, two installments may be deductible If death occurs between the first Monday in March and the date of the April payment, it is possible that three installments may be deductible

5 Ordinary expenses of administration
(See in general Sec 13988)

a The commission of an executor or administrator computed under Prob C Sec 901 upon the probate inventory at "date of death" values may be deducted (Sec 13988(a)) *Estate of Skinker* (1956) 47 C 2d 290, 303 P 2d 745.

b The same rule applies to attorneys' fees If executor is a lawyer and elects to act as his own attorney he may claim either the executor's commission or attorney's fee, but not both But see *Estate of Thompson* (1958) 50 C 2d 613, 328 P 2d 1 Should he retain his own firm as counsel he must file an affidavit to establish that he is not to participate in or receive any benefit from the attorney's fee claimed as a deduction (Reg 13988(b)) *Estate of Parker* (1926) 200 C 132, 135, 251 P 907, 909 He may, however, employ another attorney to render the necessary legal service and the latter's fee is a proper deduction *Estate of Graham* (1921) 187 C 222, 201 P 456

c A bequest to the executor in lieu of the statutory commission is not deductible insofar as it exceeds the statutory commission (Reg. 13988(a), 13601-13603(f))

d Expenses of administration (Reg 13988(g)) ordinarily include filing fees, publication of notices, death certificates, certified copies of documents, appraiser's fees, and closing costs Generally, these are rather modest and present no problem The following are not allowable as ordinary expense of administration

(1) California inheritance tax paid by or on behalf of an heir or legatee *Kelso v Sargent* (1936) 11 C A 2d 170, 172, 54 P 2d 26, 26-27, *Estate of Chesney* (1905) 1 C A 30, 33, 81 P 679, 680;

(2) Payments to compromise an actual or threatened suit by a disgruntled or disinherited heir or legatee (*compare* Sec 13409);

(3) Costs incurred defending a will contest;

(4) Costs incurred in connection with contested or litigated claims against estate, the established or compromised claim is allowable as a deduction, however;

(5) Expenses relative to carrying on decedent's business,

(6) Traveling expenses of executor or administrator or his attorney,

(7) Expenses on sale of estate property, unless the sale was directed by will, or was necessary to pay debts or taxes,

(8) If the sale is necessary, and the sale price is at or below the appraised value, the difference between the net proceeds and the appraised value is allowable as a deduction,

(9) Amounts expended for care and upkeep of estate property

D *Extraordinary Professional Fees*

Extraordinary fees, in the usual connotation of the term (e g, suits to recover property, litigated claims, etc), are not allowable as deductions (Sec 13988 1) The extraordinary fees which are allowable are limited to tax work and proceedings to fix inheritance tax, such as costs for

(1) Proceedings under Prob C Sec 1170,

(2) Petition to determine inheritance tax,

(3) Federal estate tax return, negotiation and litigation;

(4) Income tax returns, negotiation and litigation

Such fees are allowable only for work actually performed, and if they are charged by and paid to the executor, administrator, or the executor's attorney or accountant There is no fixed fee schedule, but the fee must be fair and reasonable It may be allowed as a deduction prior to the actual fixing by the court It is not allowable if the services are minor in character and compensated in the statutory fees *Estate of George E Tubbs* (1947) 82 C A 2d 305, 309, 186 P 2d 7, 10

E. *Federal Estate Tax as to Decedents Dying Prior to 5 05 p m, June 24, 1959*

1 Any amount due or paid to the United States as federal estate tax is allowable as a deduction Computation of the deduction is limited to property subject to the California inheritance tax, and the computation is based upon the appraiser's valuation of that property Property located outside of California may not be included in the making of this computation *Estate of Guthman* (1954) 125 C A 2d 408, 270 P 2d 875 The marital exemption (Sec 13805) is treated as an exclusion for the purpose of this computation

2 The allowable deduction is the amount actually paid the United States as finally determined, or the appraiser's computation of the federal estate tax, whichever is the lesser amount *Estate of Slack* (1948) 86 C A 2d 49, 194 P 2d 61 The 1957 amendment gives the court continuing jurisdiction to amend the order fixing tax for this purpose only Even though not yet actually paid, the deduction is allowable if it appears "due" in the sense that it will be paid *Estate of Slack, supra.*

3 Apportionment may be avoided by an appropriate provision in the will directing that the federal estate tax be paid out of the residue (Prob C Sec 970 and following) A similar provison in the will relating to inheritance taxes amounts to a bequest of inheritance tax, however

As to decedents dying after 5 05 p m , June 24, 1959 , Section 13989 is repealed and no deduction is allowable for Federal Estate Tax paid Constitutionality of repeal of Section 13989 was upheld in *Estate of Fabris* (1962) 200 C A 2d 408

F *Nonresident Decedents*
If ancillary administration is had in California and the assets subject to domiciliary administration are sufficient to discharge debts and expenses, i e , *the domiciliary estate is solvent*, none of the debts, charges and expenses are allowable as deductions, except those directly chargeable to the California estate, i e , administrator's commissions and attorney's fees based upon the California estate, and the California expenses of administration. (Reg 13981-13982(b))

G *Deductions Erroneously Allowed*
An order fixing tax may be amended to fix supplemental tax on amount of erroneous over allowance of deduction (Sec 13984) No statute of limitations runs against the state

VI. Exclusions

A *Community Property*

1 Identification of community property to be excluded There is no presumption that any property acquired by a decedent after marriage is community property. (Sec 13556) The inheritance tax presumption is the opposite of the Civil Code presumption A spouse claiming community property has the burden of proof, and must file a Community Property Affidavit, Form No 3 See *Estate of Raphael* (1949) 91 C A 2d 931, 206 P 2d 391. The definition of "separate property" in C C Secs 162 and 163 is closely followed See *Estate of Caswell* (1957) 152 C A 2d 195, 312 P 2d 703 Following is the method used for identifying community property

(a) Separate property of the decedent (and surviving spouse if inter mingled) is first identified and segregated ,

(b) Proceeds and earnings are traced and segregated ,

(c) If tracing is impossible or impracticable, separate property is capitalized at simple interest of 4 percent per annum from date of marriage or acquisition to date of death ,

(d) The balance is community property
See *Estate of Mendenhall* (1960) 182 A C A 524 and *United States* v *Stewart*, 270 F 2d 894 (cert den) re includability of wife's half cash surrender value insurance on life of husband where premiums paid with community earnings

2 Community property passing to husband on wife's death
On the death of the wife, no part of the community property passing to the husband is subject to the tax All of the community property devised or bequeathed to a person other than the husband is subject to the tax (Sec 13551(b))

3 *Community property passing on husband's death*
On the death of the husband none of the community property which passes outright to the wife, whether by the laws of succession, the decedent's will or by election, is subject to tax If, however, the husband's will gives the wife a life estate in his one-half of the community property, or gives her a power of appointment, the life estate or the property subject to the power is subject to tax (Secs 13551, 13552, as amended 1961) All of the community property devised or bequeathed to a person other than the wife is subject to the tax

4 Community property transferred other than by will or the laws of succession
If one spouse transfers community property other than by will or the laws of succession outright to the other, none of the property so transferred is subject to tax If, however, the husband is the transferor, and the wife is given a life estate, with remainder in another, or a power of appointment, the life estate or the property subject to the power is subject to tax. (Sec 13554) The "harsh" rule of *Kirk-*

wood v *the Bank of America* (1954) 43 C 2d 333, 273 P. 2d 532, which limited the community exclusion of the wife-transferee of old type community property transferred to her and a third person to one-half of what she received, rather than one-half of the total, was eliminated by amendment in 1955 There is no longer any distinction between the old type and new type community property so far as inheritance tax is concerned (Sec 13557, 1957 amendment)

B *Nonnative Son Property—Prob C 201 5 Property*

One-half of any property to which Prob C Sec 201 5 is applicable and which goes to the surviving spouse, is subject to tax (Sec 13555(a) (amended 1957)) By contrast no community property passing outright to the surviving spouse is subject to tax Sec 13551.

The one-half of any Prob C Sec 201 5 property which belongs to the surviving spouse is not subject to tax (Sec 13555(b))

None of the property restored to the decedent's estate under Prob C Sec. 201 8 is subject to tax (Sec 13555(b))

Any person who claims certain property in Prob C Sec 201 5 property has the burden of proving that it is such (Sec 13556 5)

See this Outline VI A 1. above

Where a married person by his will presents the surviving spouse with an election, and the surviving spouse elects to take under the will, the exclusion is the value of the property received by the surviving spouse by virtue of such election, subject, however, to a maximum exclusion of

(a) One-half of the value of Prob C Sec 201 5 property, and

(b) Full value of Prob C Sec 201 8 property (Sec 13552 5)

The same rules apply to transfers other than by will or the statutes of succession (Sec 13554 5 (1957))

See, *Rights of a Surviving Spouse in Property Acquired by a Decedent While Domiciled Outside California* by Abel, Barry, Halsted and Marsh, (1959) 47 Calif Law Rev 211

See, also, *Paley* v *Bank of America* (1958), 159 C A 2d 500

C *Insurance Exclusion*

Insurance proceeds payable to a named beneficiary or beneficiaries up to the amount of $50,000 are not subject to the tax See the Outline III. E. 2.

VII. Exemptions

A *In General*

Exemptions must be distinguished from deductions and exclusions Exemptions are a part of the tax computation and have the effect of exhausting a part at least of the lower tax brackets, thus throwing the balance of the property into higher tax brackets (Sec 13403) See *Estate of Harrison* (1952) 110 C A 2d 717, 243 P 2d 528.

B *Specific Exemptions*

There are four classes of transferees

Class A · Husband, wife, lineal ancestors, lineal descendants, adopted and mutually acknowledged children and their issue, and adopted children of lineal issue of the decedent (Sec 13307), *Estate of Radovich* (1957) 48 C 2d 116, 308 P 2d 14, *Estate of Teddy* (1963) 214 A C A 126 (mutually acknowledged child),

Class B Brother or sister of the decedent, descendants of a brother or sister, wife or widow of a son, and husband or widower of a daughter (Sec 13308),

Class C Brother or sister of a father or mother of the decedent, and descendants of brother or sister of father or mother of decedent (Sec 13309);

Class D All other transferees (Sec 13310);

The specific exemption is measured in dollars and varies according to the class into which the beneficiary falls.

Class A. Minor child, $12,000; all others, $5,000 (Sec. 13801);

Class B $2,000 (Sec 13802);

Class C $500 (Sec 13803);
Class D $50 (Sec 13804)

The rates of tax are also graduated according to class, with the lowest rates to class A beneficiaries and the highest rates chargeable to class D beneficiaries The rates are also graduated according to the amount received by each beneficiary, with the lowest rate in the under $25,000 bracket and the highest in the over $500,000 bracket (Secs 13404 to 13407)

Important Chapter 1128, Stats 1959, effective 5 05 p m June 24, 1959, amends Secs 13406 and 13407, increasing the rates of tax applicable to class C and class D beneficiaries, respectively Statutes of 1961, p. 4531, amended a schedule setting forth the exemptions and rates of tax as set out at page 29 hereof; Sec 13405, increasing rates of tax applicable to class B beneficiaries

C *Marital Exemption*
An exemption equal to one-half the clear market value of decedent's separate property is allowed to the spouse of the decedent (Sec 13805) There is no terminable interest rule. The surviving spouse does not have to take any of the separate property for the exemption to apply It will extend to any other property devised or bequeathed to the surviving spouse The amount of the exemption is one-half the clear market value of the decedent's separate property, computed after the federal estate tax is deducted *Estate of Law* (1958) 50 A C 279, *rehearing denied* 325 P 2d 449

D. *Charitable Exemption*
(Secs 13841 and 13842)

1 Transfers to the United States, the State of California, a California public corporation or a society, corporation, institution, or association exempt from taxation by California law, are exempt from inheritance tax Although the inheritance tax law exempted from taxation transfers to the United States, the Supreme Court of California held, in *Estate of Burnison* (1948) 33 C 2d 638, 204 P 2d 330, *aff'd* 339 U S 87, that the United States could not take by will in California under Prob. C. Sec. 27. That section has since been amended to include the United States

2 Transfers to any society, etc., operated solely for religious, charitable, scientific, literary, or educational purpose, not operated for private profit or engaged in propaganda, are exempt from taxation provided any of the requirements listed below is met.
   a That the society, etc, is organized under the laws of California or of the United States (Cf *Estate of Barter* (1947) 30 C 2d 549, 184 P 2d 305,
   b That the transferred property is limited for use in California (*Estate of Fleming* (1948) 31 C 2d 514, 190 P.2d 611); or
   c That the society, etc, is organized under the laws of another state, the other sovereignty either
      (1) Did not impose a death duty, or
      (2) Had in its laws a reciprocal provision similar to California
   See *Estate of Baxter* (1950) 100 C A 2d 397, 223 P 2d 877; *Estate of Bendheim* (1950) 100 C.A 2d 398, 223 P.2d 874.

3 It is not necessary that the charitable corporation be in existence at the date of death, i e, one may, in California, by his will create a charitable organization. *Estate of Irwin* (1925) 196 Ch 366, 237, p 1074

E *Other Exemptions*

1 Although included within Chapter 5 of the inheritance tax law, the following "exemptions" are, in reality, exclusions certain intangible personal property belonging to a deceased nonresident of California; war risk insurance, the armed services exemption, and death benefit payments.

2 Intangible personal property belonging to a deceased nonresident of California is not subject to tax if the other state did not impose a death tax with respect to intangible personal property belonging to a deceased resident of California, or the other state had in its laws a reciprocal provision similar to California's (Sec 13851)

3 War risk insurance, *i e*, National Service Life Insurance, is not subject to tax if it is payable to the estate of the deceased veteran (Sec 13861) If such insurance is payable to a named beneficiary it must be aggregated with other insurance and included therewith in applying the $50,000 insurance exclusion.

4 Where the decedent was a member of the armed forces of the United States between Sept 16, 1940 "and the termination of all wars in which the United States is now engaged," and death was service connected, property transferred to persons within class A, B, or C is not subject to tax The transferee must be a dependent of decedent, and death may not be the result of wilful misconduct The "exemption" is applicable only to resident decedents or transferees (Secs 13871 to 13873)

5 Death benefit payments and return of employees' contributions, made under a *public* pension or retirement system to a named beneficiary or to the estate of a deceased employee are not subject to tax Section 13880 was, in effect, a legislative overruling of *Estate of Simpson* (1954) 43 C 2d 594, 275 p 2d 467, and *Estate of Richartz*, (1955) 45 C 2d 292, 288 p 2d 857. See this Outline, III E. 3.

VIII. Computation of the Tax

A. *The Inheritance Tax Proper*

Market value (Sec 13311) or gross estate value less allowable deductions equals "clear market value" (Sec. 13312)
This total is allocated among the heirs or devisees or legatees according to the statutes of succession or the will, depending upon whether the decedent died intestate or testate All transfers to a particular beneficiary are aggregated and the appropriate exemption, depending upon the beneficiary's relationship to the decedent, is deducted therefrom and the balance is multiplied, by brackets, by the appropriate rates of tax

1 All transfers to the same person (inter vivos gifts, joint tenancies, bequests, devises, etc) are aggregated, and the tax is computed on the total, as though there was but a single transfer (Sec 13408) *Estate of Childs* (1941) 18 C 2d 237, 115 p 2d 432.

2 If a legatee or devisee under a will or an heir renounces his rights, or agrees that the estate be distributed other than under the will or the laws of succession, the tax is computed in accordance with the will or the laws of succession, depending upon whether decedent died testate or intestate, and not according to the renunciation or agreement (Sec 13409) *Cohn* v *Cohn* (1942) 20 C 2d 65, 68, 123 p 2d 833, 835, *Estate of Rossi* (1915) 169 C 148; 146 p 430, *Estate of Holt* (1923) 61 C A 464, 469, 215 p 124, 125-126, *Kelso* v *Sargent* (1936) 11 C A 2d 170, 54 p 2d 26

3 If a transfer is subject to a contingency (future interests), the tax is computed at the highest contingency A refund may be had, however, upon the happening of the contingency, where the tax was paid on high contingency (Secs 14411 to 14414) See, however, *Estate of Off* (1956) 146 C.A 2d 516, 304 p 2d 126 The Controller may compromise the tax where contingency is present (Sec 14191) In such case the court order is a final determination, and no refund is permitted upon the failing in of the interests (Sec 14192)

B *Additional Tax—"Pickup" Tax*

(Secs 13441 and 13442)

1. In a case where the credit for inheritance tax paid the state under the federal estate tax law exceeds the inheritance tax payable to the state, an additional tax is imposed equal to the difference between the

maximum federal credit and the inheritance tax. (See *Estate of Good* (1963) 213 A C A 2d.)

2 In a case where, due to the exclusions and exemptions, no inheritance tax would normally be owing to the state (*e g*, wife deceased, all community property in name of the husband, and wife dies intestate or leaves a will bequeathing her share of the community property to the husband), a tax is imposed equal to the maximum credit allowed under federal estate tax law. (Sec 13442)

3. By the provisions of Sec 14161 a discount equal to 5 percent of the amount of tax is available for prompt payment, *i e*, payment within six months of the date of death The discount provision does not apply where an additional tax is imposed under Secs 13441 and 13442 (Sec 14161) The reason for this rule is that under the federal estate tax law, the executor can get credit only for the exact number of dollars actually paid to the state

4. The pickup tax becomes delinquent at the expiration of two years from date of death or at the expiration of six months from the final determination, whichever is later (Sec 14103)

IX. Credits

A. *Previously Taxed Property*

1. (Sec 14071, 1957) Prior to Sept 11, 1957, there was a "previously taxed property" exemption in the law (Secs 13821 to 13824, repealed 1957) which required each item to be traced from prior estate into present estate, and identified As to the effect of the then exemption, see this Outline VII A

2 Under the present law, the decedent must have been a class A beneficiary in a prior estate, and the beneficiary in the present estate must be a class A beneficiary to the present decedent The two deaths must occur within a five year period, and an inheritance tax must have been paid in the prior estate, but no additional (pickup) tax (Secs 13441 and 13442) need have been paid The formula for computation is prescribed by Sec 14071(b) The credit so computed is deducted from the inheritance tax computed without reference to the credit

B *Gift Tax Credit*

If the same transfer is taxed both under the gift tax law and under the inheritance tax law a credit is allowed against the inheritance tax for the gift tax paid The formula for computation of gift tax credit is prescribed by the statute If the decedent had neglected to file a gift tax return and paid the tax where required prior to his death, the amount paid by the executor after death is an allowable deduction Should the same transfer also be taxable under inheritance tax law, the credit is allowable It follows, therefore, that the same payment may be used twice to reduce the inheritance tax (Secs 14051 to 14059)

X. Payment of the Tax

A. *When and to Whom Payable*

The inheritance tax is due and payable as of the date of death (Sec 14102) and must be paid within two years, at which time it becomes delinquent if unpaid (Sec 14103) It is payable to the county treasurer (Sec 14104) The executor, administrator, or trustee must collect the tax, or withhold it from the transferee, and is responsible for its payment (Secs 14101 and 14121) Where a life estate with a remainder over has been created, the tax is payable out of the property itself, and is not collected from either transferee (Secs 14123 and 14124) The same rule applies to a transfer subject to a contingency (Sec 14125) The personal representative may sell estate property to pay the tax (Sec 14127) The additional (pickup) tax (Secs 13441 and 13442) is also payable to the county treasurer. (Sec 14126) It becomes delinquent at the expiration of two years from date of death or six months after the final determination of the federal estate tax, whichever is later (Sec. 14103) No discount is allowable. (Sec 14161.)

B *Discount (Sec 14161)*

If the inheritance tax (no additional tax being due) is paid within six months of the date of death a discount equal to five per cent of the amount of tax is allowed No discount is allowed where the California tax is the pickup tax See *Estate of Harker* (1948) 88 C A 2d 6, 198 P 2d 51, and the subsequent amendment to C.C P. Sec 12a.

C *Deferment of Payment*

Where a transfer has been made subject to a contingency, payment of a portion of the tax may be deferred upon posting of a bond (Secs 14171 to 14178) Preferred practice in contingency cases is to request the appraiser to compute tax on both a normal and high (Sec 13411) contingency and then to compromise the tax by adding an agreed sum to the normal tax (Sec 14191), thus closing the matter. Should the "spread" between the normal and high contingency be so large as to preclude a "fair" compromise both as to taxpayer and the state, the following two avenues are open.

(1) The executor may show both computations in the report, pay the tax on the high contingency, and apply for a refund, if proper, upon the resolving of the contingency (Secs 14401 to 14403); or

(2) He may pay tax on the normal contingency, and post a bond against the difference between the normal and the high contingency

D *Interest*

If the tax is not paid prior to the date upon which it becomes delinquent (two years from the date of death) it is subject to simple interest at six per cent per annum from the delinquency date until paid. (Sec 14211) All payments upon a delinquent tax are applied first to the satisfaction of interest, and the balance, if any, to the tax itself. (Sec 14221)

In a proper case, the Controller may require the filing of a delinquent tax bond

E *Payment of Tax and Interest, a Prerequisite to Distribution*

1 The account of an executor, administrator or trustee cannot be approved or settled until the tax has been paid and a receipt, countersigned by the Controller is in the file (Sec 14143) A probate estate cannot be distributed (Prob C Sec 1024) nor can a decree establishing fact of death be made (Prob C Sec 1174) unless the inheritance tax and accrued interest, if any, have been paid in full. *Becker* v. *Nye* (1908) 8 C A 129, 96 P 333 Payment of the tax is established by the presence in the file of the original receipt of the county treasurer, countersigned by the Controller or his deputy (Sec 14142)

2 Upon receipt of payment of inheritance tax the county treasurer executes a receipt, upon the prescribed form, in quadruplicate (Sec 14141) Distribution is as follows

(a) The fourth copy is retained by the county treasurer for his records,

(b) One copy is delivered to the person paying the tax,

(c) The original receipt and one copy is forwarded to the Controller in Sacramento.

If the ledger account which was set up at the time the Report of the appraiser is balanced by the payment, the original receipt is countersigned by a deputy Controller and forwarded to the county clerk for filing in the proceeding (Sec 14142)

F *Refund*

1 Refunds are generally occasioned by payments made to secure the prompt payment discount of 5 percent, and usually arise by reason of a premature estimate of the tax without according proper weight to the many factors which might reduce the tax This accounts for perhaps 90 percent of all applications for refunds

2 The present procedure to be followed in applying for a refund
Prepare the application alleging the payment, the amount of tax found due reduced by the discount allowable, if any, show the difference, and pray that the State Controller draw his warrant upon the State Treasurer in favor of the person paying the tax Distribution
(a) Forward to the Inheritance Tax Department in Sacramento the original and one copy of the application and the form of order directing refund,
(b) If approved, the original application and original form of order directing refund will be stamped with an approval and waiver of notice of time and place of hearing, the order directing refund may then be obtained ex parte,
(c) Three "conformed" or "endorsed" copies of the order fixing tax should be served upon or delivered to the State Controller at his Sacramento office

The 1959 Legislature amended Secs 14361, 14373, 14383, 14391, 14392, 14403, 14413, 14423, and 14428, effective Sept 18, 1959, to provide that the State, rather than the County Treasurer to whom the payment on account of tax was made, shall make the refund to the person paying the tax Application for refund must still be filed, and refund may be made only upon order of the superior court having jurisdiction.

3 Refunds for reasons other than as above may require a recomputation of the tax See Ch 10, Sec 14361 and following of the inheritance tax part of the Revenue and Taxation Code

Important · The 1963 Legislature by amendments to the inheritance tax law greatly simplified the refund procedures to permit the State Controller to process refund applications without the necessity of a court order Prior to the 1963 amendments Chapter 10 of Division 2, *Part 8 of the Revenue and Taxation Code embraced eight different* articles, all dealing with inheritance tax refunds in specified fact situations Superfluous sections (Section 14381-14388, 14401-14403, 14411-14414, 14426-14428, and 14421-14424) were repealed eliminating the specified types of direct refund The new law, by amending Sections 13956 and 13411 and adding Sections 13443 and 14371, gives the taxpayer the right to have the order fixing tax amended to reflect the correct amount of tax due

All refunds may now be obtained under the regular procedure provided in Sections 14371-14375 (overpayment in excess of correct order fixing tax) The person entitled ot the refund applies directly to the State Controller on a form provided and after audit and approval the refund is paid by the State Treasurer

The old procedure is retained in the law to afford the applicant an alternative method should dispute develop with respect to the amount or the legality of the refund

XI. Practice and Procedure

A *Appraisers*

1 The Controller must appoint at least one person in each county to act as inheritance tax appraiser for that county (Secs 14771 to 14774) Larger or more populous counties may have several inheritance tax appraisers The appraiser has no power to act except upon order of the court in a particular case

2 Court must appoint an inheritance tax appraiser in every probate proceeding (Prob C Sec 605), in every proceeding to establish the fact of death (Prob C Sec 1174) and in every proceeding for determination of inheritance tax (Sec 14501 and following)

3 Appointment of an appraiser by the court in particular proceeding imposes the duty to ascertain and report to the court the clear market value of all transfers and the amount of tax due (Sec 14501) Upon

such appointment the appraiser becomes a referee of the court with power to issue subpoenas, require attendance of witnesses, production of records, etc (Secs 14502 to 14505)

B *Normal Probate Procedure*

1 An original and two copies of the inventory must first be submitted When the original inventory and appraisement is returned, the following must be submitted to the appraiser

(a) Form 22, the inheritance tax affidavit; it must be carefully and accurately filled out in detail, an incomplete or inaccurate Form 22 is the single most important cause of delay in processing the report.

(b) Form 3, the community property affidavit, where required,

(c) The will and all codicils;

(d) The inventory and appraisement if not already in the hands of an appraiser;

(e) A copy of any trust instrument executed by or under which the decedent may have been a beneficiary,

(f) Any other pertinent or useful information A hearing before a department attorney may be required if the estate exceeds $200,000 gross or if problems exist

2 The appraiser drafts and submits the proposed report to the department for examination and audit It is to be noted that the appraiser is an independent officer of the court, he is not an employee of, nor is he subject to, the inheritance tax department He may file his report irrespective of department approval

3 Upon receipt of department approval of his report or at his own discretion, the appraiser files his report with the court If no objection is filed, at the expiration of 10 days from the filing of the report, the appraiser procures an order fixing tax (Sec 14509)

4 Should the executor, administrator or any of the beneficiaries, or the department be not satisfied with the report, any of them may file objections to the report following its filing and before the order fixing tax is made (Sec 14510) If objections are filed, trial is had in the Probate Court which enters its order overruling or sustaining the objections, as the case may be (Sec 14513) On the hearing of objections the objector is the "plaintiff," and the report is presumed to be correct *Cf Estate of Cunningham* (1957) 148 C A 2d 8, 305 P 2d 920

C *Petition to Establish Fact of Death or Determine Inheritance Tax*

Upon filing of the petition, the executor or his attorney should procure an order appointing the inheritance tax appraiser and submit to him a copy of the petition, the Form 22 Inheritance Tax Affidavit, and the Form 3 Community Property Affidavit, if the latter is pertinent The processing is the same as indicated in this Outline XI B

D *Miscellaneous*

1 Tax Lien Imposed.

a A lien is imposed upon all property subject to inheritance tax, which lien remains until the tax and interest are paid in full (Sec 14301) The statute of limitations is five years where property subject to lien is sold to bona fide purchaser, mortgagee, etc (Sec 14303) If property subject to lien is sold on probate sale, the lien on such property is extinguished and the lien attaches to proceeds of sale (Sec 14304)

b Release of the lien may be granted by the Controller, inheritance tax attorney, or the appraiser upon proof that no tax is due (Sec 14307) or by the Controller or the inheritance tax attorney if sufficient security is posted (Sec 14308) A certificate is issued as evidence of the release of the lien

2 Termination of Joint Tenancy

Following is the procedure for termination of a joint tenancy in real property by the affidavit method

(a) Submit to department or appraiser Form 22 affidavit and Form 3 Community Property Affidavit, if requested by department,

(b) Copy of "Affidavit—Death of Joint Tenant" (Land Title Ass'n Form) or description of property, date of deed and page of recordation and recorder's number;
(c) Appraisal of property by inheritance tax appraiser or evidence of sale price on pending sale;
(d) If it appears that no inheritance tax is due, or that it is amply secured, the certificate will issue;
(e) Recordation of "Affidavit—Death of Joint Tenant," a certified copy of death certificate, and the department certificate releasing inheritance tax lien will satisfy the title company;
(f) Generally, this simplified procedure is not available where a tax is due and there is no proceeding pending in which the tax may be determined, under such facts a proceeding under Prob C Sec 1170 should be instituted

3 Consent to transfer and withholding by third persons
No bank, corporation, depositary, etc, may transfer any asset belonging to a decedent, or an asset in which a decedent had an interest, without retaining a sufficient portion or amount to pay any tax and interest, or without first securing consent to transfer In actual practice the withholding privilege is rarely used In the case of the contents of a safe deposit box or drawer, the contents are listed by the county treasurer and consent to transfer is then given (Sec. 14344) Burial instructions or the will may be removed, however, prior to listing and consent by the county treasurer (Sec. 14344) Consent to transfer is required prior to the transfer of corporate stock. (Sec. 14341) This same requirement applies to bank accounts generally However, it is relaxed in the following instances·
(a) Prob C. Sec. 630 cases,
(b) Where a husband and wife joint tenancy accounts are up to $5,000, in this situation the bank must give notice to the Controller;
(c) Where the decedent was a California resident, and there is a California probate proceeding; the bank must give notice to the Controller.

4 Informal or extra judicial determination of the tax
Where the assets transferred, or passed by survivorship consist of a bank account or shares of listed stock, and where the amount or value and the tax are relatively small, the tax may, by tradition (but *not* by statute), be fixed by "report letter" by department attorney. Form 22 affidavit must be filed with department The tax is paid to the county treasurer. If computation is erroneous, or overpayment made, there can be no refund, since there is no court proceeding

XII. Administration

The State Controller is vested with the responsibility for administration of inheritance tax law (Rev. & Tax C Sec 14732) The Inheritance Tax Department, set up under Sec. 14731, is under the authority and direction of the State Controller. (Sec 14733) The inheritance tax attorney (chief) with offices in Sacramento (Sec 14736) is in charge of the legal work and has general supervision of the department (Sec 14738) District offices are maintained in Sacramento (five attorneys), San Francisco (six attorneys), and Los Angeles (10 attorneys) The department is not a tax-collecting agency; rather it administers and enforces inheritance tax law It advises appraisers, county treasurers, attorneys, trust officers, title examiners, taxpayers, and the general public in all matters affecting inheritance tax It issues rules and regulations, it records, compiles, and publishes statistics relating to inheritance tax

XIII. Additional References

Barnett, *California Inheritance and Gift Taxes—A Summary* 43 Calif. Law Rev 49 (1955);
Barry, *The Inheritance Tax Affidavit of California*, 7 Hastings L. J. 237 (1956).

CALIFORNIA GIFT TAX

CALIFORNIA GIFT TAX

I. Historical Background

The original enactment of the California gift tax can be found in Stats 1939, Ch. 652, effective June 21, 1939. It was codified in 1943 (Stats 1943, Ch 658, effective July 1, 1945) and can be found in Sections 15101 to 16652 of the Revenue and Taxation Code

II. Jurisdiction to Tax

A. *Resident Donors*

Where the donor is a resident of the State, all real property and intangible personal property within the State, and all other personal property "the transfer of which this State may constitutionally tax," is subject to the tax

B *Nonresident Donors*

Where the donor is not a resident of the State, all real property within the State, and "all intangible and other personal property the transfer of which this State may constitutionally tax," is subject to the tax

III. Transfers Taxable

The transfer of any property, interest therein, income therefrom, in possession or enjoyment, present or future, in trust or otherwise, directly or indirectly, made with a donative intent, is taxable (Sec 15104) By contrast, under the federal gift tax which does not require "donative intent," it is sufficient to establish taxability if made without adequate and full consideration, not in the course of business A revocable transfer not normally taxable, becomes taxable upon the relinquishment of the power of revocation (Sec 15105) If the transfer is made for less than adequate and full consideration, excess value over the consideration paid is value of transfer (Sec 15106) Payment of tax by the donee is not consideration (Sec 15107) The creation of a joint tenancy between husband and wife in real property does not constitute a taxable transfer, unless the donor elects to treat it as a gift, and then it is not taxable until the joint tenancy is terminated (Note Sec 15104 5, enacted 1957, effective Sept. 11, 1957, is the California version of a similar federal provision)

IV Valuation

Property transferred is valued as of the date of the gift (Sec 15551) The method of evaluating gifts of future interests is similar to that used for inheritance tax purposes (Secs 15552 and 15553) If the annuitant or the life tenant dies prior to the issuance of determination of the tax, the value of the annuity or the life interest is the amount actually paid (Sec 15554) If the donor dies before the filing of the gift tax return, his executor or administrator may elect, if the transfer is also subject to an inheritance tax, to have the transferred property valued by an inheritance tax appraiser (Secs 15571 to 15577)

V. Deductions

The actual consideration paid in money or money's worth, is deductible from the total value of the property transferred (Sec 15106) Where property is transferred subject to an encumbrance which is assumed by the donee, it is deductible from the value of the property transferred

VI. Exclusions

A *The Annual Exemption*

The annual exemption of $4,000 is subtracted from the value of the property transferred leaving as a result the "net gift" (Secs 15118 and 15401) However, the annual exemption is not always allowable if the gift is a future interest (Sec 15402) Gifts to minors within the "Gifts to Minors Act" qualify for the annual exemption (Sec 15402(a), 1957 as amended) In a case of conversion of separate property into community property, the second half is subject to a gift tax on the death of the spouse whose property it was, without the annual exemption (Sec 15402(b))

B *Community Property Transferred*

On transfer by one spouse to the other one-half is not subject to tax the other one-half is taxable (Sec 15301) On transfer to a third person, each spouse is donor of one-half value of the property transferred (Sec 15302) There is no distinction, for gift tax purposes in the interest that the wife acquires in community property whenever acquired (Sec 15304) It is always treated as new type community property A person claiming transferred property in community must establish that as fact (Sec 15306) Form GT3, community property affidavit, must be filed

C *Conversion of Separate Property into Community*

Where separate property of either spouse is converted into community property, one-half is subject to tax at the time of the transfer (Sec 15303(a)) The other one-half is subject to gift tax, without annual exemption, on the death of the spouse whose property it was, but not to inheritance tax (Sec 13573) (Sec 15303(c)) Caveat It is unwise in the present state of the law to convert separate property into community property by inter vivos transfer, for this results in 100 percent of such property being subjected to tax If the one spouse leaves separate property to the other by will, only one-half is taxed (Sec 13805)

D. *Quasi-community Property*

Section 15300, enacted 1961, defines quasi community property as property acquired by either spouse while domiciled elsewhere which would have been community property of the husband and wife had the property been acquired in California It is the same type of property as referred to in Section 201 5 Probate Code Under Sec 15301, if one spouse transfers *quasi-community property to the other, one-half the property* is subject to gift tax providing the same rule as for a similar transfer of community property The donor must prove the nature of the property transferred (Sec 15306) (Form GT-3) If quasi-community property is transferred to a person other than a spouse, the spouse owning the property is the donor or, if both elect, each shall be considered to be the donor of one-half (Sec 15302 5) The spouses may convert quasi-community *property into community property or into property held by the* spouses as joint tenants or as tenants in common with equal interests without gift tax consequences Sec 15303 5) If, however, the quasi-community property converted into community property was owned (held

in the name of) by the wife, one-half thereof would be subject to gift tax on her death

VII. Exemptions and Rates

The specific exemptions and rates of tax are precisely the same as under the inheritance tax law See schedule, page 29 (Secs 15110 to 15113; 15205 to 15208, and 15421 to 15424) Specific exemptions are not allowed where the donor is an alien nonresident of the United States (Sec 15425) The specific exemption is applied as gifts are made Application may not be deferred to later years (Sec 15426) By contrast, the federal $30,000 specific exemption may be applied at the will of the donor The charitable exemption is similar to the inheritance tax exemption (Secs. 15441 and 15442) The intangibles exemption is also similar to the inheritance tax exemption (Sec 15451)

VIII. Returns

A *The Donor's Return*

The donor must file a return between January 1 and April 15 following the calendar year in which the gift was made (Sec 15651) The return will not be accepted until the close of the year in which the gift was made The Controller may grant an extension of time not exceeding six months (Sec 15652) The Controller may make an arbitrary determination (Sec 15654)

B *The Donee's Return*

Formerly the donee was required to file a donee's return (Sec 15671) This has been obviated by the donee's signature to "Schedule D" of the current form

C *Penalties for Failure to File Return*

If no return is filed as required, a penalty equal to 5 percent of amount of tax is added to the tax. (Sec 15681) Interest is computed upon tax and penalty at 7 percent per annum beginning June 15 in the year following that in which the gift was made (Sec 15684 5)

D *Fraudulent Return*

The penalty is 25 percent of the amount of the unreported tax (Sec 15682) A willful failure to file return may subject the donor to a penalty of $1,000 (Sec 15685)

IX. Computation of the Tax

(See Sec. 15204) Where there are no prior gifts.

(1) the market value of the gift
(2) (less) the annual exemption
(3) (equals) the net gift
(4) (less) the specific exemption
(5) (equals) the amount subject to rates
(6) (times) the rates
(7) (equals) the gift tax due

Where the donor has made prior gifts

(1) the new gifts for the calendar year
(2) (plus) the new gifts to same donee for all prior years
(3) (equals) the total net gifts
(4) (less) the specific exemption
(5) (equals) the amount subject to rates
(6) (times) the rates
(7) (equals) the total gift tax
(8) (less) the gift tax heretofore paid
(9) (equals) the gift tax currently due

X. Determination

A. *When Issued*

If the return is filed in time, the determination of the tax must issue within three years from the date the return is filed (Sec 15801) If no return is filed or the return is false or fraudulent, a determination may be issued any time (Sec 15802)

B *When the Determination Becomes Final*
The determination becomes final at the expiration of 60 days from notice of the determination (Sec 15804) and has the force and effect of judgment in a civil action (Sec 15806), unless (1) the tax is paid (Sec 15908), (2) the action is brought by donor to recover the tax so paid (Sec 15805), and (3) the action is brought within 60 days of notice of determination (Sec. 15804) By 1963 amendment to Sec 16251 the requirement that the tax must be paid "under protest" was deleted as a prerequisite to action for refund

C *When Payable*
The tax must be paid within 60 days of notice of determination (Sec. 15905) If not so paid, it is subject to interest at 7 percent per annum beginning 60 days after issuance of notice of determination (Secs 15905 and 15961) The tax is payable to the State Controller by remittance drawn in favor of the State Treasurer

XI. *Refund*
If erroneous overpayment has been made, a refund may be had by application to the State Controller within one year of the date of payment or determination of the tax (Sec 16221) Interest is not allowed if the overpayment is due to an error or mistake of the taxpayer (Sec 16271) If the overpayment is involuntary, the interest on refund is allowed at 6 percent per annum from the date of payment (Sec. 16272)

INHERITANCE TAX

The 1963 legislation made the following changes in the laws effecting the work of the Inheritance and Gift Tax Division.

INTANGIBLE PROPERTY IN CALIFORNIA OF DECEASED NONRESIDENTS OF THE UNITED STATES SUBJECT TO INHERITANCE TAX

Revenue and Taxation Code Section 13303(b) by specifying what shall be included in the terms "estate" or "property" sets forth the types of intangible personal property of a deceased nonresident of the United States which are subject to inheritance tax Prior to the 1963 amendment the section specifically included as subject to tax, among other intangibles, "all stock of a California corporation" and specifically excluded from tax, bank deposits not used in connection with a business operated in California

The 1963 amendment clarifies what is meant by a California corporation by rewording the section to include stock of a corporation organized in California or which has its principal place of business here or does the major portion of its business here The amendment also extended the bank deposit exclusion to savings accounts in savings and loan associations.

The text of the section as amended:

13303 "Estate" or "property" means the real or personal property or interest therein of a decedent or transferor, and includes all of the following.

(a) All intangible personal property of a resident decedent within or without the State or subject to the jurisdiction thereof

(b) All intangible personal property in California belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of California or which has its principal place of business or does the major part of its business in California or of a federal corporation or national bank which has its principal place of business or does the major part of its business in California, excluding, however, saving accounts in saving and loan associations operating under the authority of the Division of Savings and Loan or the Federal Home Loan Bank board and bank deposits, unless such deposits are held and used in connection with a buiness conducted or operated, in whole or in part, in California

REFUND PROCEDURES

Substantial changes were made in the inheritance tax refund procedures These procedures are set forth in Division 2, Part 8, Chapter 10 of the Revenue and Taxation Code Prior to the 1963 amendments, Chapter 10 embraced eight different articles of from two to seven sections each, all dealing with inheritance tax refunds As amended, Chapter 10 is now composed of a single article of five sections (Sections 14371-14375) The amendments accomplished three primary changes in the law

1 *A single method of obtaining refunds is provided* Under prior law most refunds were obtained under Sections 14371-14373 which covered cases in which the amounts paid to the county treasurer exceeded the amount fixed in the order fixing inheritance tax In five classes of cases, however, the law permitted a refund where the tax fixed and the tax paid were in balance but later events proved the tax to have been fixed in an excessive amount In these cases the law did not provide for amending the order fixing tax but permitted the taxpayer to let the erroneous order stand and apply directly for the amount of refund due The cases in which refunds were obtained in this manner are as follows

a *Sections 14381-14383* Cases involving an additional or "pickup" tax under Sections 13441-13442 in which the credit finally allowed against federal estate tax by the Internal Revenue Service proved to be less than the total state tax which was previously fixed and paid

b *Sections 14401-14403* Cases in which an inheritance tax was fixed and paid without making allowance for a contingency which might defeat or diminish the interest of the transferee pursuant to Section 13956 and in which the contingency happens so as to result in a lower tax.

c *Sections 14411-14414.* Cases in which the tax was fixed and paid at the highest contingency pursuant to Section 13411 and in which the contingencies have resolved themselves in such manner as to produce a lower tax

d *Sections 14426-14428* Cases in which a transferee is entitled to an armed services exemption under Sections 13871-13873 which was not allowed when the tax was previously fixed and paid.

e *Sections 14421-14424.* Cases in which a debt which was not allowed as a deduction in fixing the tax is established after distribution of the estate

The 1963 amendments repealed the sections above enumerated, thereby eliminating this type of direct refund In lieu of the direct refund provided by the repealed sections, the new law, by amending Sections 13956 and 13411 and adding Sections 13443, and 14371, gives the taxpayer the right to have the order fixing tax amended to show the correct amount of tax due The order having been thus corrected, the refund can be obtained in the usual manner under

Sections 14371-14375 (It was not necessary to provide for amendment of the order fixing tax in cases covered by repealed Sections 14421-14424 because this is already provided for in Section 13985.)

2 *Certain sections providing for refunds were repealed as being superfluous* They covered cases in which it was necessary to correct the order fixing tax before the application for refund could be made Since a correct order was required, the refund can be obtained under the regular procedure provided in Sections 14371-14375 The sections repealed as being superfluous were Sections 14361-14362 (refund after order is modified on appeal), Sections 14391-14393 (refund when power of appointment exercised in favor of charity)

3 *The basic procedure for obtaining refunds of inheritance tax was simplified* In order to obtain a refund under prior law, it was necessary for the taxpayer to file a petition in the superior court and obtain the court's order directing the State to pay the amount of refund due Notice of filing the petition had to be given the State Controller After the order was made, copies would be submitted to the Controller and the refund would be paid

This procedure is retained in the law as amended but in addition a new procedure is provided whereby the refund may be obtained by direct application to the State Controller without obtaining a court order (Revenue and Taxation Code Sections 14371-14375) The Controller will furnish forms to be used in making the application Should the Controller refuse to honor the direct application, the taxpayer may follow the old procedure and make application for a court order directing the refund

The text of the amendments which accomplish these changes is as follows

13411 (a) In the case of a transfer made subject to a contingency or condition upon the occurrence of which the right, interest, or estate of the transferee may, in whole or in part, be created, defeated, extended, or abridged, the tax is computed as though the contingency or condition has occurred in such manner as to produce the highest rate of tax possible

(b) Upon the occurrence of the contingency or condition after an order fixing inheritance tax has been entered in which the tax was computed at the highest rate possible pursuant to this section, the court which made the order shall, upon petition after notice to the Controller, modify said order to fix the tax due in accordance with the occurrence of the contingency or condition The petition shall be filed within six months after the occurrence of the contingency or condition

13443 (a) If the amount of the maximum state death tax credit allowable pursuant to the federal estate tax law is later found to exceed the total amount of tax fixed by an order fixing inheritance tax theretofore made, the court which made said order shall, upon petition of the Controller after notice to the persons chargeable with any increased tax, modify it to fix the true amount of additional tax due under this article The Controller's petition for modification may be filed at any time within six months after he has received knowledge that the federal estate tax has been finally determined

(b) If the amount of the maximum state death tax credit allowable pursuant to the federal estate tax law is later found to be less than the total amount of tax fixed by an order fixing inheritance tax theretofore made which included an additional tax computed under this article, the court which made said order shall, upon petition by or on behalf of the persons liable for the tax fixed in said order, after notice to the Controller, modify it to fix the true amount of tax

due under this article The petition shall be filed at any time within six months after the federal estate tax has been finally determined

13874 The court which has made an order fixing inheritance tax in which the exemption provided by this article was not allowed may, upon petition after notice to the Controller, modify said order to make allowance for said exemption The petition shall be filed within one year after the entry of said order or the decree of final distribution in the estate, whichever is later

13956 (a) In determining the value of any estate or interest to the beneficial enjoyment or possession of which there is a person presently entitled, no allowance is made on account of any contingent incumbrance on the estate or interest, nor on account of any contingency upon the happening of which the estate or interest, or some part of it, might be abridged, defeated, or diminished

(b) Upon the taking effect of the incumbrance or the happening of the contingency after an order fixing inheritance tax has been entered in which no allowance was made pursuant to this section, the court which made said order shall, upon petition after notice to the Controller, modify said order to fix the amount of tax due based upon the diminution in value resulting therefrom The petition shall be filed within six months after the taking effect of the incumbrance or the happening of the condition

(Chapter 10 is repealed and Chapter 10 is added)

Chapter 10. Refunds

14371 Any person who has made a payment of tax to the county treasurer in excess of the amount specified in the order or orders fixing tax as finally amended or modified, and as said amount is adjusted pursuant to discount and interest provisions of this part, is entitled to a refund in the amount erroneously paid

14372 An application for the refund shall be made to the State Controller, or shall be filed with the superior court having jurisdiction, within one year after the date of the entry of the order fixing tax or of the decree of final distribution of the estate, whichever is later

Where application for refund is filed with the superior court, notice of the hearing together with a copy of the application shall be given to the Controller.

14373 On proof satisfactory to him that the applicant is entitled to a refund, the State Controller shall draw his warrant upon the State Treasurer in favor of the person who paid the tax in the amount erroneously paid, and the State Treasurer shall refund that amount If an application to the Controller is denied in whole or in part, the applicant may file an application for a determination of the amount of the refund with the superior court having jurisdiction within one year after the date of the entry of the order fixing tax or the decree of final distribution of the estate, whichever is later On proof satisfactory to it that the applicant is entitled to a refund, the court shall by order direct the state to refund to the person who paid the tax the amount erroneously paid

Notice of the filing of such an application to the court shall be given to the Controller

14374 No person is entitled to interest upon any refund allowed by this chapter

14375 A judgment for a refund allowed by this chapter bears interest after the judgment becomes final and the refund is refused upon demand after such final judgment, but then only from the date of refusal

PROCEDURE ESTABLISHED TO INCREASE AMOUNT OF ADDITIONAL (PICKUP) TAX AFTER FEDERAL DETERMINATION

Revenue and Taxation Code Section 13443 was added to the law as one of the measures necessary to effectuate the changes in refund procedures previously described This new section also provides a procedure which permits the Controller to have the order fixing tax modified if the final federal estate tax determination results in a federal credit in excess of the tax fixed Under prior law, the taxpayer had a remedy, i e , by obtaining a refund under Sections 14381-14383 if the credit proved to be less than the tax fixed but there was no

procedure enabling the State to pick up the excess in cases where the credit proved to be larger than the tax fixed.

The text of the amended section is set forth under changes in Refund Procedures.

CASUALTY LOSS DEDUCTION

A new section, 13991, was added to the Revenue and Taxation Code providing for allowance of casualty losses as a deduction in computing inheritance tax. The loss must be uncompensated for by insurance and must occur prior to the date of entry of the order fixing tax or prior to one year from the date of death, whichever is earlier. Under prior law no such deduction was allowable.

The text of the new section:

13991. Any net loss, not compensated for by insurance or otherwise, which shall occur as to any property included in any transfer subject to this part made by the decedent, shall be deductible from the appraised value of such property, subject to the following limitations:

(a) Such loss shall have been caused by fire, earthquake, landslide or other casualty.

(b) The cause of such loss, as specified in subsection (a) of this section, shall have occurred after the date of death of the decedent but prior to the date of the making of the order fixing tax, or prior to one year from the date of death, whichever is earlier.

PETITION FOR DETERMINATION OF INHERITANCE TAX—CHANGE IN PROCEDURE

Prior to the 1963 legislation when the taxpayer filed a petition under Revenue and Taxation Code Section 14551 to have the inheritance tax determined upon inter vivos transfers, the court was required to set a time and place for an inheritance tax hearing before the appraiser. The 1963 amendment to Section 14552 deletes this requirement.

The text of the section as amended:

14552 Upon the filing of the petition the court shall, by order, designate and appoint an inheritance tax appraiser to ascertain and report to the court the amount of tax, if any, due and payable on the transfer for which the petitioner is liable. Upon the entry of such order, the petition and the matter to which it relates shall be deemed referred to such appraiser for all purposes.

COURT COSTS IN INHERITANCE TAX PROCEEDINGS

Revenue and Taxation Code Section 14675 was amended to permit court costs to be awarded against the State in inheritance tax proceedings. The amendment deleted the clause of Section 14675 which prohibited the awarding of such costs.

Text of the section as amended

14675 No fee shall be charged the Controller for filing, recording, or certifying any petition, lis pendens, decree, or order, or for taking any oath or acknowledgment, in any proceeding under this part; nor shall any undertaking be required from the Controller or the State in any such proceeding.

TREASURERS' COMMISSIONS

Revenue and Taxation Code Section 14797 was amended to provide increased commissions for inheritance tax collected by county treasurers (other than those of counties of the first and second class) who collect more than eight million dollars per year.

Text of the section as amended:

14797. The maximum commissions that may be retained by the county treasurer out of the total inheritance taxes paid to and accounted for by him in any one year are as follows

a By the county treasurer of a county of the first class, eighty-five thousand dollars ($85,000)

b By the county treasurer of a county of the second class, fifty thousand dollars ($50,000)

c By the county treasurer of a county of the third class, forty thousand dollars ($40,000), provided that where the total amount of inheritance taxes paid to and accounted for by the county treasurer in the year exceeds eight million dollars ($8,000,000) the maximum commissions that may be retained by him shall be fifty thousand dollars ($50,000)

d By the county treasurer of a county of the fourth class, twenty-five thousand dollars ($25,000); provided that where the total amount of inheritance taxes paid to and accounted for by the county treasurer in the year exceeds eight million dollars ($8,000,000) the maximum commissions that may be retained by him shall be fifty thousand dollars ($50,000)

e By the county treasurer of a county of any other class, twenty thousand dollars ($20,000); provided that where the total amount of inheritance taxes paid to and accounted for by the county treasurer in the year exceeds eight million dollars ($8,000,000) the maximum commissions that may be retained by him shall be fifty thousand dollars ($50,000)

GIFT TAX

GIFT TAX ANNUAL EXEMPTION ON TRANSFERS BETWEEN SPOUSES

Revenue and Taxation Code Section 15402(b) was amended to conform this section with the changes effected by the 1961 amendment of Section 15303(b).

Prior to the 1961 amendments, one-half of the community property passing to a wife upon the death of her husband and all of the community property passing to a husband upon the death of his wife was exempt from inheritance tax In order that separate property converted to community by inter vivos transfer of the spouses would not escape both gift and inheritance taxes by reason of such inheritance tax exemptions, the law (Revenue and Taxation Code Section 15303) provided (1) that upon a conversion of the husband's separate property to community property, one-half was subject to gift tax at the time of conversion, leaving the other half subject to inheritance tax upon the husband's death and (2) that upon a conversion of the wife's separate property to community property, one-half of the converted property was subject to gift tax at the time of conversion and the other half, if it passed to the husband, was subject to gift tax upon the wife's death In order that the full half would be subjected to gift tax (in lieu of inheritance tax) upon the wife's death, Section 15402(b) provided that the annual exemption would not be allowable

In 1961 the inheritance tax law was amended to exempt all community propery (except life estates and powers of appointment in the husband's half) passing from husband to wife, and in conformance therewith, Section 15303(c) was also amended to subject to gift tax, as of the date of a husband's death, the remaining half of his separate property which he had converted to community property during his lifetime The 1961 Legislature, however, omitted to provide, as in the case of a decedent wife, that the annual exemption would not apply

The 1963 amendment corrects this oversight by amending Section 15402(b) to disallow the annual exemption upon such transfers regardless of which spouse is the decedent-donor

The text of the section is amended

15402 Neither of the following is within the exemption allowed by this article

(a) A future interest in property, provided, that no part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for the purposes of this subsection if the property and the income therefrom may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and will to the extent not so expended pass to the donee on his attaining the age of 21 years, and in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under an unlimited power of appointment

(b) Property subject to tax by virtue of the operation of subdivision (c), Section 15303 of this code.

AMENDMENT OF GIFT TAX DETERMINATIONS BY REASON OF PRIOR GIFTS

Revenue and Taxation Code Section 15807 was amended to provide that when a gift tax is determined for a calendar year prior to those for which determinations have already been issued, the latter determinations may be amended to show the true amount of tax which would have properly been assessed had all determinations been made in proper sequence Under the old law the prior year's gift was treated as having been made in the last year for which a determination was issued

The text of the amended section:

15807. When the Controller makes an original, amended or supplemental determination for a calendar year which is prior to calendar years for which he has theretofore made final determinations, he may concurrently therewith, notwithstanding other provisions of this part, amend the determinations for the subsequent years to show the true amount of tax which would have been determined had all determinations been issued in the sequence in which the gifts were made.

PAYMENT OF GIFT TAX UNDER PROTEST

Revenue and Taxation Code Section 16251 was amended to delete the requirement that payment of gift tax must be accompanied by a protest as a condition to filing action for recovery of the tax.

Text of the section as amended.

16251. Within 60 days after notice of the determination of the amount of tax has been given by the Controller, any person who has paid the tax may file an action against the State in the superior court having jurisdiction to recover the tax so paid.

PROBATE CODE

INHERITANCE BY PERSON WHO CAUSED DECEDENT'S DEATH

Probate Code Section 258 was amended to extend the circumstances under which a person who caused the decedent's death is barred from succeeding to any portion of the estate as heir or legatee Under prior law the only circumstances which barred the person from taking was his conviction of the murder or voluntary manslaughter of the decedent.

The text of the section as amended

258 No person who has unlawfully and intentionally caused the death of a decedent, and no person who has caused the death of a decedent in the perpetra-

tion or attempt to perpetuate arson, rape, robbery, burglary, mayhem, or any act punishable under Section 288, Penal Code, shall be entitled to succeed to any portion of the estate or to take under any will of the decedent; but the portion thereof to which he would otherwise be entitled to succeed goes to the other persons entitled thereto under the provisions of this chapter or under the will of the decedent A conviction or acquittal on a charge of murder or voluntary manslaughter shall be a conclusive determination of the unlawfulness or lawfulness of a causing of death, for the purposes of this section

CONSENT TO GRANTING PETITION TO HAVE EXECUTOR OR ADMINISTRATOR COMPLY WITH OPTION

The 1963 Legislature added Section 854 to the Probate Code which provides a procedure whereby an optionee of an option given by will may obtain a court order authorizing the executor or administrator to transfer property of the estate in compliance with the option The order cannot be made unless the court finds that the inheritance tax has been paid or a consent to entry of the order is obtained from an inheritance tax attorney.

The text of the new section:

854 When any option to purchase real or personal property is given in a will duly admitted to probate the optionee may petition the court for an order authorizing the executor or the administrator with the will annexed to transfer or convey such propery upon compliance with the terms and conditions stated in the will

The clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by Section 1200 of this code

Such order shall not be made unless the court shall find that the rights of creditors will not be impaired or shall require bond in an amount and with such surety as the court shall direct or approve. The order shall not be entered unless the court shall find that all inheritance taxes payable in said proceedings have been paid or the State Controller, and inheritance tax attorney or a subordinate inheritance tax attorney has, in writing, consented to the entry of the order by the court

The petition must be filed within any time limitations stated in the will, or, in any event, within six months after the issuance of letters testamentary or letters of administration with the will annexed; provided, however, that if any time limitation in the will is measured from the death of the testator such time shall be extended by the period between such death and the issuance of such letters but in no event to more than six months after such issuance

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ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

A PROGRAM OF TAX REFORM FOR CALIFORNIA

A Major Tax Study

Part 12

Published by the
ASSEMBLY
CALIFORNIA LEGISLATURE

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JULY 1965

A PROGRAM OF TAX REFORM FOR CALIFORNIA

Final Report of the

ASSEMBLY INTERIM COMMITTEE ON REVENUE AND TAXATION

July 1965

LETTER OF TRANSMITTAL

HON. JESSE M UNRUH,
Speaker of the Assembly, and
MEMBERS OF THE ASSEMBLY

Attached hereto is the final report of the Assembly Interim Committee on Revenue and Taxation. The report covers the major tax study during the 1963–65 interim and the tax legislation which was introduced as a result of the interim work

The tax reform plan (AB 2270) is shown as Part A of the Appendix The single omnibus bill was chosen as a vehicle for all our tax law reforms and rate changes to enable us to present one balanced program for consideration by the Legislature To break the proposal into separate components would have created unnecessary problems in drafting and hearings, and confusion for those responsible for handling the bills Furthermore, it is possible that many of the exemptions would have been approved by the legislators who would have been reluctant to support the increases in other tax levies necessary to make up the lost revenue.

Although a majority of the committee supported the tax reform plan, the record should be clear that some of the members of the committee did not approve it.

I want to express my appreciation for the support you gave to the committee during the interim study and for your work on behalf of the bill in the general session

Sincerely yours,

NICHOLAS C PETRIS

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FOREWORD

This report of the activities of the Assembly Interim Committee on Revenue and Taxation covers the work of the committee during the 1963–1965 interim period and presents the major tax legislation which emerged from that study of California's tax structure The measure was introduced as AB 2270 of the 1965 General Session.

We have included in this booklet a detailed description of the bill, an index to its sections, tables showing its effect on the counties, cities and school districts of the state, and a list of revenue sources with estimates of their return In this way the committee is making available the material from which it assembled AB 2270 and when this is used with the information contained in our earlier reports on the economic impact of each tax levy it is possible to evaluate the ultimate burden of any tax change which may be proposed in the immediate future.

SPECIAL ACKNOWLEDGMENT

Any legislation with the technical detail found in this tax law is the product of a dedicated group of extremely well-qualified men. Although the members of the Committee on Revenue and Taxation have called upon these men in the past they wish to give special tribute to them for their assistance in the preparation of the major bill which emerged from the work described in this report

Franchise Tax Board

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Russell L. Sparling, *Deputy Legislative Counsel*
Ernest H. Kunzi, *Deputy Legislative Counsel*

Controller's Office

Charles J. Barry, *Chief Inheritance Tax Attorney*

Office of the Auditor General

Albert L. Monighan, *Senior Auditor*

CONSULTING ECONOMISTS

Economists from California's university and state college system were retained by the committee to prepare special studies on the various parts of the tax structure We are grateful for the guidance and assistance thay gave us and appreciate the many hours which they devoted to research and writing for us

A biography of each contractor follows:

Dr Harold M. Somers, chairman of the Department of Economics at U C.L.A., received his Ph.D in economics from the University of California, Berkeley, and his LL B. from the Law School of the State University of New York at Buffalo.

He is a member of the American Bar Association, American Economic Association, American Finance Association, and National Tax Association.

Prior to coming to U C L A , Dr Somers taught at the University of Buffalo and the University of Michigan and was a member of the research staff at the University of Chicago and the Brookings Institution, an economist for the New York State Department of Commerce, a consultant to the New York State Department of Commerce, and a consultant to the New York State Commission on Revision of the Constitution and the Joint Legislative Committee on Town and Village Laws.

Dr. Somers has published widely in the areas of economics and taxation He is the author of a book, *Public Finance and National Income,* and a contributor to volumes on *Growth of the American Economy* and *Taxation and Business Concentration* His papers, notes and reviews have appeared in the *American Economic Review, American Historical Review, Buffalo Law Review, Canadian Journal of Economics and Political Science, Commercial and Financial Chronicle, Econometrica, Impuestos: Revista de Doctrina Jurisprudencia y Legislación, Journal of Economic History, Journal of Finance, Journal of the American Statistical Association, Journal of Political Economy, National Tax Journal, Proceedings of the National Tax Association, Quarterly Journal of Economics, Review of Economics and Statistics, Review of Economic Studies, Rivista Internazionale di Scienze Economiche e Commerciali, Revue de Science et de Législation Financière, Vanderbilt Law Review, Western Economic Journal,* and the following federal publications, *Monetary Policy and the Management of the Public Debt* and *Federal Expenditure Policy for Economic Growth and Stability,* both issued by the Joint Economic Committee of the U S. Congress, and *Excise Tax Compendium,* issued by the House Ways and Means Committee. Among his contributions to professional publications since 1950 are·

"A Theory of Income Determination," *Journal of Political Economy,* December 1950.

"Government Expenditures and Economic Welfare," *Revue de Science et de Législation Financière,* January 1951.

"What Generally Happens During Business Cycles—and Why," *Journal of Economic History,* summer 1952.

"The Place of the Corporation Income Tax in the Tax Structure," *National Tax Journal,* September 1952.

"'Cost of Money' as the Determinant of Public Utility Rates," *Buffalo Law Review,* spring 1955.

"Estate Taxes and Business Mergers," *Journal of Finance,* May 1958.

"Reconsideration of the Capital Gains Tax," *National Tax Journal,* December 1960.

"Theoretical Framework of Sales and Use Taxation," *Proceedings of the Fifty-fourth National Tax Conference: 1961* (National Tax Association)

"Capital Gains Tax: Significance of Chances in Holding Period and Long-term Rate," *Vanderbilt Law Review,* June 1963

"Economic Implications of an Income Tax Reduction," *Rivista Internazionale di Scienze Economiche e Commerciali,* April 1964

"Problemas fiscales de paises en desarrollo," ["Fiscal Problems of Developing Countries"], *Impuestos,* April 1965

Dr. Yung-Ping Chen was Brookings Research Professor at the University of Wisconsin immediately prior to his association with this committee. He received his M.A. and Ph.D. at the University of Washington where he was also a research fellow and teaching fellow. While he was assistant professor of economics at Seattle Pacific College Dr. Chen published several articles dealing directly with the tax problems of the senior citizen. "The Federal Old Age and Survival Insurance Trust Fund as an Equalization Reserve" appeared in *Proceedings of the Western Economic Association;* "The Economic Implication and Consequences of the OASI Trust Fund," *Journal of Finance;* and "Income Tax Exemption for the Aged as a Policy Instrument" in the *National Tax Journal* make him eminently qualified to write on homestead exemptions for the aged in California.

Mrs. Yvette Gurley received her undergraduate degree at San Diego State College and did graduate work in economics at Stanford University. She was engaged in an interdisciplinary research project at the Center for Research on World Political Institutions in Princeton University before she moved to Washington, D.C. In Washington Mrs. Gurley was first an economic analyst in the trust investment department of the American Security and Trust Company and later a researcher at the Brookings Institution. Since 1963 she has been with the American Economic Review. Among her publications is "Federal Income Taxation of Mutual Savings Banks and Savings and Loan Asso-

ciations" which was a portion of the study *Tax Revision Compendium: Compendium of Papers on Broadening the Tax Base* written for the Committee on Ways and Means of the U S Congress

Bruce T McKim is an assistant professor of economics in the University of California at Riverside He received his bachelor's, master's, and doctoral degrees in economics from the State University of Iowa where he taught before coming to California as an assistant professor at Los Angeles State College in 1962 Dr McKim also served as an economist to the Federal Reserve Bank of Chicago from 1960 to 1962. Among his publications are "A Statistical Examination of Selected Factors of Economic Growth and Stock Market Conditions" *Iowa Business Digest:* "Income Velocity and Monetary Policies in the United States, 1951–1960"· *Journal of Finance*, and "The Quantity of Money and Monetary Policy"· also in the *Journal of Finance*

Ralph C Kelly is a graduate of Western Reserve University in Cleveland, Ohio He continued his education at Cleveland Marshall Law School in Cleveland where he received his LLB Mr Kelly was an accounting major and corporate finance and banking minor and it was this experience he used from 1955 to 1962 as public accountant in Ohio and California His work for the committee involved a detailed study of the proposed tax on public utility services and analysis of the public financial records of public utilities in California.

Levern Graves, associate professor of economics at California State of Fullerton, receiving his bachelor's and doctoral degrees from the University of California at Berkeley He has also done work at Johns Hopkins School of Advanced International Studies in Washington. Dr Graves has been a consultant to business groups in Oakland, California and received research grants from the Southern Fellowships Fund and the Foundation for Economic Education as well as a Ford Foundation regional fellowship. He was an assistant professor of economics at Florida State University and the University of Nevada before coming to Fullerton

Ellis T Austin is a professor of business administration at Fresno State College He is a graduate of Western Washington College of Education, where he received his teacher's certificate, and of the University of Washington He received his Ph D from Michigan State University in 1955

Dr Austin taught at the University of Washington, the University of Idaho, Michigan State, and the University of Pittsburgh before coming to Fresno State in 1958 He has participated actively in campus and civic affairs in each community where he has taught; in the fall of 1960, for example, he gave 15 one-hour lectures on local television in Fresno and he has spoken before, or written for, many local groups.

Professor Austin has received fellowships for special study each summer since 1960 These programs have taken him to New York University, the University of Chicago, Harvard University, and more recently to U C L A for the Ford Foundation Regional Seminar in Economics—Public Finance and Fiscal Policy

He is a member of the American Economic Association and the American Finance Association.

Sylvia Lane is an assistant professor of finance at San Diego State College She received her A B and M A in economics at the University of California and her Ph D at the University of Southern California, where she also was a lecturer in economics Mrs Lane is a member of the American Economic Association, the American Finance Association, and serves as chairman of the membership committee and a member of the executive committee of the Western Economic Association

In 1963, she received a Ford Foundation fellowship for further study in public finance at U C L A. She has done research for A J Wood and Company, the Psychological Corporation, the Mendota Research Group, and the Economic Research Group. Mrs Lane was project economist for the Los Angeles County Welfare Planning Council, 1956 to 1959; and chairman of the Commission on Aging of the Community Welfare Council of San Diego County in 1963

Among her other publications are· *Personal Finance* (John Wiley and Sons, Inc, 1963); *Buying Intelligently* (a supplementary text book); and numerous papers on economic growth and development and patterns of consumer expenditure

Dr. Marvin Lee is an associate professor of economics at San Jose State College He is a graduate of the University of California at Berkeley and received his Ph D from the University of North Carolina in 1960, before his employment as a tax consultant for the North Carolina and South Carolina A F L-C I O He was later on the southern regional staff of the Amalgamated Clothing Workers of America at their New York headquarters He has done tax research for the Department of Tax Research at Raleigh, North Carolina, where he prepared reports for the legislature on many sectors of the state's economy He was a consultant on Economic Development and Prospects to the Joint Committee for Study of the Tax Structure in North Carolina. Among his publications is "Tax Incentives and the Industrialization of the Southeast" which appeared in the *Proceedings*, National Tax Journal in September, 1961.

Dr. Lee was an instructor in economics at the University of North Carolina and an assistant professor of economics at Hofstra University, Hempstead, Long Island, before coming to San Jose State College in September, 1963

Mrs. Wilma Mayers is a lecturer on economics at Sacramento State College Mrs Mayers graduated at the head of her class when she received her A B in economics from the University of British Columbia From 1944 to 1947 she was a teaching assistant in economics and statistics at the University of California in Berkeley and at that same time she was on the staff of the University's Bureau of Business and Economic Research In 1949 she became a lecturer in economics at U C L A, leaving in 1950 when she began work for the State Board of Equalization on property and sales taxes.

Mrs. Mayers has been active in civic affairs in Sacramento and was president of the League of Women Voters in 1958–59 She is now a candidate for the Ph D at the University of California, Berkeley

Mrs Alice John Vandermeulen, associate research economist in the Institute of Government and Public Affairs at the University of California, Los Angeles received her A B in economics from Bryn Mawr College, her master's degree from Radcliffe College, and her Ph D from Harvard University. She is a member of Phi Beta Kappa.

Dr. Vandermeulen taught economics at Harvard before moving west in 1948 and since that time she has lectured at Scripps College, at Claremont Graduate School, at Claremont Men's College, where she was assistant dean of the faculty, and at the University of California at Los Angeles Both the John Randolph and Dora Haynes Foundation and the Social Science Research Council have made grants to Dr Vandermeulen for special study projects

She is a past president of the Southern California Economics Association and a member of the American and the Western Economics Associations as well as the American Finance Association Her published works include both articles and books in the field of government finance. The most recent article· "Capital Gains—Two Tests for the Taxpayer and a Proposal for the President" appeared in the *National Tax Journal* for December 1963.

Mrs. Corinne Lathrop Gilb, is a research associate at the Center for Study of Law and Society at the University of California in Berkeley Dr Gilb received her A B degree from the University of Washington, her master's degree from the University of California, and her Ph.D from Radcliffe College. She is a member of Phi Beta Kappa

Dr Gilb has headed the regional cultural history project and the Institute of Industrial Relations' oral history project at the University of California prior to her work with the Center for the Study of Law and Society She has also taught at San Francisco State and Mills College. Dr Gilb is the author of a recent book entitled *The Professions and the State* and has published numerous articles in professional journals

I. BACKGROUND OF THE MAJOR TAX STUDY

During the 1963 legislative session the members of the California Assembly became greatly concerned about the revenue system of the state They directed their Committee on Revenue and Taxation to make a thorough investigation of the state's tax structure and to report to the 1965 Legislature with suggestions for improving, updating, and rebuilding the system The members fully realized that tax increases would be necessary to balance the 1965–66 budget when they commissioned the study in 1963 This gave all the more urgency to their instructions to the committee The committee was told to study the structure in detail to see where the proposed increases could be levied most equitably—not necessarily where they would create the least public outcry The committee was to look at each revenue source, study its history and development, judge its equitability as a revenue producer, determine its relative importance, its impact on the businessman and consumer, and most important of all see which income groups bore the brunt of its payment

The first step was to employ a noted economist to help guide the project and to help prepare the studies of the tax structure Dr. Harold M Somers, Chairman of the Department of Economics at UCLA, was chosen as the consulting economist for the study Other professors from the university and state college system were retained to prepare detailed explanations of our existing tax levies

The tax structure which they studied was basically the system adopted in 1933–35 Each of the professors who contracted to work with the committee was assigned a topic in the field of taxation for research and analysis They were asked to dissect the subject from all standpoints as well as make suggestions for improvements in all phases of concern Each of the contractor's reports was reviewed by the committee members and discussed in formal and informal meetings of the committee and with Dr Somers The individual studies were published by the committee and have received wide distribution throughout the state Many cities and states as well as libraries and universities across the nation have requested copies of these contractor's reports Alice Vandermeulen did the first known complete compilation of financial information on California's fees and licenses (Part 2 of the Tax Study) Corinne Gilb wrote Part 3, a review of conformity of state to federal personal income tax laws, and Wilma Mavers studied the financial problems of local government (Part 6)

The major emphasis of the entire tax study was on the property tax so it is natural that there were more contributions in this field Bruce McKim wrote on the economic and psychological limits of the property tax, Yvette Gurley studied the bank tax which is in lieu of the personal property tax, and Yung-Ping Chen provided a detailed analysis of senior citizens' property tax relief legislation in the 50 states and its impact on California Guenter Conradus discussed the prop-

erty tax in relation to forest timber and Levern Graves compared state and local tax burdens in California.

Two contractors, Wilma Mayers and Marvin Lee, reported on the real estate transfer tax, the stock transfer tax, and the taxation of petroleum producing properties in Part 7. Sylvia Lane's *The Insurance Tax* is Part 8 and California's excises on cigarettes, alcoholic beverages, and horseracing, written by Ellis Austin, is Part 9. The consulting economist, Harold Somers, wrote Part 4, *The Sales Tax*, a portion of Part 5 on the property tax, coauthored Part 10 on the taxation of corporate income, and did Part 11 titled *Capital Gains, Death and Gift Taxation* Committee staff members David R Doerr and Raymond R Sullivan worked with each of the authors, while themselves contributing a major portion of Part 5 on the property tax and writing sections of Parts 1, 6, 7, and 10

While the professors were busy with the theoretical the committee held a series of public meetings throughout the state to learn about problems in taxation The first hearing in the interim period gave the civil servants and elected officers of state and local government departments the opportunity to express their views of the statutes guiding the operation of the tax levies they administered. Representatives of the Department of Finance, the Controller's Office, Board of Equalization, Franchise Tax Board, the county and city assessors, and tax collectors spoke at length in describing their work, the taxes they deal with and the problems they encounter.

The second hearing was in Los Angeles where the committee was given a thorough briefing on the operations of the assessor's office and then heard a day and a half of testimony on the property tax, assessment practices, and exemptions from the tax. Subsequent hearings held throughout the state centered on the assessment and taxation of agricultural land, the tax burdens of senior citizens, the income tax, state income tax conformity to federal tax law, and certain technical amendments proposed to the California personal income tax law The "single tax," business taxes (especially inventory), revenue problems of the cities and counties, and overall views of the tax structure by representatives of major business and labor groups filled the six two-day hearing periods scheduled after the orientation meeting in Oakland (See Appendix L for a listing of those who appeared before the committee during the interim period)

The public was kept abreast of these activities through press notices, coverage of the hearings, and speeches about the study by the chairman and other members of the committee. Letters with suggestions and questions for study were received and considered, detailed questionnaires were mailed to the county assessors The contractor's reports were distributed to the members and to the public, and discussions were held periodically to keep the other members of the Assembly informed on the progress of the overall program. During the 1964 Budget Session a comprehensive review of activites to date was published in the *Assembly Daily Journal;* and in July, 1964, a report was made to the Assembly Rules Committee on progress, expenses, and the plans for the completion of the study.

II. GENERAL DISCUSSION OF THE TAX STRUCTURE

California's growth in the past two decades has put unprecedented demands on government. These demands have produced a patchwork revenue structure—a structure that is regressive—a structure that is not based on ability to pay—a structure that hinders economic growth —a structure which cannot meet the demands which will come with the growth expected in the future

Under the existing revenue system every California property owner faces the certainty that his local property taxes will continue to rise unabated year after year while he faces further tax increases at the state level *It is vital that the state tax structure be reoriented and redrawn to ensure that our revenue sources keep abreast of growth in the economy.* But while this is done it is necessary to view the tax structure as it relates to the business climate of California The state must be careful to avoid the imposition of taxes which might deter the development of new industry

It is clear that the property tax is the major defect in the California tax system, it is outmoded, discriminatory, unfair, economically destructive and regressive. It fails every major and accepted standard by which government policymakers have come to judge the propriety of any particular form of taxation

University of California Professor Malcolm Davisson told this committee at its first interim hearing of one writer who says:

"The general property tax has only two faults; first it is wrong in theory; and second it doesn't work in practice" In support of this generalization he offered the following evidence.

"First, the property tax is discriminatory in its application to different forms of wealth

"Second, although proportional as to rate, the property tax is often regressive when related to incomes of property owners There appears to be considerable evidence that high value properties are at times treated differently than low value properties so far as the ratio of assessed to full value is concerned It is often argued that the tax is regressive because a considerable portion of it falls on housing, and that housing expenditure tends to decline as income rises.

"The third argument is that the use of an ad valorem base for tax purposes places a heavy burden on persons with small current cash income.

"Fourth, the property tax is a poor index of benefits received. There are, undoubtedly, certain services performed by government, particularly by local government, which do provide benefits that are pretty closely allied to the value of property, and here, I suppose one can make a case for property taxation. But there are many kinds of services which are supported in large part by the property tax where this is not the case. The outstanding example is, of course, education

"Fifth, property is also deficient as a measure of ability to pay, another point that is so obvious it needs no elaboration.

"Lastly, the property tax is cumbersome and fails to adjust adequately to the changing economic conditions of an industrialized society. Property tax yields tend to lag behind overall changes in economic activity and thus accentuate inflationary pressures in periods of prosperity and deflationary pressures during recessions

"Now there may be a difference of opinion as to whether these various arguments support the sweeping indictment that I quoted a few minutes ago that the property tax is both wrong in theory and doesn't work in practice, but whether that is true or not, the fact remains that the case against the property tax turns out to be a fairly impressive one."

Local property taxes are imposed on a base which is determined in an arbitrary and often inequitable manner; the assessment of a parcel of property is never the product of an exact science There are as many approaches to value as there are values for each piece of property. The best that can be said for assessments is that they are impartial guesses The studies made by the committee found variations of assessments within a county whereby one taxpayer paid two hundred times more in tax on the same value property as did another taxpayer In addition it is impossible for an assessor, under California's rapidly shifting economic conditions, to keep up with changes in value of property within his county on a year-to-year basis The existence of the "time lag" in reassessing and consequent sudden increases in assessment generates ill feeling among taxpayers while causing a revenue loss to local government

The study of state and local tax burdens in California (by Dr Levern Graves) for our study shows that the overall impact of taxes collected at the state level is proportional However, the property tax is shown to be highly regressive, with a heavy enough burden to make the whole tax structure regressive.

Graves' findings are shown in Table 1 on the following page.

These findings indicate that the poor pay a far heavier share of the property tax, restricting low income purchasing power and putting a drag on the economy.

Considering these weaknesses, the magnitude of this property tax and the pace at which the rate has been increasing are of grave concern More money is extracted from the citizens of this state through property taxation than by all state levied taxes combined In 1963-64, taxes levied on property amounted to $2 8 billion dollars Since World War II, the tax has increased from 3 2 percent of personal income to 5 3 percent of personal income

These findings suggest that it is imperative that certain property tax reforms be instituted and that the revenue structure be altered by moving away from the property tax toward more equitable forms of taxation.

As a potential source of additional state revenue to meet growing demands for state services and to finance property tax relief, the personal income tax has a number of advantages The income tax is based on ability to pay and is progressive in relation to income. While it treats all persons with similar incomes equally, the tax can also be adjusted to meet differing sets of circumstances—such as size

TABLE 1

Effective Tax Rates Based on Family Personal Income After Federal Income Taxes [a]

Tax	Income bracket: Under $2,000	$2,000 –2,999	$3,000 –3,999	$4,000 –4,999	$5,000 –5,999	$6,000 –7,499	$7,500 –9,999	$10,000 –14,999	$15,000 and over
STATE									
Personal income	01	01	14	18	25	24	33	44	2 45
Bank and Corporation	1 00	83	69	52	46	44	46	51	1 41
Sales and use[b]	2 12	1 67	2 04	1 77	1 86	2 16	1 81	1 68	2 04
Motor Fuel	72	76	1 24	1 19	83	99	99	77	94
Motor Vehicle[c]	72	61	88	77	75	88	76	75	89
Cigarette	39	23	27	22	22	23	18	09	14
Alcoholic beverage	13	11	11	10	16	19	13	13	15
Gift & inheritance	49	35	25	16	.12	09	12	14	39
Horseracing fees	15	10	09	07	07	12	11	10	10
Private car	01	01	01	01	00	01	00	00	00
Insurance	13	22	18	20	19	17	22	14	16
Total state	5 85	4 94	5 87	5 19	4 90	5 51	5 11	4 76	8 69
LOCAL									
Sales and use	65	51	65	55	60	69	58	54	67
Property	9 21	10 44	9 05	7 99	7 42	7 03	6 19	5 01	5 63
License fees and permit	37	26	27	25	25	26	24	21	23
Total local	10 23	11 21	9 97	8 80	8 27	7 98	7 01	5 76	6 53
TOTAL									
Total state and local	16 08	16 15	15 84	13 99	13 17	13 49	12 12	10 52	15 22

[a] Detail may not add to totals due to rounding
[b] Includes license fees
[c] Includes the Motor Vehicle Transportation Tax and the Use Fuel Tax
SOURCE Taxation of Property in California, A Major Tax Study, Part 5, Assembly Committee on Revenue and Taxation, December, 1964

of family medical costs, etc. and finally, those with limited income are exempt from taxation.

From an economic standpoint, the income tax rates high marks in its impact on business cycles. During an economic downturn the income tax will produce less revenue—thereby mitigating the effects of the recession During boom times, the income tax raises more revenue, tending to curb runaway inflation. The personal income tax also tends to be much more responsive to growth than other levies The opposite is true of the property tax

Compared with other industrial states, California makes relatively light use of the personal income tax. Its exemptions tend to be higher, its brackets tend to be wider and its rate schedule tends to be lower than elsewhere. The total amount raised is roughly two-thirds of one percent of the personal income of California. The average state income tax paid by a family of four at various income levels is·

Gross Income	*Tax Paid*
$ 5,000	$ 0
7,000	18
9,000	38
10,000	48
15,000	136
25,000	432

Personal income taxes per $1,000 of personal income averaged approximately $11 in all states levying a state income tax In California, the personal income tax raises approximately $6 50 per $1,000 of per-

sonal income. The large yield in the state of New York ($20 per $1,000 of personal income) suggests that this levy can become the backbone of a state revenue system.

The sales tax is also a better revenue source than the property tax. One of the major charges which has been hurled at the sales tax is that it is regressive. Our study of the California Sales Tax, by Dr Harold Somers, developed a somewhat different conclusion. His findings indicate that if current income is the measure of ability to pay, the sales tax is slightly regressive with food exempt, but less so than the property tax However, if net resources (income plus net worth) are the measure of ability to pay, the sales tax is actually slightly progressive.

Perhaps the most desirable aspect of sales taxation, from a governmental standpoint, is that it raises substantial amounts of revenue in a relatively painless manner In a situation where governmental expenditures are expected to increase faster than personal income, it is desirable to have a tax base which expands commensurately From fiscal 1950 to fiscal 1962, collections from sales taxes increased from $326 to $749 million—a 130% increase During this same period of time, personal income in California increased by 152%.

The sales tax is also a valuable adjunct to the income tax in that it provides a means of taxing those people who somehow manage to have a low net taxable income despite a high inflow of disposable resources

One additional point must be made Loopholes and exemptions are proliferating in all the major taxes—income, sales, and property This tendency must be stopped if the tax structure is to remain equitable and carry the burden of providing revenues for government service This is not to say all exemptions are bad In some instances, certain taxes can be improved with judicious exemptions. However, the many exemptions now in the laws should be thoroughly reviewed and those which favor a special group should be eliminated.

Because of the weaknesses in the property tax and the pressing demands by government for more revenue, it is quite clear that the revenue structure of California needs a major overhaul. It will not be easy to revamp the system so that it can support the services which the people demand and support them by a fair and equitable means of taxation However, expediency will cause only trouble if it becomes the basis for modifications of the revenue system At best, this approach is only postponing the inevitable while doing a disservice to the people of California At worst, it can become the basis for the breakdown of government.

III. AB 2270—PETRIS-UNRUH TAX REFORM PLAN

As a result of the interim hearings and the studies of the tax structure which were prepared for the committee a plan of tax reform gradually took shape Many discussions were held among members of the committee and other interested parties as to the specific ingredients of the package Two committee workshops were held in late 1964, one in Los Angeles on November 12 and 13 and one in Sacramento on December 7 and 8. At these meetings many of the reform features of the proposal were hammered into shape After a general consensus was reached, the proposed tax reform package was announced to the public by Assemblyman Nicholas C Petris and Speaker Jesse M Unruh on January 27, 1965 This plan, which was introduced in the 1965 Legislature as AB 2270, was approved by a majority of the members of the Assembly Committee on Revenue and Taxation (12 aye, 6 no) and then by a majority of the Members of the Assembly

When AB 2270 was acted on by the State Senate, all the reform features were removed by the Senators who returned the bill to the Assembly with a 6¢ cigarette tax and the provisions which brought leases under the sales and use tax provisions In this form it was unacceptable to the Members of the Assembly who felt the need for tax reform was paramount The measure was then rejected by a unanimous vote

While AB 2270 has been rejected, the issue of tax reform has not. It will be before the people and the Legislature until it has been resolved.

A. OBJECTIVES

In formulating AB 2270 the basic approach was to devise a program which would be fair to all taxpayers, which would meet the revenue needs of state and local government, and at the same time improve California's tax structure Specifically, the plan was designed to remove inequities in the tax structure, to promote economic growth in California, to reduce the oppressive burden of the property tax, to provide for partial financing of state capital improvements from current revenues rather than entirely from bonds, and to meet the needs of state and local government.

It is important to recognize the balanced nature of the plan and consider it as a whole, rather than a collection of individual items. There are features which, if standing alone, might be unacceptable However, in the context of a "package" they are balanced by other, more desirable features For example, the proposed elimination of the personal property tax on household goods, although meritorious, would be unacceptable as a separate item, because of the sizeable revenue loss to local government When balanced by increases in other taxes, such a proposal is justified. In addition, in assessing the impact of the plan on various income groups, the total effect of the package must be considered rather than the incidence of individual taxes.

For example, the regressive cigarette tax was balanced by the progressive income tax.

It was not the purpose of this plan to shift tax burdens from one income group to another. And it cannot be stressed too strongly that the ultimate aim of the plan was to be fair to persons in all income groups.

B. BRIEF SUMMARY OF THE TAX REFORM PLAN

The proposed tax program made major changes in the revenue structure of the state of California The total revenue to be raised for state and local government by the plan was slightly more than one billion dollars of which over $730 million was earmarked for local government use to offset reductions in the property tax.

The property tax relief phase of the plan which was to be effective in 1966–67 was a three-part program Step one involved a narrowing of the property tax base due to the exemption of business inventories, household furnishings, and solvent credits. This would have reduced local government revenues by $287 million Part two was a reduction of the school property tax rate by an average of 25 percent through the substitution of revenue derived from an increase in the sales tax In furnishing additional state money to schools, AB 2270 used the equalization formula but also constituted major reforms in school finance Part three provided an additional $36 million in special property tax relief for low-income aged homeowners who could no longer afford to remain in their homes in the face of spiraling property taxes

The reduction of the property tax base and the reduction of the school property tax rate were fully funded from tax sources other than the property tax. There would have been no shifting of the property tax load from one group of taxpayers to another and local government would have been more than completely compensated for any loss in revenue These units would have received more revenue under the plan than they would have lost. (See Appendix B) To insure that the property tax reductions were continuing, new tax ceilings were proposed for schools and adjustments were made for other local governmental entities.

Revenue adjustments which were needed to offset the loss of property tax revenue and provide for state government needs included:

(1) An increase in the cigarette tax from 3¢ per pack to 8¢ per pack
(2) Changes in the income tax as follows: (a) revising the rate structure from the present 1 to 7 percent, to 1 to 15 percent; (b) reducing the personal exemption to $1,000 ($2,000 for couples); and (c) narrowing the present tax brackets to $1,500 intervals.
(3) The adoption of a pay-as-you-earn system of collecting the state income tax, with 100 percent forgiveness from the tax (exclusive of capital gains) for 1965 income.
(4) Slight changes in the coverage of the sales tax to include the lease of equipment and the occasional sale of autos, aircraft and boats. (Local government would also benefit from these changes under the Bradley-Burns formula.)
(5) An increase of ¼ percent in the Bank and Corporation Tax rate

(6) A minor increase in the Inheritance and Gift Tax rates on inheritances over $100,000; changes in Class C and D rates; changes in the taxable status of capital gains at death and removal of the exemption of tax on inheritances to tax-exempt organizations (other than churches, colleges, schools and charitable organizations).

(7) A property transfer tax, to be imposed by counties at their option, for their own use partially to make up for loss in property tax base. The first $15,000 of all transfers would be exempt (except for sales of bare land) The rates would be 1 percent for all transfers over $15,000 and 1½ percent for transfers over $25,000.

(8) An increase of 1 percent in the state sales tax All the revenue from this increase would have been placed in the state school fund to allow mandatory reduction of school property tax rates an average of 25 percent.

Each of the changes outlined above is fully explained in Chapter IV AB 2270 also carried a number of reforms, primarily in the area of property taxation, which improved tax administration but which were without major revenue significance. These will be explained in Chapter VI.

IV. DETAILED EXPLANATION OF STATE REVENUE NEEDS, MAJOR REFORM, AND REVENUE SOURCES IN PROPOSED TAX PLAN

There is danger in attempting an item by item justification of the component parts of a revenue package Many items are intended to balance other items Because the proposal must be considered and evaluated as a whole, a discussion of each item may tend to obscure the broad view and divert attention to individual levies Yet, to understand the whole plan, it is necessary to clarify and explain each of its ingredients. (Refer to Table 2)

A. STATE REVENUE NEEDS

1. State Revenue Gap

$100 million—1965–1966
240 million—1966–1967

Based on statements by the Department of Finance, this $100 million was the minimum amount of new revenue which was necessary to balance the budget passed by the 1965 Legislature, and the $240 million

TABLE 2

Impact of AB 2270 on State and Local Revenues for 1965–66 and 1966–67
(in millions)

	1965–65	*1966–67*
A. State Revenue Needs		
Gap	$100	$240
Capital improvements—pay-as-you-go	25	50
State revenue loss due to income tax conformity provisions	1	5
	126	295
B. Revenue Loss to Government Due to Reductions in Property Tax Base		
Exemption of business inventories (includes loss of state bank tax revenues of 12 million)		237
Exemption of household goods		45
Exemption of solvent credits		5
Tax relief for low-income aged		36
		323
C. School Property Tax Relief		
Mandatory school property tax reduction (average 25 percent)		335
		335
D. Additional Revenue for Local Government		
Additional assistance for cities beyond replacement of property tax loss		25
Additional assistance for counties beyond replacement of property tax loss		26
Additional assistance for schools beyond replacement for property tax loss		35
		86
	126	1039

is their estimate of next year's needs. The gap results from the end of the "one-shot" accelerated revenues which were used in this and the last fiscal year, the need for additional revenues to finance the school assistance program of 1964 and new programs passed by the 1965 Legislature Approximately $60 million is represented by new programs and salary increases It must be emphasized that these figures are at best only estimates. During the preparation and presentation of the reform plan, the estimates of revenue needs made by the Department of Finance kept changing. This made the development of a sound presentation of this facet of the plan very difficult

2. *Capital Improvements Pay-As-You-Go*

$25 million—1965–1966
50 million—1966–1967

In 1964, the Legislature signified a desire to move toward financing state capital outlay from current revenues rather than bonds. This amount represents a significant move toward that goal It should also be noted that the proposed 1965–1966 federal budget recommends a doubling of the grants to states for higher educational facilities. Congressional approval of this proposal will alleviate further pressure on state bonds.

3. *State Revenue Loss*

$1 million—1965–1966
5 million—1966–1967

A small amount of revenue would have been lost to the state due to the conforming of provisions in the state income tax law with those in federal law. The following changes in the California Personal Income Tax Law were included:

a. Annuities Under Life Expectancy Rule

Changed the personal income tax law to allow annuities to be taxed under the life expectancy rule. Estimated revenue loss· $300,000.

b. Foster Children Deduction

In computing their state personal income tax, taxpayers would have been allowed to deduct $600 for each foster child. Estimated revenue loss: $200,000.

c Charitable Contributions Deduction

The allowable deduction for charitable contributions was to be increased to 30% of income to conform with federal law Estimated revenue loss: $1,100,000.

d Foreign Student Deduction

Individuals could have deducted from taxable income $50 per month for each foreign student in their home. Revenue loss is minor.

e Medical Deduction

The maximum deduction of medical expenses was increased from $2,500 to $20,000 for married taxpayers and from $1,250 to $10,000 for single taxpayers Estimated revenue loss· $2,900,000

Each of these items is more fully discussed in part E of this chapter.

B. MAJOR REFORM: REDUCTION IN PROPERTY TAX BASE

1. *Exemption of Business Inventories*

It was proposed that business inventories be exempt from property taxation Inventories would have included raw material, work in process, or goods which were in the stream of commerce and were intended to be sold Inventories would not include machinery, equipment, office machines and furniture and other items which a firm would not sell in the normal course of its business It would include most agricultural livestock and crops for sale The exemption would also extend to motion picture films

This exemption is desirable for a number of reasons The tax is an invitation for firms to export inventories to avoid high taxes To avoid the tax, a great many firms have goods stored in transit in other states such as Nevada which artificially depresses economic activity in California for the first two months of the year It is anticipated that repeal of this tax would be of material benefit to the business climate in California, unemployment could be reduced and more jobs created

The inventory tax is completely inequitable in its application The tax falls most heavily on the firm that must have a high inventory on the lien date or has not been able to sell its goods To the extent that the tax falls on those which have been less successful, it falls on the firm *least* able to pay

It should also be noted that the inventory tax is partially passed on to consumers—and to this extent it applies to items exempt from sales tax such as food and medicine. The inventory tax exemption would have gone into effect for the 1966–67 fiscal year

From data supplied the committee by the county assessors, we have estimated that local units of government would lose approximately $225 million in revenue as a result of this exemption and the state would lose approximately $12 million from the bank tax because of the reduction in locally taxable personal property The defects of the inventory tax are fully documented in "Taxation of Property in California," Part 5 in the series of reports released by the committee during the interim

2. *Exemption of Household Goods*

The exemption of household goods and furnishings from property taxation is long overdue AB 2270 would have exempted all personal effects, wearing apparel, and household furnishings not used for the production of income; but it did not include boats or airplanes

Of all the weaknesses of the property tax, the assessment of household goods and furnishings is most glaring Assessment of this type of property is completely inequitable and administratively impossible Many assessors simply estimate the value of household personal property by the value of the residence This practice is inequitable, as some homes of the same value may have furniture of higher value than others; and unconstitutional, as assessors are required to assess all property equally in proportion to value

Household goods would have been exempt beginning with the 1966–67 fiscal year Estimated revenue loss to local government by elimination of household *personally* from the assessment rolls was $45 million

For a complete discussion of the evils of the present tax on household goods, see "Taxation of Property in California," Part 5 of this study.

3. *Exemption of Solvent Credits*

The special, low-rate property tax on solvent credits would have been discounted Solvent credits, which are amounts owing to a party from the sale of a good or service without security, less debts of a like character, are the only intangible forms of wealth now taxable in California. It is illogical to tax this one form of intangible wealth and exempt all other forms. Intangibles such as notes, shares of stock and bonds are tax exempt, but book accounts are taxed Under present law, accounts are taxed while a note taken in payment of an account would not be taxed. This exemption would have gone into effect for the 1966–67 fiscal year and the estimated revenue loss to local government was $5 million.

4. *Tax Relief for Low Income Aged*

A program of tax relief for low-income aged was included as part of the tax reform plan

The state would reimburse each homeowner on the basis of the following schedule:

TABLE 3

Property Tax Relief to Low-Income Aged

Eligible—aged (65 or over) owner-occupied residence

Total gross income of all residents, less than	Percentage exempt of first $5,000 of assessed value	Total gross income of all residents, less than	Percentage exempt of first $5,000 of assessed value	Total gross income of all residents, less than	Percentage exempt of first $5,000 of assessed value
$1,000	95	$1,800	63	$2,600	31
1,025	94	1,825	62	2,625	30
1,050	93	1,850	61	2,650	29
1,075	92	1,875	60	2,675	28
1,100	91	1,900	59	2,700	27
1,125	90	1,925	58	2,725	26
1,150	89	1,950	57	2,750	25
1,175	88	1,975	56	2,775	24
1,200	87	2,000	55	2,800	23
1,225	86	2,025	54	2,825	22
1,250	85	2,050	53	2,850	21
1,275	84	2,075	52	2,875	20
1,300	83	2,100	51	2,900	19
1,325	82	2,125	50	2,925	18
1,350	81	2,150	49	2,950	17
1,375	80	2,175	48	2,975	16
1,400	79	2,200	47	3,000	15
1,425	78	2,225	46	3,025	14
1,450	77	2,250	45	3,050	13
1,475	76	2,275	44	3,075	12
1,500	75	2,300	43	3,100	11
1,525	74	2,325	42	3,125	10
1,550	73	2,350	41	3,150	9
1,575	72	2,375	40	3,175	8
1,600	71	2,400	39	3,200	7
1,625	70	2,425	38	3,225	6
1,650	69	2,450	37	3,250	5
1,675	68	2,475	36	3,275	4
1,700	67	2,500	35	3,300	3
1,725	66	2,525	34	3,325	2
1,750	65	2,550	33	3,350	1
1,775	64	2,575	32		

Because of rising property tax burdens, many people over 65 who have little or no income are being forced to sell their homes. In some

cases, people are paying up to 40 percent of their incomes in property taxes No tax program should force people to abandon their homes.

The plan as proposed would reimburse the elderly for a portion of the amount that has been paid in property taxes The taxpayers would pay property taxes to local government as at present, but, they could send their receipted tax bill to the Franchise Tax Board and receive a state reimbursement for a portion of their tax bill depending on the gross income of all residents of the home.

To be eligible for the program, the homeowner would have to be 65 or over. Gross income means income from all sources of all residents of a household and the taxpayer would not receive any refund for taxes paid on assessed value in excess of $5,000 The refund would apply to the first $5,000 of assessed value for all property—no matter what the total assessed value. For a further discussion of this problem, see *"The Taxation of Property in California"* Part 5 of the series of tax studies prepared for the Assembly Committee on Revenue and Taxation.

C. MAJOR REFORM: SCHOOL PROPERTY TAX RELIEF

In addition to reduction in the tax base, school property tax rates would have been reduced by an additional 25 percent (on an average) by placing in the State School Fund the amount raised by a sales tax rate of 1 percent. This money would be distributed as equalization aid and would have the effect of putting almost every school district in the state on equalization aid.

Each school district would have been required to reduce its tax rate by an amount necessary to raise the sum of new money received from the state under this program. The statutory tax ceiling in each district would also be lowered to that same amount and school districts would be required to go to a vote of the people to increase the school tax rate, exclusive of tax increases needed for payment on bonds.

It should also be pointed out that schools would have received funds to compensate them for a loss in tax base and an additional increment of $35 million above the loss. This is explained in detail in Chapter VI.

D. ADDITIONAL REVENUE FOR LOCAL GOVERNMENT

It would be impossible to return money to local government in a dollar for dollar relation to what they would lose from the property tax reductions.

To insure that they did not lose tax revenue as a result of the reduction in assessed valuation due to the various exemptions proposed by the plan, we provided additional funds for distribution to cities.

Cities would have received $25 million more than they lost; counties would receive $26 million more than they lost; and as mentioned, school districts were to receive $35 million above what they might lose.

The method of reimbursement to local government is explained in Chapter V.

E. EXPLANATION OF REVENUE SOURCES
(refer to Table 4)

To provide revenue to meet state requirements and offset reductions in property taxes, a number of adjustments in the tax structure were to have been made.

TABLE 4

Revenue Sources to Make Up State Gap & Offset Property Tax Relief

	1965–66	*1966–67*
Cigarette tax · 5¢ increase	120	125
Sales tax reforms:		
—taxation of equipment leases in lieu of sales	9	13
—taxation of occasional sales of autos, aircraft, and boats	8	8
Income tax		
—withholding		
100 percent forgiveness (excluding capital gains)	—200 (est.)	75
—drop exemption to $1,000; narrow brackets to $1,500 intervals; extend rates to 15 percent	89	353
—tax capital gains at death		1
Bank and Corporation tax.		
—increase rate ½ percent	34	35
—allocation of income of multistate corporations	3	3
—eliminate double tax on commencing corporations	—2	—2
Inheritance tax:		
—increase rates on inheritances over $100,000		8
—tax inheritances to nonprofit foundations (other than those eligible for property tax exemptions)		3 (est.)
New tax source for county use (optional) property transfer tax: first $15,000 of all transactions exempt (except bare land) rates 1 percent over $15,000; 1½ percent over $25,000		80
Automatic local revenue increase: New local sales tax revenue due to state reforms in sales tax coverage (see above)	5	7
1 percent sales tax increase for mandatory reduction in school property taxes and additional assistance for schools	90	360
	156	1,069

1. *Cigarette Tax*

The tax on cigarettes would have been increased from 3 cents a pack to 8 cents a pack, effective July 1, 1965, although the dealer discount for stamping would remain at 2 percent. Provision was made for a floor stocks tax at a rate of 5 cents per pack. This would have produced approximately $120 million in new revenue in 1965–66 and $125 million in 1966–67.

Cigarette Tax Rates as of July 1, 1965

Cents per pack	*No. of states*†
0*	2
2	2
2 5	1
3	2
4	4
5	4
6	5
7	6
7 8	1
8	19
9	1
10	2
11	2

* Oregon has placed a 4¢ cigarette tax on its next statewide election ballot.
† Includes District of Columbia.

In addition to the need for revenue an increased consideration of the health aspect of smoking has probably contributed to the numerous recent increases in cigarette tax rates Today two states, Texas and Washington, have rates of 11 cents, and two others, New York and Vermont tax cigarettes at 10 cents per pack. Mississippi has a rate of 9 cents and 19 states have a rate of 8 cents.

Three states have proposals before them to increase the tax rate to 8 cents, and four states have proposals to increase the rate to 9 cents. Excluding California, the average cigarette tax rate as of July 1, 1965, was 6 5 cents Compared to other states, California derives an exceptionally low percentage of its total tax revenue from the cigarette tax In 1963–64, only five states including 3 * which had no tax received a smaller fraction of the total revenue from the tobacco taxes

2. *Income Tax*

Heavier use of the state income tax would make the revenue structure more progressive and by more closely paralleling the increase in personal income in the state make unnecessary the constant increase in tax rates

The following changes in the California personal income tax laws would have produced approximately $353 million in additional revenue

a Reduce the personal exemption to $1,000 for single persons and $2,000 for married This was a step in the direction of conformity with the federal exemption of $600 California's present personal exemption of $1,500 is exceeded by only four of the states with income taxes

b Decrease size of the tax brackets from $2,500 intervals ($5,000 for married couples) to $1,500 ($3,000 for married couples) This would increase the progression of the income tax more markedly.

c. Increase the rate structure to a maximum of 15 percent Prior to World War II, California personal income rates progressed from 1 to 15 percent With these rates restored, a married couple would pay the 15 percent rate only on that portion of income over $45,000 a year A couple with two children may deduct $4,200 from their yearly income to determine their taxable income and the tax is then 1 percent on the first $3,000 plus 2 percent on the next increment of $3,000 and so on until the 15 percent rate is reached The 15 percent rate applies only to the last increment of income It should be noted that much of the increase in tax liability in the higher brackets would be passed on to the federal government as the state personal income tax is fully deductible

* Colorado imposed a cigarette tax on July 1, 1964

[12] The tax applies only to interest and dividends
[13] Applies to commuters only, New Jersey-New York area
[14] In addition to the personal exemptions, the following tax credits are granted Single persons, $10, married taxpayers and heads of households, $25
[15] An additional exemption of $1,000 is allowed a married woman with separate income
[16] A credit of $1 is allowed for each $100 actually contributed by the taxpayer as partial support of a person who could qualify (except for the chief support requirement) as a dependent The credit shall not exceed $6
[17] A tax credit of $12 is allowed for each taxpayer or spouse who has reached the age of 65 A blind taxpayer and his spouse (if also blind) are allowed an additional $600 exemption plus a tax credit of $18 each
[18] The exemption is extended to dependents over the age of 21 if their income is less than $600 a year and if they are students in an accredited school or college
[19] Exemption for one dependent of unmarried person is $1,000, if dependent is father, mother, son, daughter, sister or brother
[20] Single person, $218, married couple $405

SOURCE Tax Overlapping in the United States 1964, The Advisory Commission on Intergovernmental Relations, Washington, D C Pg 120

TABLE 5

State Individual Income Taxes: Personal Exemptions, January 1, 1964

State	Personal exemption		Additional exemption on account of—		
	Single	Married (joint return)	Dependents	Age[1]	Blindness[1]
Alabama	$1,500	$3,000	$300		
Alaska	600	1,200	600	$600	$600
Arizona	1 000	2,000	600	1,000	600
Arkansas[2]	17 50 (1,750)	35 (3,250)	6 (300)		
California	1,500	3,000	600		600
Colorado	750	1,500	750	750	750
Delaware	600	1,200	600	600	600
Georgia	1,500	3 000	600	600	600
Hawaii	600	1 200	600	[3]600	5,000
Idaho	600	1,200	600	600	600
Indiana	1 000	2 000	500	500	500
Iowa[2]	15 (1,500)	30 (2 333)	7 50 (333)	[4]15	[4]15
Kansas	600	1,200	[5]600	600	600
Kentucky[2]	20 (1 000)	40 (2,000)	20 (1,000)	20 (1,000)	20 (1,000)
Louisiana[7]	2 500 (100)	5,000 (100)	[8]400 (8)		[9]1,000 (20)
Maryland	800	1 600	[6]800	800	800
Massachusetts[10]	2 000	2,500–4 000	[8]400		2,000
Minnesota[2]	10 (835)	30 (1,700)	15 (514)	[11]	[11]
Mississippi	5,000	7,000			
Missouri	1,200	2 400	400		
Montana	600	1,200	[6]600	600	600
New Hampshire[12]	600	600			
New Jersey[13, 14]	600	1,200	[6]600	[6]00	600
New Mexico	600	1,200	[6]600	600	600
New York[14]	600	1 200	[6]600	600	600
North Carolina	1,000	[15]2 000	300		1,000
North Dakota	600	1,500	600	600	600
Oklahoma	1,000	2,000	500		
Oregon	600	1,200	[16]600	[17]	[17]600
South Carolina	800	1,600	[16]800	800	800
Tennessee[18]					
Utah	600	1,200	[6]600		600
Vermont	500	1,000	500	500	500
Virginia	1 000	2,000	[19]200	200	600
West Virginia	600	1 200	[6]600	600	600
Wisconsin[2]	10 (435)	20 (870)	10 (405)	[20]5	
District of Columbia	1,000	2,000	500	500	500

[1] In most states an identical exemption is allowed for a spouse if she meets the age and blindness conditions In Massachusetts the deduction is allowed against business income only In Hawaii the $5,000 blindness deduction is allowed in lieu of the personal exemption

[2] Personal exemptions and credits for dependents are allowed in the form of tax credits which are deductible from an amount of tax With respect to personal exemptions, the sum in parentheses is the exemption equivalent of the tax credit assuming that the exemption is deducted from the lowest brackets With respect to the dependency exemptions, the sum in parentheses is the amount by which the first dependent raises the level at which a married person or head of family becomes taxable

[3] Individuals establishing residence in Hawaii after the age of 65 are subject to tax on income from Hawaii sources only (the tax is imposed on the entire taxable income of resident individuals estates, and trusts)

[4] Each spouse is entitled to the lesser of $1 000 or adjusted gross income

[5] Single person $833 married couple, $1 167

[6] The exemption is allowed for students regardless of age or income

[7] The exemptions and credits for dependents are deductible from the lowest income bracket and are equivalent to the tax credits shown in parentheses

[8] An identical exemption is allowed for a spouse or for a dependent

[9] The exemption is allowed for students regardless of age or income, and an additional credit of $800 is allowed for each dependent 65 years of age or over

[10] The exemptions shown are those allowed against business income, including salaries and wages a specific exemption of $2,000 for each taxpayer In addition a dependency exemption of $500 is allowed for a dependent spouse who has income from all sources of less than $2,000 In the case of a joint return, the exemption is the smaller of (1) $3,000 or (2) $2 000 plus the income of the spouse having the smaller income For nonbusiness income (annuities, interest and dividends) the exemption is the smaller of (1) $1 000 or (2) the unused portion of the exemption applicable to business income Married persons must file a joint return in order to obtain any nonbusiness income exemption If a single person, or either party to a joint return is 65 years of age, the maximum exemption is increased from $1,000 to $1,500 No exemption is allowed against nonbusiness income if income from all sources for a single person exceeds $5,000 and for a married person exceeds $7,500

[11] An additional tax credit of $10 for single persons and $15 each for taxpayer and spouse is allowed for persons 65 years of age or over and for blind persons

TABLE 6

State Individual Income Taxes: Rates, January 1, 1964

State	Net income after personal exemption	Rate (percent)	Federal tax deductible	Standard deduction allowed[1]	Special rates or features
Alabama	First $1,000	1	X	X	
	$1,001–$3,000	2			
	$3,001–$5,000	3			
	Over $5,000	5			
Alaska	First $2,000	1		X	
	$2,001–$4,000	2			The income brackets are for single persons, and married couples filing separate returns. The use of brackets is double for married couples filing joint returns
	$4,001–$6,000	3			
	$6,001–$8,000	4			
	$8,001–$10,000	5			
	$10,001–$12,000	6			
	$12,001–$14,000	7			
	$14,001–$16,000	8			
	$16,001–$18,000	9			
	$18,001–$20,000	10			
	$20,001–$22,000	11			
	$22,001–$26,000	12			
	$26,001–$32,000	13			
	$32,001–$38,000	14			
	$38,001–$44,000	15			
	$44,001–$50,000	16			
	$50,001–$60,000	17			
	$60,001–$70,000	18			
	$70,001–$80,000	19			
	$80,001–$90,000	20			
	$90,001–$100,000	21			
	$100,001–$150,000	22			
	$150,001–$200,000	23			
	Over $200,000	24			
Arizona[2]	First $1,000	1	X	X	
	$1,001–$2,000	2			
	$2,001–$3,000	3			
	$3,001–$4,000	4			
	$4,001–$5,000	5			
	$5,001–$6,000	6			
	$6,001–$7,000	7			
	Over $7,000	8			
Arkansas	First $3,000	1		X	
	$3,001–$6,000	2			
	$6,001–$11,000	3			
	$11,001–$25,000	4			
	Over $25,000	5			
California[3]	First $2,500	1		X	
	$2,501–$5,000	2			
	$5,001–$7,500	3			
	$7,501–$10,000	4			
	$10,001–$12,500	5			
	$12,501–$15,000	6			
	Over $15,000	7			
Colorado	First $1,000	3	X	X	Surtax on income from intangibles in excess of $5,000, 2 percent. Beginning with tax year 1963, taxpayers are allowed a credit equal to ½ of 1 percent of net taxable income on the first $9000 of taxable income
	$1,001–$3,000	3.5			
	$2,001–$3,000	4			
	$3,001–$4,000	4.5			
	$4,001–$5,000	5			
	$5,001–$6,000	5.5			
	$6,001–$7,000	6			
	$7,001–$8,000	6.5			
	$8,001–$9,000	7			
	$9,001–$10,000	7.5			
	Over $10,000	8			
Delaware	First $1,000	1.5	X[4]	X	
	$1,001–$2,000	2			
	$2,001–$3,000	3			
	$3,001–$4,000	4			
	$4,001–$5,000	5			
	$5,001–$6,000	6			
	$6,001–$8,000	7			
	$8,001–$30,000	8			
	$30,001–$50,000	9			
	$50,001–$100,000	10			
	Over $100,000	11			
Georgia	First $1,000	1		X	
	$1,001–$3,000	2			
	$3,001–$5,000	3			
	$5,001–$7,000	4			
	$7,001–$10,000	5			
	Over $10,000	6			

See footnotes at end of table

TABLE 6—Continued

State Individual Income Taxes: Rates, January 1, 1964

State	Net income after personal exemption	Rate (percent)	Federal tax deductible	Standard deduction allowed[1]	Special rates or features
Hawaii[4]	First $500	3		X	Alternative tax on capital gains
	$501–$1,000	3 5			Deduct 50 per cent of capital
	$1,001–$2,000	4			gains and pay an additional 3
	$2,001–$5,000	5			percent on such gains The in-
	$5,001–$10 000	6			come classes reported are for
	$10,001–$20,000	7			individuals and heads of
	$20 001–$30,000	8			households For joint returns
	Over $30,000	9			the rates shown apply to in-
					come classes twice as large
Idaho[2]	First $1,000	3 4	X	X	A $10 filing fee is imposed on
	$1,001–$2,000	5 5			each return
	$2,001–$3,000	7 2			
	$3,001–$4,000	8 25			
	$4 001–$5,000	9 35			
	Over $5,000	10 5			
Indiana	Adjusted gross income	2			A $6 tax credit is allowed each
					taxpayer and each dependent
					for sales tax paid on food and
					prescription drugs
Iowa	First $1,000	0 75	X	X	
	$1 001–$2,000	1 5			
	$2,001–$3,000	2 25			
	$3,001–$4 000	3			
	Over $4 000	3 75			
Kansas	First $2,000	1 5	X	X	The income classes reported are
	$2,001–$3,000	2 5			for individuals and heads of
	$3 001–$5,000	3			households For joint returns
	$5,001–$7 000	4			the rates shown apply to in-
	Over $7 000	5 5			come classes twice as large
Kentucky	First $3 000	2	X	X	
	$3,001–$4,000	3			
	$4,001–$5,000	4			
	$5,001–$8,000	5			
	Over $8 000	6			
Louisiana[2]	First $10 000	2	X	X	
	$10,001–$50,000	4			
	Over $50 000	6			
Maryland	Ordinary income	3		X	Rate on ordinary income in-
	Investment income				creased to 4 percent, effective
	First $500	3			January 1, 1965
	Balance	5			
Massachusetts[4]	Earned income and business income	3 075	X[5]		Rates include the following
	Interest and dividends, capital gains on intangibles	7 38			additional taxes 3 percent permanent surtax on all types of income, and, through June 30 1965, 20-percent surtax on all types of income, 1 percent on earned and business income, and 3 percent on capital gains on intangibles
	Annuities	1 845			
Minnesota	First $500	1	X	X	A 15-percent surtax for taxable
	$501–$1,000	1 5			years starting before 1965
	$1 001–$2 000	2 5			There is an additional tax of
	$2,001–$3 000	3 5			1 percent on the first $1,000
	$3,001–$4 000	4 5			or fraction thereof of ad-
	$4 001–$5,000	5 5			justed gross income where net
	$5 001–$7 000	6 5			income tax plus surtax does
	$7,001–$9,000	7 5			not exceed $10 This addi-
	$9 001–$12,500	8 5			tional tax shall not, however,
	$12 501–$20,000	9 5			be applied to increase the
	Over $20,000	10 5			total taxes payable by such persons to more than $10
Mississippi	First $5,000	2		X	The maximum rate for later
	$5,001–$10 000	3			years will be 1965, 3 5 on
	Over $10,000	4			income in excess of $10,000, 1966 and after, 3 on income in excess of $5,000

See footnotes at end of table

TABLE 6—Continued

State Individual Income Taxes: Rates, January 1, 1964

State	Net income after personal exemption	Rate (percent)	Federal tax deductible	Standard deduction allowed[1]	Special rates or features
Missouri	First $1,000	1	X	X	The rates apply to total income, not merely to the portion of income falling within a given bracket, but as a result of the following tax credits, the schedule in effect is a bracket rate schedule $1,001–$3,000, $5 $3,001–$5,000, $30 $5,001–$7,000, $55 $7,001–$9,000 $90 Over $9,000 $135
	$1,001–$2,000	1 5			
	$2,001–$3,000	2			
	$3,001–$5,000	2 5			
	$5,001–$7,000	3			
	$7,001–$9,000	3 5			
	Over $9,000	4			
Montana	First $1,000	1	X	X	
	$1,001–$2,000	2			
	$2,001–$3,000	3			
	$3,001–$5,000	4			
	$5,001–$7,000	5			
	Over $7,000	7			
New Hampshire	Interest and dividends (excluding interest on savings deposits)	4 25			
New Jersey	First $1,000	2		X	Tax applies to commuters only, New Jersey-New York area
	$1,001–$2,000	3			
	$2,001–$3,000	4			
	$3,001–$5,000	5			
	$5,001–$7,000	6			
	$7,001–$9,000	7			
	$9,001–$11,000	8			
	$11,001–$13,000	9			
	$13,001–$15,000	10			
	Over $15,000				
New Mexico[2, 4]	First $10,000	1 5	X	X	Net income (of married taxpayer filing joint return and single taxpayer with one or more dependents) under $1,500 nontaxable
	$10,001–$20,000	3 0			
	$20,001–$100,000	4 5			
	Over $100,000	6			
New York	First $1,000	2		X	Capital gains treatment is similar to that provided under Federal law Income from unincorporated business is taxed at 4 percent The following credit is allowed *If tax is—* *Credit is—* $100 or less...Full amount of tax $100–$200...Difference between $200 and amount of tax $200 or more No credit
	$1,001–$3,000	3			
	$3,001–$5,000	4			
	$5,001–$7,000	5			
	$7,001–$9,000	6			
	$9,001–$11,000	7			
	$11,001–$13,000	8			
	$13,001–$15,000	9			
	Over $15,000	10			
North Carolina	First $2,000	3		X	
	$2,001–$4,000	4			
	$4,001–$6,000	5			
	$6,001–$10,000	6			
	Over $10,000	7			
North Dakota	First $3,000	1	X	X	
	$3,001–$4,000	2			
	$4,001–$5,000	4			
	$5,001–$6,000	5			
	$6,001–$8,000	7 5			
	$8,001–$15,000	10			
	Over $15,000	11			
Oklahoma[4]	First $1,500	1	X	X	The income classes reported are for individuals and heads of households For joint returns the rates shown apply to income classes twice as large
	$1,501–$3,000	2			
	$3,001–$4,500	3			
	$4,501–$6,000	4			
	$6,001–$7,500	5			
	Over $7,500	6			
Oregon	First $500	3	X	X	The income classes reported are for individuals and heads of households For joint returns the rates shown apply to income classes twice as large
	$501–$1,000	4			
	$1,001–$1,500	5			
	$1,501–$2,000	6			
	$2,001–$4,000	7			
	$4,001–$8,000	9			
	Over $8,000	9.5			

See footnotes at end of table

TABLE 6—Continued

State Individual Income Taxes: Rates, January 1, 1964

State	Net income after personal exemption	Rate (percent)	Federal tax deductible	Standard deduction allowed[1]	Special rates or features
South Carolina	First $2,000	2	X[2]	X	
	$2,001–$4,000	3			
	$4,001–$6,000	4			
	$6,001–$8,000	5			
	$8,001–$10,000	6			
	Over $10,000	7			
Tennessee	Interest and dividends	6			Dividends from corporations having at least 75 percent of their property subject to the Tennessee ad valorem tax are taxed at 4 percent
Utah	First $1,000	1	X	X	
	$1,001–$2,000	2			
	$2,001–$3,000	3			
	$3,001–$4,000	4			
	Over $4,000	5			
Vermont[4]	First $1,000	2		X	The rates are subject to reduction if there is sufficient surplus in the general fund
	$1,001–$3,000	4			
	$3,001–$5,000	6			
	Over $5,000	7.5			
Virginia	First $3,000	2		X	
	$3,001–$5,000	3			
	Over $5,000	5			
West Virginia	First $2,000	1.2		X	The income classes reported are for individuals and heads of households. For joint returns the rates shown apply to income classes twice as large
	$2,001–$4,000	1.3			
	$4,001–$6,000	1.6			
	$6,001–$8,000	1.8			
	$8,001–$10,000	2.0			
	$10,001–$12,000	2.3			
	$12,001–$14,000	2.6			
	$14,001–$16,000	2.8			
	$16,001–$18,000	3.0			
	$18,001–$20,000	3.1			
	$20,001–$22,000	3.4			
	$22,001–$26,000	3.5			
	$26,001–$32,000	3.7			
	$32,001–$38,000	3.9			
	$38,001–$44,000	4.1			
	$44,001–$50,000	4.3			
	$50,001–$60,000	4.5			
	$60,001–$70,000	4.7			
	$70,001–$80,000	4.9			
	$80,001–$90,000	5.0			
	$90,001–$100,000	5.2			
	$100,001–$150,000	5.3			
	$150,001–$200,000	5.4			
	Over $200,000	5.5			
Wisconsin[4]	First $1,000	2.3		X	
	$1,001–$2,000	2.55			
	$2,001–$3,000	2.8			
	$3,001–$4,000	3.9			
	$4,001–$5,000	4.3			
	$5,001–$6,000	4.8			
	$6,001–$7,000	5.3			
	$7,001–$8,000	6.3			
	$8,001–$9,000	6.8			
	$9,001–$10,000	7.3			
	$10,001–$11,000	7.8			
	$11,001–$12,000	8.3			
	$12,001–$13,000	8.8			
	$13,001–$14,000	9.3			
	$14,001–$15,000	9.9			
	Over $15,000	10.0			
District of Columbia	First $5,000	2.5		X	Income from unincorporated business is taxed at 5 percent
	$5,001–$10,000	3			
	$10,001–$15,000	3.5			
	$15,001–$20,000	4			
	$20,001–$25,000	4.5			
	Over $25,000	5			

[1] Varies on single and joint returns from $250 to $1,000
[2] Community property state in which, in general, ½ the community income is taxable to each spouse
[3] Limited to $300 for single persons and $600 for married persons filing joint returns
[4] Allows deduction of state individual income tax itself in computing state tax liability
[5] Limited to taxes paid on professional or business income
[6] Limited to $500 per taxpayer
SOURCE Advisory Commission on Intergovernmental Relations, *Tax Overlapping in the United States, 1964*, Pp 122–126

d. In addition to changes in the rate structure, the method of collection of the state income tax was to be changed. Beginning on January 1, 1966, Californians would have started paying state income taxes on a pay-as-you-earn basis—similar to the present method of paying federal income taxes. Employers would withhold state income taxes from wages and persons who expected that their income tax would exceed the amounts withheld by more than $40 would be required to file declarations of estimated tax By adopting this collection method, taxes would be received from many people who owe the state income taxes but do not pay. Farmers, fishermen, some retired persons, military personnel, newsboys and certain others would be exempt from the withholding feature.

The change to a pay-as-you-earn system of collection would be accompanied by a full 100 percent forgiveness of all 1965 taxes that were owed the state and would be due in 1966 (except for capital gains and trust income). This means that none of the money Californians earned in 1965 would be subject to income taxation by the state Even those exempt from withholding would be eligible for 100 percent forgiveness. The state would lose $200 million in revenue in the fiscal year 1965–66 as a result of the forgiveness of 1965 income taxes; however, beginning in 1966–67 and without changing rates the general fund would receive more than $65 million in new money primarily due to the pickup from those now evading the tax and from those who leave the state without paying and by attaching the rate structure to the growth in the tax base in the year the growth occurs

Under the present method of collecting the state income tax, there is a lag of from 3½ to 15½ months between the time the income is earned and the time the tax on that income is due It takes another two years using the most up-to-date methods and equipment to ascertain who is a delinquent taxpayer and almost 2½ million persons will have left the state in this time period. Many avoid the state income tax by not being here when it comes time to file the tax return, or by not paying the tax in anticipation of leaving California. This problem would be aggravated by the shifting of defense contracts to other states, with the consequent departure of well-paid technical and professional persons.

Withholding also educates new residents to their California income tax responsibilities and helps prevent initial tax delinquency on their part Some of these people come from states which do not levy an income tax and they are not aware that California imposes such a levy

The argument has been made that withholding reduces the "tax consciousness" of the taxpayer, and with it goes his concern for efficiency and economy in government Those holding this opinion further contend that paying taxes should be painful rather than easy—that taxpaying should be like pulling teeth—only without an anesthetic. There is a difference of opinion among economists as to whether taxes should be painful or be collected with the ease of convenience to the taxpayer.

Adam Smith, one of the giants of the free market economists, states on this point: "Every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it."

TABLE 7

Withholding States in Order of the Effective Date of Withholding and the Extent of Forgiveness

	The state	Effective date of withholding	Degree of forgiveness
1	Oregon	1948—January 1	None
2	Alaska[1]	1949—January 1	Not applicable [2]
3	Delaware[3]	1949—July 1	None
4	Vermont	1951—July 1	None
5	Arizona	1954—July 1	None
6	Colorado	1954—July 1	None
7	Kentucky	1954—July 1	None
8	Idaho	1955—July 1	None
9	Maryland	1955—July 1	None
10	Montana	1955—July 1	None
11	Alabama	1956—January 1	None
12	District of Columbia	1956—October 1	50% of 1956 liabilities
13	Indiana	1957—July 1	None
14	Hawaii[1]	1958—January 1	None
15	Massachusetts	1959—February 15	None
16	New York[4]	1959—April 1	Most 1958 liabilities
17	Utah	1959—July 1	None
18	North Carolina	1960—January 1	None
19	South Carolina	1960—January 1	None
20	Georgia	1960—May 1	None
21	Louisiana	1961—January 1	None
22	West Virginia	1961—April 1	Not applicable [2]
23	Missouri	1961—July 1	None
24	Oklahoma	1961—July 1	None
25	New Mexico	1961—July 1	None
26	Minnesota	1961—October 1	Roughly 75% of 1961 liabilities
27	Wisconsin[5]	1962—February	65% of 1961 liabilities
28	Virginia	1963—January 1	None
29	North Dakota[6]	1965—October 31 (if approved)	None
30	Arkansas	1966—January 1	None
31	Iowa	1966—January 1	None

[1] A territory when withholding introduced
[2] Withholding introduced simultaneously with state income tax
[3] Delaware suspended withholding on December 31, 1950 and resumed it on July 1, 1953
[4] All liabilities except those on trusts, estates, and capital gains were forgiven
[5] With the exception of tax on capital gains
[6] Subject to referendum
SOURCE National Tax Journal Volume XVII, No 4 December 1964, pg 404, National Tax Administrators News, Vol 30, No 6, June 1965, and information supplied by revenue departments of various states

Some would argue that withholding actually increases awareness Each time the wage earner receives his paycheck—often 52 times a year—he is aware that deductions for income taxes have been made Each time the taxpayer files and pays his declaration of estimated tax, he is aware of the income tax And finally, when he files his income tax return he is made aware of the total amount of his tax liability. Tax payments are not similarly summarized for the individual who pays general sales taxes, gasoline taxes or other excises

The pay-as-you-earn system does not decrease tax consciousness It does make it easier for the taxpayer to pay what he owes by creating a reserve from which to pay his tax It spreads out his payments in the form of interest-free installments, thus removing the need to borrow funds to meet his liability

Often the taxpayer must borrow in order to fulfill his liability or he may not remit the amount due with his return In 1964, more than 200,000 returns were received without remittances Of this number, over 188,000 were from taxpayers with incomes below $14,000 and these persons were required to pay interest to the state when they finally paid their tax.

Pay-as-you-earn also improves taxpayer morale, since the honest taxpayer knows that those who would evade the tax are also paying

their fair share of the cost of government. Better morale means improvement in voluntary compliance as the taxpayer includes income from all sources when he files his return States that have adopted withholding report little, if any taxpayer opposition Many states, in fact, report taxpayer satisfaction, something that no other collection method has been able to accomplish

The most valid argument against the adoption of withholding is that the employer becomes a tax collector The rebuttal is to point out that he is already the collecting agent for other taxes and services, many of which he does voluntarily. Payroll deductions may add something to employer expenses; however, it is not a large amount The study of this subject most frequently referred to was done by Professor Lewis G Kahn of Hamline University regarding the administration of local income taxes for four Pennsylvania cities He contacted 22 firms Of the 16 which responded, 9 reported that the cost of withholding was negligible, and 6 gave information which indicated that the weighted average cost of withholding per employee was 26 cents per year Conversation with employers large and small in income tax cities of other states led Professor Kahn to the conclusion that the cost of withholding local income taxes is negligible.

The burden of a state income tax withholding system can be said to be marginal in any case, since it is only one of the many payroll deductions (including United Crusade, union dues, etc) usually required The cost of withholding is a business expense to the employer, and as such is fully deductible in arriving at taxable income

It must be emphasized, too, that under AB 2270 employers would remit quarterly the amounts they withheld Thus, employers would have the interest-free use of these funds for an average of two months before they remit it to the state

As of June 1965, 30 of the 33 states taxing personal income collected, or will shortly collect the tax by withholding Only one, New York, granted 100 percent forgiveness when withholding was instituted

c Reforms in the Personal Income Tax

In the committee's interim report, Part 3, *Conformity of State Personal Income Tax Laws,* there were suggestions for more uniformity of deductions and exemptions in the state personal income tax law so that it would then parallel the Federal Internal Revenue Code Six of these suggestions were included among the provisions of AB 2270

1 Annuities Under Life Expectancy Rule

Under present law a person who receives payments from an annuity contract is subject to an annual tax on payments (up to 3 percent of the purchase price) until the amount of the exempt payments equals the purchase price of the annuity From that time all the payments are fully taxable The amendment proposed in AB 2270 would conform California tax law to federal rules which allow a standard exemption on all payments received The tax liability would be the same in all years, not increasing in later years as they do under the 3 percent rule The standard exemption would have been determined for each annuity by the size of the payment and adjusted for the actuarial life of the annuity

2 Foster Children Deduction

Foster parents would have been allowed to deduct the $600 personal exemption for any foster children under their care as they now claim each of their own children or other dependents

3 Charitable Contributions Deduction

The maximum charitable contribution was raised from 20 percent to 30 percent of a taxpayers' adjusted gross income if the extra 10 percent were contributed to a church, school or hospital

4 Foreign Student Deduction

Taxpayers would also be permitted to deduct $50 per month ($600 per year prorated) for each month that they maintain a student under a program sponsored by charitable organizations

5 Medical Deduction

The maximum medical expense deductions were raised to conform to federal statute

Taxpayer	*Existing law*	*Proposed by AB 2270*
Single or married filing separately	$1,250	$10,000
Joint or head of household	2,500	20,000
Over 65 and disabled	15,000	20,000
Married couple (both over 65 and disabled)	30,000	40,000

It should be kept in mind that these are not automatic deductions for all taxpayers; they are medical expense deductions and represent a like amount already spent by the taxpayer for medical care

6 Capital Gains at Death

One further reform proposed by AB 2270 was in the treatment of capital gains at death The bill would have imposed a tax at capital gains rates on all net gains accrued on capital assets up to the time of transfer at death Under the present law, at the time of death property takes on a basis equivalent to market value, and any appreciation in value that occurred in the hands of the decedent is forever forgotten as far as the capital gains tax is concerned The property at its new value is subject to the federal estate tax and the state inheritance tax but in view of the many exemptions and deductions in both of these taxes a particular capital gain may escape all taxation In this case the transfer may escape all taxation since the capital gain will escape, and the higher rate personal income tax will not apply To eliminate this inequity AB 2270 proposed that the capital gains tax rate apply to the net gain on the asset between the time it was originally acquired and the date of transfer The California Personal Income Tax Law provides a capital gains rate at 50 percent of the rate applied to normal income In most cases where the capital gains tax would apply the income tax rate would be 7 percent so the capital gains rate would be only 3½ percent As an example let us cite two illustrations In one case a man owns 500 shares of General Motors bought at $10 a share He sells them at $50 a share and receives $25,000 He pays a capital gains tax on the $40 a share increase in value of the stock Then immediately after selling the stock he dies He is also taxed on the $25,000 in cash in the estate In another situation a

man buys 50 shares of General Motors at $10 a share but does not sell He dies when the General Motors stock is worth $50 a share His beneficiary will pay an inheritance tax on the value of the stock, $25,000 Immediately upon receiving the stock his beneficiary sells the stock for $50 a share He will pay no capital gains tax whatsoever. In this illustration, the second taxpayer has an advantage over the first one

3. *Bank and Corporation Tax*

To compensate for a loss in the bank and corporation tax revenues as a result of the elimination of business personal property from the tax base, this tax rate would have been raised one-half of 1 percent—from 5½ percent to 6 percent This would add approximately $30 million in revenue to the general fund.

Adoption of the reforms in the Bank and Corporation tax law described below would have resulted in a large revenue loss in 1965–66 and a small gain thereafter.

a Allocation of Income of Multistate Corporations

The major portion of California's corporation franchise tax is paid by corporations operating in two or more states. In levying the tax on multistate corporations, the Franchise Tax Board must determine the net income of the corporation derived from or attributable to sources within the state A problem results when other states also tax the net income of these same corporations often using different methods of allocating net income to their state A recent Congressional investigation of this problem concluded that the present situation is chaotic

To preclude the need for Congressional action, the states are attempting to adopt a proposed uniform standard. AB 2270 amended the Bank and Corporation Tax Law to adopt the principles of the Uniform Division of Income for Tax Purposes Act which was approved by the National Conference of Commissioners on Uniform State Laws in 1957 A number of the provisions in AB 2270 dealing with acceleration were technical or would have the effect of putting into the law what are already existing administratively established practices in California and would therefore have no effect on revenues Major changes which would have had substantive effect were these:

Existing law provides that the formula for allocating income among the various states will be based upon sales, purchases, manufacturing expenses, payroll, value and situs of tangible property or by reference to any other factors or method which would fairly determine the allocation This bill makes changes in the formula, described below, in the allocation factor relating to sales

Currently the administratively adopted guidelines for allocating sales provides that sales are to be attributed to various states on the basis of sales activity in the states Under the changes in the bill, sales would be allocated on the basis of the state of delivery rather than sales activity.

The existing guidelines contain special provisions for allocating sales made to the United States Government because such sales usually involve sales activity in two or more states. Under the changes in the bill, all such sales would be allocated to the state from which the items were shipped. The Franchise Tax Board estimates the changes pro-

posed in the bill would result in an increase in revenues of $3 million per year, most of which would be attributable to the provisions applying to sales to the United States Government

Currently property owned by a taxpayer is included as one of the factors in the income allocation formula, but rented property is not This bill provided that rented property be included in the allocation formula and gave a method for establishing the value of rented property for this purpose.

Payrolls are currently apportioned to the state in which the personal services are rendered In instances where employees work in more than one state, such as those operating transportation equipment, the costs are apportioned on a mileage or similar basis Under this bill it is expected that such personal service costs would have been allocated entirely to the state in which the employee is normally considered to have his base of operations

The provisions of the bill which affected computation of the taxes would apply to income or taxable years beginning after December 31, 1964

b Commencing Corporations

The annual franchise tax is paid in advance (as contrasted to the personal income tax which is paid at the end of the earning year). When a new firm is incorporated, it is immediately liable for its first year's tax payment although there is no income on which to base the collection For this reason, a uniform payment of $100 is required of all new corporations At the end of the first year of business, the tax rate is applied to the corporation's net income to determine the second year's tax liability, and this same figure is adjusted by the original $100 prepayment to take care of the first year's tax A refund or additional payment is then made for the first year In subsequent years, there is only one computation at tax time with the payment based on the previous year's net income

The tax is always collected in advance so there is no tax based on the final year's net income Since many "corporations" are created to perform a specific job, e g , produce a movie, and complete the job in a year or less, they avoid a corporate tax in their year of greatest earnings or their only year of earnings

AB 2270 eliminated the prepayment provisions and imposed a tax on the net income of the corporation in each year of operation (including the last year or portion of a year) in California Due to the elimination of the first-year double payment there would be a $2 million yearly loss to the state general fund.

c. Exemption of Keogh Trusts

This section relates to the highly complex and controversial federal Self-Employed Retirement Act of 1962 In general, the act permits an individual to deduct from adjusted gross income his contributions made under a self-employed pension plan Self-employed individuals may contribute to a retirement plan for themselves up to $2,500 per year, however, only 50 percent of this is deductible from gross income Benefits may not begin before age 59½ unless the individual becomes disabled or dies Individuals who choose this particular tax exemption must also cover all their full-time employees with more than three years

TABLE 8

Present California Gift and Inheritance Tax—Rates and Exemptions

	CLASSIFICATION		EXEMPTION	Rate of tax on amount left after deducting exemption from $25 000 00	$25 000 to $50,000	$50,000 to $100,000	$100 000 to $200,000	$200 000 to $300 000	$300,000 to $500,000	Over $500 000
A	HUSBAND or WIFE	Community Property	All Exempt*	2%	3%	4%	7%	9%	9%	10%
		Decedent's Separate Property	One-half of Separate Property Plus $5,000 00							
	Minor Child—Including Adopted		12,000 00	2%	3%	4%	7%	9%	9%	10%
	Adult Child, Grandchild (Adopted or Acknowledged) Parent—Grandparent		5,000 00	2%	3%	4%	7%	9%	9%	10%
B	Brother—Sister Nephew—Niece Son-in-Law—Daughter-in-Law		2,000 00	6%	10%	13%	15%	15%	17%	18%
C	Uncle—Aunt—Cousin		500 00	7%	12%	15%	15%	15%	18%	18%
D	Strangers in Blood—including Brothers- and Sisters-in-Law Fathers- and Mothers-in-Law		50 00	10%	15%	18%	18%	18%	22%	24%

* If a decedent husband gives his wife a life estate or power of appointment in his half of the community property, said half is subject to tax at the rates indicated with a $5,000 exemption allowed

SOURCE Alan Cranston, State Controller

TABLE 9

California Gift and Inheritance Tax—Rates and Exemptions Proposed by AB 2270

	CLASSIFICATION	EXEMPTION	Rate of tax on amount left after deducting exemption from $25,000 00	$25,000 to $50 000	$50,000 to $100,000	$100 000 to $200,000	$200,000 to $300,000	$300,000 to $500,000	Over $500,000
A	HUSBAND or WIFE — Community Property	All Exempt*	2%	3%	4%	9%	11%	12%	14%
	HUSBAND or WIFE — Decedent's Separate Property	One-half of Separate Property Plus $5 000 00							
	Minor Child—Including Adopted	12,000 00	2%	3%	4%	9%	11%	12%	14%
	Adult Child Grandchild (Adopted or Acknowledged) Parent—Grandparent	5,000 00	2%	3%	4%	9%	11%	12%	14%
B	Brother—Sister Nephew—Niece Son-in-Law—Daughter-in-Law	2,000 00	6%	10%	13%	15%	16%	17%	18%
C	Uncle—Aunt—Cousin Strangers in Blood—including Brothers- and Sisters-in Law Fathers- and Mothers-in-Law	300 00	10%	15%	18%	19%	20%	22%	24%

* If a decedent husband gives his wife a life estate or power of appointment in his half of the community property, said half is subject to tax at the rates indicated with a $5 000 exemption allowed

service, not counting seasonal, part-time or temporary workers The primary purpose of the measure was to give self-employed persons access to retirement plans on a basis similar to that given employees whose employers have established pension, or profit-sharing bonus plans. Retirement plans established for the benefit of employees and their beneficiaries are given favorable tax treatment under present law. AB 2270 exempted from bank and corporation tax, trust income set up pursuant to the Keogh Act.

4. Inheritance and Gift Tax

Several changes were contemplated which related to the gift tax and to taxes paid at death. The revenue impact of these changes was estimated to be $16 million.

a. Rates on gifts and inheritances over $100,000 would have been increased as follows:

Class A	$100,000–$200,000	change from 7 to 9 percent
	200,000– 300,000	change from 9 to 11 percent
	300,000– 500,000	change from 9 to 12 percent
	over $500,000	change from 10 to 14 percent
Class B	$200,000–$300,000	change from 15 to 16 percent
Class D	$100,000–$200,000	change from 18 to 19 percent
	200,000– 300,000	change from 18 to 20 percent

b Class C and D rates and exemptions were combined to reflect Class D rate with a $300 exemption.

c. Certain types of nonprofit foundations, now exempt from inheritance taxes would have been taxable at Class D rates although colleges, churches, orphanages, and charitable institutions would continue to be exempt.

5. Property Transfer Tax

Counties would have been authorized to impose a countywide real property transfer or deed recording tax. This would partly offset the loss of tax base which the counties would experience. It was similar to the 1 percent real property transfer tax proposed by Governor Frank Merriam in 1935 except that the first $15,000 of all sales of property with improvments was to be exempt and the rate for property over $25,000 increased to 1½ percent Fourteen other states have real estate transfer taxes It is estimated that the counties of California could derive $80 million from this tax For a more detailed discussion of property transfer taxes see Part 7 of the Committee's Interim Reports, and Appendix I

6. Sales Tax

The sales tax is also a better revenue source than the property tax. California's state sales tax would have been raised 1 percent (3 percent state–1 percent local, to 4 percent state–1 percent local) with the increased revenue obtained therefrom placed in the state school fund for mandatory school property tax relief to average 25 percent. This new rate would have gone into effect in January 1966. Recent studies

of the sales tax have shown that with the exemptions California provides it is not regressive *

a. Reform in the State Sales Tax

1 Occasional Sales of Vehicles, Boats and Aircraft

AB 2270 extended the provisions of the sales and use tax to occasional sales of autos, aircraft and boats These are the sales by private parties rather than dealers Under present law, private parties may sell one automobile each year without a sales or use tax applying but AB 2270 would extend the tax to all sales except those between family members California would realize $8 million in new revenue each year after this exemption is closed

The occasional sale exemption was satisfactory until the practice of arranging sales between individuals developed in the automobile business This practice took several forms In some instances it was done in order to get a so-called clean deal—the sale of a new car with no trade-in Some dealers, however, complained that it was carried on as a profitable sideline by salesmen In any event, sales of used cars directly from owner to purchaser soon became an important sales and use tax loophole

In 1963 the sales tax law was amended to tax all private party sales in any 12-month period Under this law the tax is paid by the purchaser at the time the vehicle is registered if he has not obtained an affidavit stating that the former owner has made no other sale in the previous 12 months Since the buyer has no assurance that the car he has purchased is, in fact, the other party's first sale in 12 months, he frequently finds that he has been double-crossed and what was understood to be a tax exempt sale is taxable The use tax applies to these sales and it must be paid before the car can be registered Because a complete check of all such transfers is not feasible, the present law actually tends to encourage deception and tax evasion As a result of this provision there has been a great deal of dissatisfaction among purchasers and a substantial tax loss to the state The simplest solution is to make all sales of vehicles subject to use tax, just as all sales of new cars and all used car sales by dealers are subject to the sales tax

Extension of this use tax principle to occasional sales of boats and airplanes merely recognizes that the same potential loophole exists in these types of property If the purchase is made from a retailer, it is taxable If it is made from an individual who has sold less than three items in a year, it is exempt under present law AB 2270 applied the same rule to boats—except ferry boats, sailboats less than eight feet in length, rowboats and canoes—and to airplanes The use tax would be collected by the Board of Equalization subsequent to notification by the Division of Small Craft Harbors and the Civil Aeronautics Administration of a transfer of ownership of boats and airplanes

(This occasional sales tax as it applied to automobiles, boats, and aircraft was included in AB 1 of the 1965 1st Extraordinary Session and is now on the statute books)

* For a full discussion of this tax see "The Sales Tax" by Harold M Somers, part 4 of the series published by the Assembly Committee on Revenue and Taxation

2 Leasing of Tangible Personal Property

AB 2270 extended the sales and use tax to the receipts from the lease of tangible personal property Closing this loophole would mean $13 million to the General Fund

The practice of leasing rather than purchasing or selling tangible personal property has expanded significantly in the 1960's Companies which have come into existence in recent years will lease almost any conceivable piece of equipment Many items, such as computers and office machines, are now acquired entirely on a lease basis rather than by purchase Recently, banks have also entered the field of equipment leasing Leasing has become a way of business life, in competition with selling

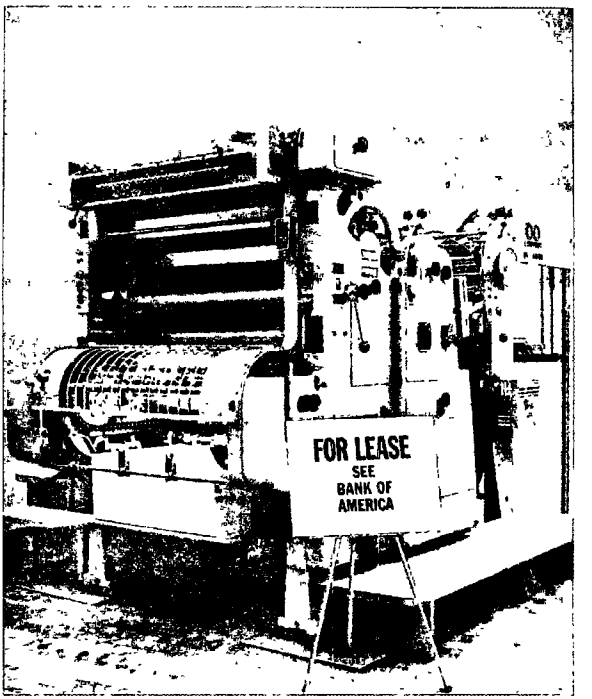
At the beginning of 1965 the law allowed a lessor to elect to pay tax on his cost of property or on his rental receipts The taxable cost to manufacturers who operate their own lease plan is only the cost of their raw materials and labor and this ordinarily represents only a fraction of sale or rental price Many long-term leases closely resemble conditional sales and under the then existing law certain of these leases were considered sales for tax purposes There are, however, an infinite variety of clauses, options, and terms which may be placed in rental or lease agreements making it extremely difficult for businessmen and tax administrators to clearly segregate those leases which were subject to tax from those which were not As many leases were then taxed, or sales taxes were paid prior to leasing, the major impact of AB 2270 in this area would have been on property leased from the original manufacturer or on property leased from banks and insurance companies. In the case of a lease from a manufacturer, there is no transfer of title, and the measure of the tax is the cost of the raw material which went into production of the item, only a minimal fraction of the actual value of the finished product Such a manufacturer-lessor has a distinct tax advantage over other lessors

Estimates by the Board of Equalization indicated that $10 million of the increased revenue expected if this proposal had been adopted would come from the lease of computers and E D P equipment The proposal would also have covered those banks which were entering the equipment rental business

Banks and insurance companies are not subject to use tax, since the bank and insurance taxes are in lieu of all other taxes on personal property Hence, it was possible for banks and insurance companies to purchase tangible personal property outside the state and bring it to California for leasing purposes Since the lessee was not subject to tax under the existing law, this transaction escaped taxation entirely while their competitors were subject to the full 4 percent sales or use tax

AB 2270 attempted to correct each of these situations by including leases of tangible personal property in the definition of "sale" and "purchase" since this lease is, in effect, a continuing sale The tax applies and it is to be collected by the lessor from the lessee, just as the amount of the sales tax is collected by the seller from the purchaser.

Exemptions were provided for clothing, linen supplies, where the laundering service is an essential part of the lease agreement, house-



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At the special session of the Legislature following adjournment of the 1965 Regular Session a modified lease tax proposal was placed on the statute books This measure provides for the collection of the tax on all tangible property which is leased when a sales or use tax has not been collected on the property in substantially the form in which it is leased In simple terms it means that if an item is manufactured and leased by the same firm or leased by a bank so that no sales tax is paid then the lease tax applies However, if property is purchased by a dealer in rental equipment for subsequent lease then he will pay a sales tax and the lease tax will not apply.

b. Reform in Local Sales Tax

1 Beginning in April, 1966, a newly authorized 1 08 percent local sales tax would have been a credit against the state sales tax. As a result, the sales tax in the state of California would be a uniform five percent. If a county decided to abandon its local sales tax, the rate would continue at 5 percent in the county with all the revenue going to the state.

2 Because of the lack of uniformity in the imposition of the local sales tax, several exemptions were written into statute As the sales tax rate would be uniform throughout the state if the above reform is adopted, the local sales tax exemption for property purchased by operators of common carriers and the local use tax exemption for property purchased by utilities was to be repealed

V. HOW FUNDS WERE TO BE ALLOCATED TO LOCAL GOVERNMENT

A. REVENUE LOSS TO LOCAL GOVERNMENT DUE TO NARROWING OF THE TAX BASE

Local government would lose an estimated $275 million as a result of the property tax exemptions proposed by AB 2270 The loss stems from the repeal of the personal property tax on household goods and business inventories and the exemption of solvent credits. The reduction in the bank tax and the property tax relief program for low income senior citizens, shown in the section on revenue loss to government due to reductions in the property tax base (Chapter IV), are not losses to local government The bank tax is a state tax and the tax relief for low income aged will be a, reimbursement by the state for property taxes paid by those who are elgible for the program

LOSS TO LOCAL GOVERNMENT
(in millions)

Exemption of Business Inventories	$225
Exemption of Household Goods	45
Exemption of Solvent Credits	5
Total	$275

The $275 million loss is the total figure for all local government. To determine the loss by type of local government, it is necessary to allocate the loss based on the percentage of total property tax revenue collected for each of the local jurisdictions using this tax. For example, approximately 50 percent of all property taxes levied are for schools Therefore, approximately one-half the revenue loss could be allocated to schools Thirty percent of all property taxes collected go to county governments and 15 percent to cities The balance represents the property taxes collected by special districts

LOSS BY TYPE OF GOVERNMENT
(in millions)

Schools (50%)	$137.50
Counties (30%)	82 50
Cities (15%)	41.25
Special Districts (5%)	13 75
Total	$275 00

B. CITY REIMBURSEMENT

Cities would lose approximately $42 million in property tax revenues because of the exemptions in AB 2270

The state would not only reimburse cities for this loss, but add an additional $25 million in new money for city councils to use They may use this additional money to improve the quality of their services or to reduce property taxes even further To reimburse cities, the state

ADDITIONAL REVENUE FOR CITIES
(in millions)

From seventeen one-hundreds of 1 percent of sales tax set aside in special fund	$61
From local 1 percent sales tax on leases and occasional sales of autos	6
Total additional revenue	$67
Loss to cities due to exemptions	42
Net additional revenue	$25

would place revenue equivalent to the amount collected by a sales tax rate of seventeen one-hundreds of 1 percent into a special fund. The fund would be allocated to cities by the Controller in the proportion that the revenue collected from locally assessed personal property by each city in 1963–64 bears to the sum of all revenue collected by cities against locally assessed personal property The cities would also get approximately $8 million through the present Bradley-Burns local sales tax as a result of the expansion of the sales tax base to leases and occasional sales of autos, boats and aircraft

C. COUNTY REIMBURSEMENT

Counties would lose approximately $82 5 million in property tax revenues because of the exemptions in AB 2270 This loss would be made up by a locally imposed real estate transfer tax, a special countywide sales tax at a rate of eight one-hundreds of 1 percent and increased revenue from the local 1 percent sales tax as a result of an expanded tax base

Counties would have been authorized to levy the real estate transfer tax at a rate of 1 percent for the first $25,000 of transfer value and 1½ percent on values transferred in excess of $25,000, however the first $15,000 of value of improved real property would be exempt

ADDITIONAL REVENUES FOR COUNTIES
(in millions)

From real property transfer tax	$80
From countywide sales tax at a rate of eight one-hundreds of 1 percent (portion relinquished by state)	28
From increased local 1 percent sales tax due to the taxation of leases and autos	1
Total additional revenue	$109
Loss to county due to exemptions	82 5
Net additional revenue	$26 5

In order for a county to impose a countywide sales tax at a rate of eight one-hundredths of 1 percent, the state would relinquish this portion of its sales tax rate In no event would the total state and local sales tax be higher than 5 percent anywhere in the state

A small increase in sales tax revenue would accrue to counties due to the change in the sales tax base (extension to leases and occasional sales of autos, aircraft and boats) Approximately 15 percent of sales tax revenues generated under the existing 1 percent local sales tax goes into the county treasury

D. SCHOOL DISTRICT REIMBURSEMENT

In this bill California's school districts were allocated $508 million of new state money for three purposes to make up the property tax revenue lost due to the exemptions of household furnishings, business inventories, and solvent credits; to provide for a mandatory reduction in school property tax rates which averaged close to 25 percent on a

ALLOCATION OF MONEY TO SCHOOL DISTRICTS
(in millions)

New money placed in state school fund	$508
How money would be used:	
1 To replace funds lost as result of exemptions	$138
2 For average 25 percent property tax rate reduction (mandatory)	335
3 For improved educational programs	35
	$508

statewide basis (but vary from district to district depending upon the wealth and tax rate of the district); and to provide additional funds for improved educational opportunities for the children of this state. The money was to be placed in the school apportionment fund for distribution to the districts on a formula basis. The present formulae were changed substantially, as explained in Chapter VI.

VI. OTHER REFORMS

A. NON-REVENUE REFORMS IN THE PROPERTY TAX

1. Standard Ratio of Assessment

The bill provided that all taxable property in this state should be appraised at 100 percent of full cash value. To obtain the assessed value the assessor would multiply this appraised value by a factor established by the State Board of Equalization In this way all taxable property in the state would be assessed at the same ratio to full cash value Assessors were still given discretion in determining appraised values but the assessed value on which the tax applies had to be uniform throughout the state

2. Improved Appeals Procedure

(a) *Notification* Every taxpayer whose assessment was increased by 10 percent or more would have to be notified of the change (Present law requires notification only if the assessment is increased over 25 percent)

(b) *Appeal.* Assessment appeals could be filed in any branch office maintained by the county government where the assessor or clerk of the board has an office

(c) *Information.* Since the State Board of Equalization surveys of each county would be completed before the appeals hearing the taxpayer would have the board ratios for his county on which he could rely when protesting his assessment. The local board would be directed to adjust any assessment which varied by more than 10 percent depending on the evidence presented

3. City Assessing

Provisions of the bill encouraged charter cities to transfer their assessing function to their county assessor and provided that general law cities must transfer the assessing function This would have resulted in a savings of over $1 5 million which is now spent for wasteful duplication

4. Appraiser Qualifications

In the future anyone hired as an appraiser by a county would have to demonstrate his qualifications and be certificated by the State Board of Equalization. In counties where potential appraisers are required to pass a civil service examination, the State Board of Equalization would approve the content of the examination and passage of such an examination would suffice for certification In other counties, the candidate would be required to pass a state examination, which would be administered by the State Personnel Board

This requirement for certification would improve the quality of assessments and insure more uniformity of assessment throughout the

state It is a reform which has been recommended by the Advisory Commission on Intergovernmental Relations.

5. Lien Date

The lien date was changed from the first Monday in March to January 1 This change moved many dates on the tax calendar,, allowed governmental agencies to get an earlier look at the assessment roll and made more information available to the taxpayer when equalization hearings are held The lien date in most other states is on Dec 31 or Jan. 1

6. Aircraft

Aircraft are now taxed at the special rate of $1\frac{1}{2}$ percent of market value Under provisions of AB 2270 they would be assessed as all other taxable property and the previous year's statewide average property tax rate would be applied This would maintain the uniformity of taxation now applied to aircraft but tie it more closely to the average rate paid by other property

7. Tightening Exemptions

(a) The bill required that the irrevocable dedication clause be specified rather than implied in an organization's articles of corporation before such organization would be eligible to receive the welfare exemption

(b) Tighter rules for salaries and for "arms-length" dealings by welfare exempt organizations were established

(c) Cemeteries would be required to file statements indicating the property on which they claim the exemption

(d) An unconstitutional provision which attempted to exempt certain veterans' halls was repealed

(e) Veterans who claim a property tax exemption would have to appear in person at the assessor's office at least once in each four years to file their application In the intervening years they could continue to file by mail

8. Special Districts

In order that special districts could continue operations in spite of the reduced property tax base within their boundaries and the present rate limitations under which they tax, a new limit was placed on every special district which had reached its maximum This new maximum could produce no more than 105 percent of the revenue produced by their 1965–66 rate

9. Obsolete Sections

Several obsolete sections of the Revenue and Taxation Code dealing with the property tax would have been eliminated

B. REFORM IN ADMISSIONS TAX

The only admissions tax imposed by the state is the 5 percent tax on boxing and wrestling admissions AB 2270 changed this tax so that it applied only to actual amounts collected from patrons and did not apply to the value of free passes

C. REFORM IN SCHOOL APPORTIONMENT FORMULA

1 The bill appropriated to the State School Fund, in 1966–67 and in the years thereafter, an additional $508 million in school support Reforms in the bill freed approximately $200 million in additional funds for increasing foundation programs and providing additional support for schools

2 Foundation programs were increased to the following levels

	Existing level	*Proposed level*
Elementary	$249	$400
High School	339	490
Junior College	600	600

The magnitude and importance of such increases in the level of state support can readily be seen when the proposed new foundation program levels are compared with actual current expense of education in California school districts

Proposed program		*Current expense*
	Elementary	
$400 (without unified bonus)		$397 00
$425 (with unified bonus)		
	High School	
$490 (without unified bonus)		$553 00
$515 (with unified bonus)		

Presently, state levels of school support do not approach the actual average cost of providing an educational program The levels of foundation support proposed in AB 2270 would, at the elementary level, slightly surpass this actual expense level, and at the high school level, would come much closer to actual expense figures The impact of such a change would be felt most strongly in the poorer school districts, thus enabling such schools for the first time in their history to provide an educational program at least equal to what is provided, on the average, in the more financially able districts

The foundation program provisions of AB 2270, and all other major provisions of the measure, were endorsed by nearly every major educational organization in California (see Appendix F)

3 The unification bonus was increased from $15 per a d a to $25 per a d.a.

This change is necessary since it has become apparent that the $15 per a d a, added as a part of AB 145, Chapter 132, Statutes of 1964, is not sufficient in many districts to induce them to properly reorganize themselves and unify This $15 was added by AB 145 as equalization aid Because the $15 of equalization aid is apportioned to districts on the basis of their wealth, the actual apportionment may equal less than $15 per a d a in the new district An increase of this incentive to $25 per a d a should obviate this problem and should encourage more sound unification in the future

4 The maximum foundation program for adults at junior colleges in graded classes was increased from $230 to $600 per a d a This change should funnel some $10 to $14 million in additional state aid into the junior colleges

The amendment has been sought by the junior colleges for years. They point out that an adult student in a regular class costs exactly as much to educate as a minor student in the same class The logic of this argument is clear, and AB 2270 would have answered the problem by supporting the adult junior college student at the same rate as every other student

5 In place of the existing unrealistic and inequitable formula whereby varying amounts of federal P. L 874 funds are taken into account in adjusting a district's state aid, the bill provided that 50 percent of the federal money the district receives would be used in computing the district's ability to finance its own educational program Under the present formula percentages range from 5 to 74 This change would not apply to other federal funds received by schools including those which may be available under the proposed education bill pending in Congress

6. Computational tax rates used to determine district ability would have been increased as follows·

Level	*Old Rate*	*Proposed Rate*
Elementary	$0.60	$0.90
High School	0.50	0 75
Junior College	0.25	0 25

It should be noted that these proposed computational rates are lower than existing school tax rates in almost all school districts For years it has been argued by experts in the field of school finance that computational tax rates are unrealistically low and do not properly measure a school district's contribution to its own school support program The proposed rates, while still far below average school district tax rates in California, came closer to them and permitted a much greater increase in the foundation programs

AB 2270 also increased the "areawide tax" for nonunified areas to levels of $0.90 and $0.75, in order to conform to the new computational tax rates. This increase would lessen any undue benefit in state aid which nonunified elementary districts might gain through the passage of AB 2270.

7 For the first time foundation programs would have been so high that no special "supplemental support program" (a higher foundation level) for poor school districts would be necessary For this reason, the supplemental program was repealed

8 Foundation programs for small school districts were increased in the same proportion to the increase in the basic foundation program

9 Authority of school boards to levy "permissive override taxes" not requiring a vote of the people was eliminated, except for bond interest and redemption, state loan repayments, retirement and "pay-as-you-go" capital construction

Due to the unwillingness of the legislature to remove the limits from statutory maximum school district tax rates, approximately 28 separate so-called "permissive override taxes" have been authorized for specific purposes. Because of the ever-present press for funds school districts have used these "permissive overrides" extensively but there is no indication that these individual rates have been used solely for the purpose for which they were enacted In most cases, the evidence shows

that their primary use has been to take the pressure off of the general purpose tax rate

During the 1963–64 interim, the Assembly Interim Committee on Education made a survey of the taxing and expenditure policies of selected school districts The committee found some districts in which well over 50 percent of the total tax rate was comprised of "permissive override taxes" which had not been voted by the people, nor were they within the statutory maximum rates provided by law The committee recommended complete repeal of all permissive taxes With a few justifiable exceptions, AB 2270 carried out this recommendation If AB 2270 had passed, school district tax rates could be increased *only* upon a majority vote of the people of each district

The California Association of School Administrators strongly endorsed this change, calling the present method of taxation in school districts "cookie-jar financing" (see Appendix F)

10 School district maximum tax rates were changed to reflect the new money received from the bill. This section would require mandatory tax rate reductions which averaged approximately 25 percent depending upon the new money received by the district The poorer, high tax rate districts enjoyed reductions up to 70 percent (See Appendix B)

Appendix A(1)

AMENDED IN ASSEMBLY MAY 17, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 2270

Introduced by Assemblymen Petris, Unruh, Alquist, Waldie, Crown, Danielson, Dymally, Garrigus, McMillan, Meyers, Quimby, Rumford, Ryan, and Thomas

April 6, 1965

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

An act to repeal Sections 111, 112, 113, 114, 215, 216, 254.7, 263, 264, 265, 266, 268.5, 268.7, 269, 270, 271, 273, 535, 871, 2153, 6011.5, 6389, 6422, 6454.5, 13310, 13406, 13804, 15113, 15207, 15424, 23040, 30016, ~~30107, 30433 and 30475~~ AND 30433 *of, to repeal Article 3 (commencing with Section 1056) of Chapter 5 of Part 2 of Division 1 of, Chapter 3 (commencing with Section 4691) of Part 8 of Division 1 of, and Article 2 (commencing with Section 30115) and Article 3 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of, to add Sections 201.2, 214.01, 214.8, 223, 256.5, 401.1, 2151.1, 6006.1, 6006.3, 6010.1, 6051.5, 6201.5, 6390, 6391, 6422, 7103, 17035, 17109, 17110, 17111, 17112,* 17155, *17181.5, 17204.7, 17215.2, 17216.1, 17216.3, 17216.4, 17216.5, 17838, 18057, 18405.5, 18412, 18435, 18556, 18557, 18591.1, 18602, 18681.1, 18681.5, 18685.1, 18685.2, 18685.3, 18685.4, 18685.5, 18687.1, 18696,* 18805.5, *18806, 18807 18808, 18809, 18810, 18811, 18812, 18813, 18814, 18816 18822, 18823, 18824, 18934,* 18935, 18936, *19051.1, 19053.1, 19062.11, 19062.12, 19062.13, 19062.14, 19082.1, 19290, 19409, 19410, 19411, 19412, 19413, 23115, 23151 5, 23153.2, ~~23184.2,~~ 23181.5, 23182 5, ~~23183.2,~~ ~~23183.5,~~ ~~23186.5~~* 23183.5, 23186.5, 23186.7, *23505, 23701o, 24565, 24566, 24567, 25106, 25107, 25108, 25109, 25110, 25111, 25112, 25113, 25114, 25115, 25116, 25117, 25118, ~~25119,~~ ~~25130,~~ ~~25553.7,~~ ~~30004,~~ ~~30007,~~ ~~30101.5,~~ ~~30107,~~ ~~30244,~~ ~~30475 and~~ ~~30476~~ ~~to,~~* 25119, 25120, 26312, 26313 AND 30244 TO,

to add Article 8 (commencing with Section 670) to Chapter 3 of Part 2 of Division 1 of, Chapter 3.5 (commencing with Section 6271) to Part 1 of Division 2 of, Article 5 (commencing with Section 18491), to Chapter 17 of Part 10 of Division 2 of, Chapter 25 (commencing with Section 19501) and Chapter 26 (commencing with Section 19601) to Part 10

of Division 2 of, Article 3 5 (commencing with Section 23201) to Chapter 2 of Part 11 of Division 2 of, Article 3 (commencing with Section 30126) to Chapter 2 of Part 13 ~~of Division 2 of, Article 1 5 (commencing with Section 30871) to Chapter 6 of Part 13 of Division 2 of, Chapter 7.5 (commencing with Section 30463) to Part 13 of Division 2 of, Part 16 (commencing with Section 36001) to Division 2~~ OF DIVISION 2 *of, and Division 3 (commencing with Section 38001) to, to amend Sections 155 8, 210, 212, 214.3, 220, 251, 252, 254.5, 255, 272, 401, 405, 407, 441, 448, 463, 464, 467, 565, 569, 616, 619, 621, 751, 753, 1362, 1605, 1607, 1817, 1901, 2189.3, 2192, 5363, 5364,* 5366, *5391, 6006, 6009, 6010, 6011, 6051, 6052.5, 6094, 6201, 6203, 6244, 6367, 6381, 6401, 6457, 7102, 7202, 7203,* 11003.4, *11492, 13309, 13404, 13405, 13803, 13841, 13842, 15112, 15205, 15206, 15423, 17041, 17048,* 17053, *17101, 17102, 17103, 17104, 17105, 17106, 17107, 17108, 17132, 17181, 17182, 17183, 17302,* 17204, *17214, 17215, 17216, 17216.2, 17255, 17260, 17501, 17503, 17504, 17506, 17511, 17512, 17734, 17783, 17785, 17812, 17818, 17852, 18044, 18045, 18046, 18053, 18401, 18402, 18403, 18405, 18410.6, 18431, 18433, 18434, 18551 1, 18588, 18681, 18682, 18805, 19052, 19053, 19053.9, 23041, 23042, 23058, 23153, 23184, 23185a, 23185b, 23301, 23333, 23361, 23362, 23501, 23571, 23701n, 23731, 23734a, 23736.3, 23736.4, 23771, 23772, 24273, 24273.5, 24307, 24310, 24343, 24344, 24345, 24346, 24347, 24348, 24349, 24351, 24356, 24356 1, 24357, 24358, 24360, 24361, 24362, 24363, 24364, 24365, 24366, 24368 1, 24372, 24373, 24374, 24375, 24377, 24402, 24404, 24409, 24425, 24427, 24430, 24482, 24485, 24495, 24502, 24512, 24516, 24575.1, 24601, 24602, 24603, 24606, 24607, 24608, 24611, 24613, 24614, 24622, 24631, 24633, 24634, 24636, 24661, 24667, 24668, 24669, 24670, 24672, 24673, 24674, 24675, 24676, 24677, 24678, 24681, 24684, 24703, 24704, 24705, 24706, 24721, 24722, 24722 1, 24722.3, 24723, 24832, 24833, 24835, 24836, 24837, 24916, 24918, 24943, 24944, 24945, 24946, 24961, 24962, 24971, 25001, 25003, 25004, 25005, 25006, 25009, 25010, 25101, 25101.1, 25201, 25202, 25204, 25206, 25208, 25401, 25401b, 25441, 25442, 25443, 25552b,* 25553, 25553.5, 25562, *25563, 25564, 25761, 25952, ~~25953, 25954, 25956, 30001, 30005, 30008, 30009, 30011, 30013, 30014, 30101, 30103, 30103 5, 30105, 30104, 30105 5, 30106, 30108, 30109, 30111, 30140, 30142, 30167, 30168,~~* 25953, 25954, 25956, 30008, 30101, 30102 5, 30142, 30167, 30168, 30170, 30179, *30181, 30182, 30183, 30186, 30187, 30202, ~~30231, 30232~~* 30223, 30362 , *~~30366, 30431, 30432, 30453, 30454, 30455, 30461 and 30462~~* 30366, 30431 AND 30432 *of, ~~to amend the heading of Part 13 (commencing with Section 30001) of Division 2 of,~~ and to amend and renumber Sections 13407, 15208, 17216 1, 18806, 18807, 18808, 18809, 18810 , ~~18811 and 30476~~* AND 18811 *of, the Revenue and Taxation Code, to amend Section 18711 of the Business and*

Professions Code, to amend Sections 4204, 15607, 20532, 43002, 43007, 51501, 51505, 51515 and 54903 of the Government Code, to amend Sections 1828, 3347, 5605 5, 5605 6, 5661, 6352, 6741, 6954, 6955, 6963 1, 8955, 11451, 11451 02, ~~14314, 14657, 14758,~~ 16633, 16635, 16645 12, 16645 16, 17200, 17263 1, 17301, 17303.5, 17602, 17602 5, 17603, 17654 5, 17655 5, 17656, 17660, 17664, 17665, 17665 5, 17666.2, 17667, 17671, 17676, 17702, ~~17702 3, 17906 3, 17951~~ 17702.2, 17702 3, 17906 2, 17951, 20751 *and 20930 of, to add Sections 17603 5, 20751 2 and 20751 3 to, to repeal Sections ~~3255,~~ 3256, 3353, 11451.01, 11706, 17653, 20752, 20753, 25445 ; ~~25541 5~~ and 25542 of, and to repeal Article 7 (commencing with Section 1791) of Chapter 1, Division 5, Article 7 1 (commencing with Section 17920) of Chapter 3 of Division 14, and Article 3 (commencing with Section 20801) of Chapter 3, Division 16 of*, AND TO ADD SECTION 20751 4 AND ARTICLE 3 (COMMENCING WITH SECTION 20803), TO CHAPTER 3, DIVISION 16 OF *the Education Code, to add Section 681 1 to the Harbors and Navigation Code, to amend Section 4997 of the Public Resources Code, to amend Sections 1652 and 1653 of the Streets and Highways Code and Sections 4000, 4300 5, 4451, 4750 5 and 5600 of the Vehicle Code, relating to an integrated system of state and local taxation for governmental purposes, to take effect immediately, tax levy.*

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

SECTION 1. Section 111 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 112 of said code is repealed.

SEC. 3. Section 113 of said code is repealed.

SEC. 4 Section 114 of said code is repealed.

SEC 5. Section 155 8 of said code is amended to read:

155.8. Notwithstanding anything in this code to the contrary, every person who at 12 01 a m on the first day of January of any year was the owner of, or had in his possession or under his control, any taxable improvement which improvement was thereafter destroyed without his fault by fire or by any other means prior to July 31 of that year and cannot be rebuilt because of a zoning prohibition may, on or before September 30 of that year, make application for reassessment of such improvement and deliver to the assessor a written statement under oath, accompanied by a certificate of a disinterested competent person or authority, showing the condition and value, if any, of the improvement immediately after the destruction The assessor shall, on or before October 31 of that year, assess the improvement, or reassess it if it has already been assessed, according to the condition and value immediately after the destruction, and the assessor, if he reassesses the improvement, shall transmit to the board a description of

the improvement so reassessed, the name of the person making the application in connection with the improvement, and the value of the improvement so reassessed. Upon such notice as it may find to be proper, the local board of equalization may, until November 30 of that year, equalize any such assessment or reassessment.

The tax rate fixed for property on the roll on which the improvement so assessed appears or the improvement so reassessed appeared at the time of its original assessment shall be applied to the amount of the equalized assessment or reassessment determined in accordance with the last paragraph. In the event that the resulting figure is less than the tax theretofore computed, the taxpayer shall be liable for tax only for the lesser amount, and the difference shall be canceled. If the taxpayer has already paid the tax previously computed, such difference shall be refunded to him pursuant to Chapter 5 (commencing with Section 5096) of Part 9 of this division, as an erroneously collected tax.

SEC 6. Section 201 2 is added to said code, to read:

201.2. Inventories shall be exempt from property taxation. Inventories shall include goods intended for sale or resale in the normal course of business and shall include raw materials and work in process with such goods *and shall include motion picture, including television, negatives, films and tapes*. Inventories shall include animals and crops ~~intended for sale or resale within one year~~ *held primarily for sale or resale*. ~~Inventories shall not include animals and crops not intended to be sold within one year. Inventories shall not include busi-~~ *Inventories shall not include busi*ness machinery and equipment and office machines and furniture except where they are held for sale in the normal course of business. Inventories shall not include cut timber until it has been processed. This section shall be effective for the 1966–67 fiscal year *and each year thereafter*.

SEC. 7. Section 210 of said code is amended to read:

210 The householder's exemption is as specified in section 10½ of Article XIII of the Constitution. If a householder fails to select the personal property to be exempted, the assessor shall apply the one hundred dollars ($100) exemption to household furnishings and personal effects not otherwise exempt by law.

SEC. 8. Section 212 of said code is amended to read:

212 Notes, debentures, shares of capital stock, solvent credits, bonds, deeds of trust, mortgages, and any interest in such property are exempt from taxation.

SEC. 9 Section 214 01 is added to said code, to read:

214 01. For the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or

foundation, in the bylaws, articles of association, constitution, or regulations thereof.

SEC. 10. Section 214.3 of said code is amended to read:

214.3. In the event that any property described in subdivision (6) of Section 214 shall have been used solely for charitable or hospital purposes for a minimum period of 30 years, the "welfare exemption" granted by Section 214 shall extend to such property irrespective of any reversionary provisions in the title of the property respecting liquidation, dissolution or abandonment, if the ownership, operation, use and dedication of the property are otherwise within the purview of Section 214.

SEC. 11. Section 214.8 is added to said code, to read:

214.8. The Legislature finds and declares that the vast majority of community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific or charitable purposes are faithfully serving the purposes for which they were created and meet the needs of the people of this state, and it is not the legislative purpose to deprive the property of such organizations of the welfare exemption provided for in Section 214. It is the intent of the Legislature in enacting this section to debar from this exemption only those religious, hospital, scientific or charitable organizations which abuse their true purpose by payment of excessive remuneration to their officers, employees or directors or by engaging in transactions with profit-making organizations which a reasonable man should know would operate to the detriment of the religious, hospital, scientific or charitable organization involved.

Property described in Section 214 shall not be entitled to the welfare exemption from taxation if the salary, wage or other emolument of any type whatever paid directly or indirectly by the religious, hospital, scientific or charitable organization to any of its officers, employees or directors is excessive in comparison to the salaries, wages or emoluments paid to comparable officers and employees in private agencies or institutions providing comparable services within the county or, if none, within the state.

The remuneration received by an officer or employee of a religious, hospital, scientific or charitable organization shall be deemed excessive if it exceeds substantially that paid directly or indirectly to comparable officers or employees of private agencies or institutions providing comparable services. The remuneration received by a director of a religious, hospital, scientific or charitable organization shall be deemed excessive if it exceeds substantially that paid directly or indirectly to the head of comparable private agencies or institutions. No individual officer, employee or director of a single religious, hospital, scientific or charitable institution shall be entitled to two or more such remunerations by reason of the fact that he serves in two or more capacities as officer, employee or director.

Property described in Section 214 shall not be entitled to the welfare exemption from taxation if the religious, hospital, scientific or charitable organization owning such property enters into any transaction of benefit to a profit-making organization which is not conducted at arm's length and does not afford commensurate benefit to the religious, hospital, scientific or charitable organization For purposes of this paragraph, a disputable presumption shall arise that a transaction is not at arm's length if the service performed or price paid does not correspond to what a willing buyer of services or property would pay to a willing seller on the open market, neither being under any compulsion to buy or sell

As used in this section, "profit-making organization" means any person, corporation, association, partnership or any other entity engaged in business for profit.

SEC. 12 Section 215 of said code is repealed.

SEC. 13. Section 216 of said code is repealed.

SEC. 14. Section 220 of said code is amended to read:

220. Any aircraft which is in California on the first day of January solely for the purpose of being repaired, overhauled, modified, or serviced is exempt from personal property taxation This exemption does not apply to aircraft normally based in California, or operated intrastate or interstate in and into California.

SEC. 15. Section 223 is added to said code, to read:

223. The personal effects and household furnishings in excess of one hundred dollars ($100) of every householder shall be exempt from taxation, effective July 1, 1966 and thereafter.

The word "householder" as used in this section means any person owning, purchasing or renting real property which he is using regularly, if not continuously, as a residence

The phrase "personal effects and household furnishings" does not include boats, ~~aircraft, motor vehicles~~ *aircraft or motor vehicles,* or personalty held or used in connection with a trade, profession or business

SEC. 16. Section 251 of said code is amended to read:

251. The board shall prescribe all procedure and forms required to carry into effect the veterans', church, cemetery, orphanage, college, exhibition, or welfare exemption.

SEC 17 Section 252 of said code is amended to read:

252. When making the first claim any person claiming the veterans' exemption or the spouse of such person shall appear before the assessor, shall give all information required and answer all questions in an affidavit, and shall subscribe and swear to the affidavit before the assessor The assessor may require other proof of the facts stated before allowing the exemption In subsequent years the person claiming the veterans' exemption, or the spouse of such person, may file the affidavit by mail on such forms as the assessor shall require, except that the applicant for the exemption shall appear in person before the county assessor once in every four-year period and subscribe and swear to the affidavit before the assessor.

SEC. 18. Section 254.5 of said code is amended to read:

254.5. Affidavits for the welfare exemption shall be filed in duplicate on or before March 15 of each year with the assessor concerned and shall be accompanied by duplicate certified copies of the financial statements of the owner and operator. Copies of the affidavits and financial statements shall be forwarded forthwith by the assessor to the board which shall review all such affidavits and statements and may institute an independent audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Sections 214 and 215 of the Revenue and Taxation Code. In this connection the board shall consider, among other matters, whether:

(a) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public institutions;

(b) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals;

(c) Any capital investment of the owner or operator for expansion of physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

The board shall forward to each assessor concerned its finding with respect to each claimant and said finding shall be considered by the assessor in his determination with respect to the claim for exemption.

SEC. 19. Section 254.7 of said code is repealed.

SEC. 20. Section 255 of said code is amended to read:

255. Affidavits required for exemptions named in this article, except the welfare exemption, shall be filed with the assessor between 12 01 a.m. on the 1st day in January and 5 o'clock p.m. on the first Monday in April.

SEC. 21. Section 256.5 is added to said code, to read:

256.5. Cemetery exemption affidavit. The affidavit for the cemetery exemption shall show that:

(a) The property is used or held exclusively for the burial or other permanent deposit of the human dead or for the care, maintenance or upkeep of such property of such dead, and

(b) The property is not held for profit.

SEC. 22. Section 263 of said code is repealed.

SEC. 23. Section 264 of said code is repealed.

SEC. 24. Section 265 of said code is repealed.

SEC. 25. Section 266 of said code is repealed.

SEC. 26. Section 268.5 of said code is repealed.

SEC. 27. Section 268.7 of said code is repealed.

SEC. 28. Section 269 of said code is repealed.

SEC. 29. Section 270 of said code is repealed.

SEC. 30. Section 271 of said code is repealed.

SEC. 31. Section 272 of said code is amended to read:

272. If a claimant for the veterans' exemption failed to file the required affidavit pursuant to Section 255 because he

was in the military service of the United States and serving outside of the continental limits of the United States between 12:01 a.m. on the first day of January and 5 o'clock p.m. on the first Monday in April, any tax or penalty or interest thereon for any fiscal year commencing during the calendar year 1966 on property to the amount of one thousand dollars ($1,000) owned by such person as to which the veterans' exemption was available for such fiscal year, shall be canceled pursuant to Article 1 (commencing with Section 4986) of Chapter 4 of Part 9 of this division as if it had been levied or charged erroneously, and, if paid, a refund thereof shall be made pursuant to Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 of this division as if it had been erroneously collected.

SEC. 32. Section 273 of said code is repealed.

SEC. 33. Section 401 of said code is amended to read:

401. Except as provided in this part, every assessor shall uniformly appraise all taxable property at 100 percent of full cash value. This appraised value shall be multiplied by a factor which shall be established by the State Board of Equalization pursuant to Section 401.1. This factor, which may be known as the "standard ratio," shall be uniform throughout the state *The product of the appraised value and the factor shall be the assessed value.*

SEC. 34. Section 401.1 is added to said code, to read:

401.1. The Board of Equalization shall, no later than December 1, 1965, adopt the factor to be used in assessing property throughout the state as provided in Section 401. The board shall hold public hearings prior to determining the factor.

The board is directed to adopt a factor which will produce a ratio of assessed value to full cash value which is within a 20 percent range of the statewide average assessment ratio for 1964 as determined by the Board of Equalization.

Unless the Legislature, by concurrent resolution, prior to June 30, 1966, establishes another factor which shall replace the factor proposed by the Board of Equalization, the factor established by the Board of Equalization shall be in effect on July 1, 1966 with respect to assessments made in the 1966–67 fiscal year and thereafter.

SEC. 35. Section 405 of said code is amended to read:

405. Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possession, or controlling it at 12:01 a.m. on the first day of January. The assessor shall ascertain such property between January 1st and June 15th.

SEC. 36. Section 407 of said code is amended to read:

407. Annually, on or before June 22, the assessor shall transmit a statistical statement to the board, supplying any statistical information which the board may require, and shall supply from time to time any other information required by the board.

SEC. 37. Section 441 of said code is amended to read:

441. (a) Every person shall file a written property statement, under oath, with the assessor between noon on the first ~~Monday in March~~ *day of January* and 5 p.m. on the last Monday in April, annually, and within such time as the assessor may appoint. At any time, as required by the assessor for assessment purposes, every person shall furnish information or records for examination.

(b) The property statement may be filed with the assessor through the U.S. mail, properly addressed with postage prepaid. This subdivision shall be applicable to every taxing agency, including but not limited to, a chartered city and county, or chartered city.

SEC. 38. Section 448 of said code is amended to read:

448. The property statement shall show all information as of 12:01 a.m. on the first day of January and as of noon on the first Monday in March. The statement shall set forth all the real and personal property owned by such taxpayer, or in his possession, or under his control at 12:00 meridian on the first Monday of March

Additional information required by this article shall be furnished regarding property owned, controlled by or in the possession of a taxpayer on the first day of January. Additional information with respect to property owned or in the possession of a taxpayer at noon on the first Monday in March beyond that required by this section shall not be necessary.

SEC. 39 Section 463 of said code is amended to read:

463. Every person forfeits one hundred dollars ($100) to the people of the state, to be recovered by action brought in their name by the assessor, for each refusal to do any of the following:

(a) Furnish the property statement.

(b) Make and subscribe the affidavit respecting his name and place of residence

SEC. 40. Section 464 of said code is amended to read:

464. All moneys recovered by the assessor under Section 463 shall be paid into the county treasury and the assessor may retain none for his own use.

SEC. 41 Section 467 of said code is amended to read:

467. Annually, on or before February 20th, every taxing agency shall file with the assessor of the county in which the property is located statements containing legal descriptions of

(a) All real estate which it has conveyed by deed to any person during the assessment year ending on the preceding first day of January

(b) All real estate owned by it on the preceding first day of January and which it has agreed by contract in writing to sell and convey to any person The statement covering property sold by contract shall show for each parcel of real estate the name and address of the purchaser, the consideration for the sale and conveyance thereof, and the amount of the consideration paid as of the first day of January.

SEC. 42. Section 535 of said code is repealed.

SEC. 43. Section 565 of said code is amended to read:

565. Whenever tax-deeded property is redeemed between the first day in January and June 15th, the redemption officer shall immediately notify the assessor of the redemption and the assessor shall enter the property on the roll being prepared.

SEC. 44. Section 569 of said code is amended to read:

569 Whenever delinquent taxes on tax-deeded property are being paid in installments, and there has been a default in the payment of any installment, the redemption officer shall notify the county assessor of such default on or before the first day in January of the year following said default.

SEC. 45. Section 616 of said code is amended to read:

616. On or before ~~the~~ June 15th, annually, the assessor shall complete the local roll. He shall make and subscribe an affidavit on the roll substantially as follows:

"I, _____, assessor of _____ county, swear that between the first day of January and June 15, 19___, I have made diligent inquiry and examination to ascertain all the property within the county subject to assessment by me, and that it has been assessed on the roll, according to the best of my judgment, information, and belief, at its value as required by law; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice, ill will, or otherwise; nor allowed anyone to escape a just and equal assessment through favor, reward, or otherwise."

The failure to make or subscribe this affidavit, or any affidavit, does not affect the validity of the assessment.

The assessor may require from any of his deputies an affidavit on the roll similar to his own

SEC. 46 Section 619 of said code is amended to read:

619. The assessor shall, upon or prior to completion of the local roll, either;

(a) Inform the assessees of real property on the local secured roll of the amounts at which their respective properties have been or will be assessed thereon, or

(b) Inform each assessee of real property on such roll of the amount of any increase in the assessed value of such real property if the increase exceeds 10 percent of its assessed value on the roll for the year immediately preceding, or if the increase exceeds some lesser amount when so specified by the board of supervisors.

The information given by the assessor to the assessee pursuant to subdivisions (a) or (b) shall include a notification of hearings by the county board of equalization, which shall include the period during which assessment protests will be accepted and the place where they may be filed.

This information shall also include the assessment ratio for the county as last computed by the State Board of Equalization.

This information shall be furnished by the assessor to the assessee by regular U.S. mail directed to him at his latest address known to the assessor. The board of supervisors of any county may, in addition, authorize the publication of this information in any newspaper of general circulation within the county.

The failure of the assessee to receive this information shall not in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto.

SEC. 47. Section 621 of said code is amended to read:

621. The assessor, with the approval of the board of supervisors, may give the information required by Section 619, as an alternative to giving the information by U.S. mail, by having published lists of assessments in newspapers For this purpose he may divide the county into publication areas not to exceed five in number Within such areas the assessment listings may be grouped by assessment map books, by post office zones or by such other arrangements as may be determined by the assessor as most likely to give notice to assessees and as practicable for publication in local newspapers. The complete assessment data of one such area may be printed in one year, and for other areas in successive years as directed by him until the full county is covered. Each year at least all changes of assessment listings for all the areas shall be printed, together with a notice that no changes were made with regard to properties not on the list of changes, so that all changes will be on a current basis for the entire county. Newspapers for the publications shall be selected as they are for publication of the delinquent tax lists and the rate paid for the advertising shall be the same

Neither the failure of the assessee to receive this information nor the failure of the assessor to so inform the assessee shall in any way affect the validity of any assessment or the validity of any taxes levied pursuant thereto. ,

SEC. 48 Article 8 (commencing with Section 670) is added to Chapter 3 of Part 2 of DIVISION 1 of said code, to read:

Article 8 Assessor and Appraiser Qualifications

670. (a) No person shall perform the duties or exercise the authority of an assessor or appraiser of property in or on behalf of any county unless ~~the~~ *he* is the holder of a valid assessor's or appraiser's certificate, as the case may be, issued by the State Board of Equalization.

(b) The board shall provide for the examination of applicants for such certificates The State Personnel Board may be designated to give such examinations No certificate shall be issued to any person who has not demonstrated to the satisfaction of the board that he is competent to perform the work of an assessor or appraiser, as the case may be · provided that any applicant for a certificate who is denied the same shall have a

right to review of such denial in accordance with the State Administrative Procedure Act.

(c) Passage of a civil service examination for appraiser given by any county shall suffice to meet the requirements of this section. The content of such examination shall be approved by the Board of Equalization.

(d) Any person performing the duties of assessor or appraiser in state or county or city government at the time this section is adopted shall be certificated without examination upon application to the Board of Equalization.

(e) This section does not apply to elected officials.

SEC. 49. Section 751 of said code is amended to read:

751. The board shall assess all state-assessed property at its actual value as of 12:01 a.m. on the first day of January.

SEC. 50 Section 753 of said code is amended to read:

753. Annually, on or before the first Monday in August, the board shall assess all state-assessed property required to be assessed as of the first day of January.

SEC. 51. Section 871 of said code is repealed.

SEC. 52. Article 3 (commencing with Section 1056) of Chapter 5 of Part 2 of Division 1 of said code is repealed.

SEC. 53. Section 1362 of said code is amended to read:

1362. Any taxpayer having the necessary knowledge may file with the board of supervisors an affidavit, alleging that certain property has escaped taxation or is being underassessed through the willful failure or neglect of the assessor, and giving the best description of the property that he can.

SEC. 54 Section 1605 of said code is amended to read:

1605. After giving notice as prescribed by its rules, the county board may increase or lower any assessment on the local roll in order to equalize the assessment of property on the local roll.

If the ratio of assessed value to full cash value on any parcel of property in a county deviates by more than 10 percent from the average ratio of assessment of all property in a county as found by the State Board of Equalization as provided in Section 1817, this shall be prima facie evidence of an inequitable assessment and the county board shall equalize the assessment on said property so that the assessed value shall be in the same proportion to full cash value as all property in the county as reflected by the findings of the State Board of Equalization.

SEC. 55. Section 1607 of said code is amended to read:

1607. A reduction in an assessment on the local roll shall not be made unless the party affected or his agent makes and files with the county board a verified, written application for it, showing the facts claimed to require the reduction.

The application may be filed at any branch office of the county where the clerk of the county or the assessor has an office. This application shall be filed no later than three calendar ~~days~~ *days* after the first Monday in July.

SEC. 56. Section 1817 of said code is amended to read:

1817. The board shall annually estimate any change that may have occurred in the full cash value of locally assessable tangible property between the lien date of the roll for which the last survey was made pursuant to Section 1815 and the lien date of the current roll. The board shall use as the basis for such estimate data on school enrollment, retail sales, wages, or other factors reasonably indicative of change or lack of change in the total full cash value of the property. The relationship between the total assessed value of the tangible property on the current local roll and the total full cash value of locally assessable tangible property so estimated shall be computed for each county of the state by the ~~third Monday~~ *first day* in July of each year. The board shall transmit promptly to each county assessor and county superintendent of schools, and to the Superintendent of Public Instruction a statement of its preliminary determination of this relationship. This determination shall be published in a paper of general circulation in each county. This determination may be used in local equalization hearings.

SEC. 57. Section 1901 of said code is amended to read:

1901. Where property in a city is not assessed for city purposes by the county assessor the board shall equalize the assessed value of state assessed property in the city with the assessed value of other property in the *city but not higher than the assessed value of other property in the* county.

SEC. 58. Section 2151.1 is added to said code, to read:

2151.1. Notwithstanding any other provision of law, special districts may increase their property tax rates above statutory maximums to an amount which will produce no more than 105 percent of the revenue produced by the property tax they levied for the fiscal year 1965–66.

SEC. 59. Section 2153 of said code is repealed.

SEC. 60. Section 2189.3 of said code is amended to read:

2189.3. A tax on personal property belonging to an owner of real property on the secured roll located in the same county as the personal property, where the personal property is not located upon the real property on the lien date, is, on and after the lien date, a lien on the real property, having the force, effect and priority of a judgment lien from and after the lien date, if, on or before the lien date:

(a) The assessor, at the request of the taxpayer, determines and issues to the taxpayer a certificate, that the real property is sufficient to secure the payment of the tax.

(b) The taxpayer records the certificate with the county recorder.

Any tax which becomes a lien on the real property in accordance with this section shall be subject to the provisions of this division relating to the rate and date of payment of taxes on the secured roll for the current year; and in the event of any delinquency in the payment of such tax, the personal property on which it has been levied shall be subject to seizure

and sale in accordance with Sections 2914 to 2921, inclusive, of this code.

SEC. 61. Section 2192 of said code is amended to read:

2192. Except as otherwise specifically provided, all tax liens attach annually as of 12:01 a.m. on the first day of January preceding the fiscal year for which the taxes are levied.

SEC. 62. Chapter 2 (commencing with Section 4691) of Part 8 of Division 1 of said code is repealed.

SEC. 63. Section 5363 of said code is amended to read:

5363. In assessing aircraft, the assessor shall determine assessed value as provided by Section 401.

SEC. 64. Section 5364 of said code is amended to read:

5364. The board shall establish standards and fix guides to be used by the county assessor in the assessment of aircraft.

SEC. 64.5 Section 5366 of said code is amended to read:

5366. Owners, as well as operators, of private and public airports shall, on or before the first ~~Monday in March~~ *day of January* of each year, provide the assessor of the county in which the airport is situated with a statement containing a list of names and addresses of the owners of all aircraft which use the airport as a base.

SEC. 65. Section 5391 of said code is amended to read:

~~5391. On or before September 1, of each year, the board of supervisors of each county shall fix the rate of tax for aircraft, and shall levy the tax on aircraft. The rate shall be equal to one and one-half percent (1.5%) of the market value of the aircraft as determined pursuant to this part. If the board of supervisors of any county for any reason fails to fix the rate of tax for aircraft, the rate of tax for aircraft shall be conclusively presumed to be one and one-half percent (1.5%) of the market value of the aircraft as determined pursuant to this part~~

5391. The rate of tax for aircraft shall be equal to the average statewide property tax rate for the previous year as computed by the State Board of Equalization.

SEC. 66. Section 6006 of said code is amended to read:

6006. "Sale" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession," includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(d) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(f) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

(1) Clothes or costumes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Motion picture, including television, films and tapes.

SEC. 67. Section 6006.1 is added to said code, to read:

6006.1. The granting of possession of tangible personal property by a lessor to a lessee, or to another person at the direction of the lessee, is a continuing sale in this state by the lessor as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person.

SEC. 68. Section 6006.3 is added to said code, to read:

6006 3. "Lease" includes, rental, hire and license.

SEC. 69. Section 6009 of said code is amended to read:

6009. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, and also includes the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease, except that it does not include the sale of that property in the regular course of business.

SEC. 70. Section 6010 of said code is amended to read:

6010. "Purchase" means and includes.

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession," includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) When performed outside this state or when the customer gives a resale certificate pursuant to Article 3 of Chapter 2 of this part, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(d) A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

(1) Clothes or costumes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Motion picture, including television, films and tapes.

SEC. 71. Section 6010.1 is added to said code, to read:

6010.1. The possession of tangible personal property by a lessee, or by another person at the direction of the lessee, is a continuing purchase for use in this state by the lessee as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person.

SEC. 72. Section 6011 of said code is amended to read:

6011. "Sales price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold.

(b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the property, except as excluded by other provisions of this section.

The total amount for which the property is sold or leased or rented includes all of the following:

(a) Any services that are a part of the sale.

(b) Any amount for which credit is given to the purchaser by the seller.

(c) The amount of any tax imposed by this state that is conclusively presumed to be a direct tax on the retail consumer precollected by the seller for the purpose of convenience and facility only.

"Sales price" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section refund or credit of the entire amount shall be

deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(e) The amount of any tax imposed by any city, county or city and county within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(f) The amount of any tax imposed by any city, county or city and county within the State of California with respect to the storage, use or other consumption in such city, county or city and county of tangible personal property measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.

(g) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer; provided, that if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(h) The amount of any motor vehicle fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle.

SEC. 73. Section 6011.5 of said code is repealed.

SEC. 74. Section 6051 of said code is amended to read:

6051. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after August 1, 1933, and to and including June 30, 1935, and at the rate of 3 percent thereafter, and at the rate of 2½ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent thereafter, and at the rate of 5 percent on and after April 1, 1966.

SEC. 75. Section 6051.5 is added to said code, to read:

6051.5. Any retailer subject to sales tax under this part for the privilege of selling tangible personal property at retail shall be entitled to credit the amount of sales tax due under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of this code against the payment of taxes due under this part.

SEC. 76. Section 6052.5 of said code is amended to read:

6052.5. The board shall prepare sales tax reimbursement schedules showing the total amount that may be collected by the retailer from a consumer in reimbursement of the sales tax, computed on each sales price, from one cent ($0.01) to and including one hundred dollars ($100), at the 5 percent rate. The schedules shall be identical with the following tables up to the amount specified therein:

1¢–	9¢, inclusive—no tax
10¢–	29¢, inclusive—1¢ tax
30¢–	49¢, inclusive—2¢ tax
50¢–	69¢, inclusive—3¢ tax
70¢–	89¢, inclusive—4¢ tax
90¢–$1.09,	inclusive—5¢ tax

The remainder of the schedules shall show amounts of reimbursement computed by applying the applicable tax rate to the sales price, rounded off to the nearest cent by eliminating any fraction less than one-half cent ~~(0.005)~~ *($0.005)* and increasing any fraction of one-half cent ~~(0.005)~~ *($0.005)* or over to the next higher cent.

The "sales tax reimbursement schedule" shall be available for inspection and duplication or reproduction.

Each retailer who collects amounts from a consumer in reimbursement of the sales tax shall use the schedule prepared by the board in computing the amount of the reimbursement, based upon the sales price of the item sold where one item is sold, and where more than one item is sold in any one transaction, upon the sum of the aggregate sales prices of the items sold, or he shall include in the sales price of each item an amount of reimbursement computed to the nearest mill at the applicable tax rate and post a notice in his premises stating that each posted or advertised price includes reimbursement so computed. When both taxable and nontaxable items are included in the same transaction, the foregoing requirement regarding computation of tax reimbursement upon the sum of the aggregate sales prices shall apply only if the purchaser requests at the time of the sale that the computation be made in this way.

The board shall enforce the provisions of this section.

SEC. 77. Section 6094 of said code is amended to read:

6094. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be taxable to the purchaser under Chapter 3 of this part as of the time the property is first used by him, and the sales price of the property to him shall be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis shall the seller be liable for sales tax with respect to the sale of the property to the purchaser.

SEC. 78. Section 6201 of said code is amended to read:

6201. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1935, for storage, use, or other consumption in this state at the rate of 3 percent of the sales price of the property, and at the rate of 2½ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent thereafter, and at the rate of 5 percent on and after April 1, 1966.

SEC. 79. Section 6201.5 is added to said code, to read:

6201.5. Any person subject to an excise tax imposed under this part for the storage, use, or other consumption in this state of tangible personal property purchased from any retailer shall be entitled to credit the amount of use tax due under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of this code against the payment of taxes due under this part.

SEC. 80. Section 6203 of said code is amended to read:

6203. Every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 4 of this part, shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are payable by the lessee under the lease.

"Retailer engaged in business in this state" as used in this and the preceding section means and includes any of the following:

(a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property.

(c) Any retailer deriving rentals with respect to tangible personal property situated in this state.

SEC. 81. Section 6244 of said code is amended to read:

6244. If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used

SEC. 82. Chapter 3.5 (commencing with Section 6271) is added to Part 1 of Division 2 of said code, to read:

CHAPTER 3.5. MOTOR VEHICLES, VESSELS AND AIRCRAFT

Article 1. Definitions

6271. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

6272 "Motor vehicle" is as defined in Section 415 of the Vehicle Code.

6273. "Vessel" means any boat, ship, barge, craft, or floating thing designed for navigation in the water except:

(a) A seaplane;

(b) A watercraft of the type defined by subdivision (d) (2) of Section 651 of the Harbors and Navigation Code;

(c) A watercraft of a type designed to be propelled solely by oars or paddles;

(d) A watercraft of eight feet or less in length of a type designed to be propelled by sail.

A motor or other component of a vessel, whether or not detachable, shall be deemed to be part of the vessel when sold therewith.

6274. "Aircraft" means any powered contrivance designed for navigation in the air except a rocket or missile.

6275. Every person making a retail sale of a motor vehicle required to be registered under the Vehicle Code, or of a vessel or an aircraft as defined in this article, is a retailer for the purposes of this part of the motor vehicle, vessel or aircraft, regardless of whether he is a retailer by reason of other provisions of this part. This section has no application to a lease of a motor vehicle, vessel or aircraft.

6276 Except when a motor vehicle is purchased outside this state from the manufacturer or a motor vehicle dealer, whenever the purchaser of a motor vehicle is required to pay the use tax to the Department of Motor Vehicles, the sales price shall be presumed to be its market value at the time of the purchase as that value is determined to measure vehicle license fees imposed under Part 5 of Division 2 of this code. The presumption may be rebutted by evidence which establishes that the sales price was other than such market value.

Article 2. Special Exemptions

6280. The provisions of this article shall not apply to leases of motor vehicles, vessels or aircraft or to use taxes imposed upon lessees for the use of motor vehicles, vessels or aircraft.

6281. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use,

or other consumption in this state of, a motor vehicle required to be registered under the Vehicle Code or a vessel or aircraft, if such property is included in a transfer of all or substantially all the property held or used in the course of a business activity of the person selling the property, when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer For the purposes of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.

6282. There are exempted from the computation of the amount of the sales tax the gross receipts from sales of motor vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer, or dismantler.

6283. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of a vessel or of an aircraft when the retailer is other than a person holding a valid seller's permit issued pursuant to Article 2 of Chapter 2 of this part

6284 If a person is engaged in the business of selling motor vehicles, vessels or aircraft he shall not be excused from the requirements of Article 2 of Chapter 2 of this part, by reason of the exemptions provided in Sections 6282 and 6283.

6285. There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of a motor vehicle required to be registered under the Vehicle Code or of a vessel or an aircraft, when the person selling the property is either the parent, grandparent, child or spouse of the purchaser and the person selling is not engaged commercially in selling the type of property for which the exemption is claimed.

Article 3. Auxiliary Collection Provisions

6290. The provisions of this article shall not apply to use taxes imposed upon lessees for the use of motor vehicles, vessels or aircraft.

6291. Notwithstanding Section 6451, the use taxes imposed by this part with respect to the storage, use or other consumption in this state of motor vehicles required to be registered under the Vehicle Code and of vessels and aircraft as defined in this chapter are due and payable by the purchaser at the time the storage, use or other consumption of the property first becomes taxable. Delinquency penalties and interest with respect to use tax for motor vehicles registered with the Department of Motor Vehicles shall be as provided in Section 6292. Penalties and interest with respect to use tax for vessels

and aircraft shall attach as if the due date of the tax were fixed by Section 6451.

6292. (a) When a motor vehicle required to be registered under the Vehicle Code is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, dealer or dismantler, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the motor vehicle must pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 4750.5 of the Vehicle Code.

(b) If the purchaser does not make timely application to that department, but is subject to penalty because of delinquency in effecting registration or transfer of registration of the motor vehicle, he then becomes liable also for penalty as specified in Section 6591 of this code, but no interest shall accrue.

SEC. 83. Section 6367 of said code is amended to read:

6367. There are exempted from the taxes imposed by this part the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale This exemption does not apply to the gross receipts from the sale other than by leasing of, or to the storage, use, or other consumption in this state other than as lessee of, a vessel or aircraft, as defined in Article 1 of Chapter 3 5 of this part, or a motor vehicle required to be registered under the Vehicle Code

SEC. 84. Section 6381 of said code is amended to read:

6381. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

(a) The United States, its unincorporated agencies and instrumentalities;

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(c) The American National Red Cross, its chapters and branches.

This exemption does not extend to the rentals payable under a lease of tangible personal property.

SEC 85. Section 6389 of said code is repealed.

SEC 86 Section 6390 is added to said code, to read:

6390. There are exempted from the computation of the amount of the sales tax the rentals payable under a lease of tangible personal property (a) when such rentals are required to be included in the measure of the use tax or (b) when such property is situated outside this state

SEC 87 Section 6391 is added to said code, to read:

6391. There are exempted from the computation of the amount of the sales tax the rentals payable under a lease of tangible personal property for any period of time for which the lessor is unconditionally obligated to lease the property

for an amount fixed by the lease prior to the effective date of this section and the lessor has not elected under Sections 6094 or 6244 to pay use tax measured by the amount of the rental charge

SEC. 88. Section 6401 of said code is amended to read:

6401. The storage, use, or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax; provided, however, that this exemption does not extend to the possession of, or the exercise of any right or power over, tangible personal property by a lessee under a lease.

SEC. 89. Section 6422 of said code is repealed.

SEC. 90. Section 6422 is added to said code, to read:

6422. The board may provide for exemption certificates and other tax clearance certificates to be issued by it or by retailers selling motor vehicles. Such certificates shall be used to allow a completion of registration of a motor vehicle by the Department of Motor Vehicles. A certificate may indicate that the board finds that no use tax is due or is likely to become due with respect to the storage, use or other consumption of the motor vehicle or that the tax has been paid or is to be paid in a manner not requiring the withholding of a registration or transfer of registration. The certificates shall be in such form as the board may prescribe and shall be executed, issued and accepted for clearance of registration on such conditions as the board may prescribe. The issuance, alteration, forgery or use of any such certificate in a manner contrary to the requirements of the board constitutes a misdemeanor.

SEC. 91. Section 6454.5 of said code is repealed.

SEC. 92. Section 6457 of said code is amended to read:

6457. As respects leases of tangible personal property, for purposes of the sales tax, or the use tax, the return shall show the total amount payable by the lessee under the lease during the preceding reporting period.

SEC. 93. Section 7102 of said code is amended to read:

7102. The money in the Retail Sales Tax Fund shall be distributed as follows:

(a) The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part.

(b) That sum of money collected and deposited in the fund which is equal to seventeen hundredths of one percent (0.17%) of the measure of the taxes collected under this part shall, upon order of the Controller, be transferred to the City Property Tax Relief Fund, which fund is hereby created.

(c) The money remaining in the Retail Sales Tax Fund shall, upon order of the Controller, be transferred to the General Fund of the state.

SEC. 94. Section 7103 is added to said code, to read:

7103. The money in the City Property Tax Relief Fund shall, upon order of the Controller, be paid quarterly to each of the cities and cities and counties of this state in the propor-

tion that the taxes levied against locally assessed personal property by each such city and city and county in the tax year 1963–1964 bears to the sum of the taxes levied against locally assessed personal property during that time by all the cities and cities and counties in this state. This proportion shall be determined by the board.

SEC. 95. Section 7202 of said code is amended to read:

7202. The sales tax portion of any sales and use tax ordinance adopted under this part shall be imposed for the privilege of selling tangible personal property at retail, and shall include provisions in substance as follows:

(a) A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the county at the rate of one percent (1%) of the gross receipts of the retailer from the sale of all tangible personal property sold by him at retail in the county to and including March 31, 1966, and thereafter at the rate of one and eight hundredths of one percent (1.08%).

(b) Provisions identical to those contained in Part 1 of Division 2 of this code, insofar as they relate to sales taxes, except that the name of the county as the taxing agency shall be substituted for that of the state and that an additional seller's permit shall not be required if one has been or is issued to the seller under Section 6068 of this code

(c) A provision that all amendments subsequent to the effective date of the enactment of Part 1 of Division 2 of this code relating to sales tax and not inconsistent with this part, shall automatically become a part of the sales tax ordinance of the county.

(d) A provision that the county shall contract prior to the effective date of the county sales and use tax ordinances with the State Board of Equalization to perform all functions incident to the administration or operation of the sales and use tax ordinance of the county.

(e) A provision that such ordinance may be made inoperative not less than 60 days, but not earlier than the first day of the calendar quarter, following an increase by any city within the county of the rate of its sales or use tax above the rate in effect at the time the county ordinance was enacted.

(f) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California upon a retailer or consumer

(g) That any person subject to a sales and use tax under the county ordinance shall be entitled to credit against the payment of taxes due under that ordinance the amount of sales and use tax due to any city in the county; provided, that the city sales and use tax is levied under an ordinance including provisions in substance as follows:

(1) A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the city at the rate of 1 percent or less of the gross receipts of the retailer from the sale of all tangible personal property

sold by him at retail in the city and a use tax of 1 percent or less of purchase price upon the storage, use or other consumption of tangible personal property purchased from a retailer for storage, use or consumption in the city.

(2) Provisions identical to those contained in Part 1 of Division 2 of this code, insofar as they relate to sales and use taxes, except that the name of the city as the taxing agency shall be substituted for that of the state (but the name of the city shall not be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 nor in the definition of that phrase in Section 6203) and that an additional seller's permit shall not be required if one has been or is issued to the seller under Section 6068 of this code.

(3) A provision that all amendments subsequent to the effective date of the enactment of Part 1 of Division 2 of this code relating to sales and use tax and not inconsistent with this part, shall automatically become a part of the sales and use tax ordinance of the city.

(4) A provision that the city shall contract prior to the effective date of the city sales and use tax ordinance with the State Board of Equalization to perform all functions incident to the administration or operation of the sales and use tax ordinance of the city which shall continue in effect so long as the county within which the city is located has an operative sales and use tax ordinance enacted pursuant to this part.

(5) A provision that the storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under Part 1 of Division 2 of this code, shall be exempt from the tax due under this ordinance.

(6) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California upon a retailer or consumer.

SEC. 96 Section 7203 of said code is amended to read:

7203. The use tax portion of any sales and use tax ordinance adopted under this part shall impose a complementary tax upon the storage, use or other consumption in the county of tangible personal property purchased from any retailer for storage, use or other consumption in the county. Such tax shall be at the rate of one percent (1%) to and including March 31, 1966, and thereafter at the rate of one and eight hundredths of one percent (1.08%) of the sales price of the property whose storage, use or other consumption is subject to the tax and shall include:

(1) Provisions identical to the provisions contained in Division 2, Part 1, of this code, other than Section 6201, insofar as such provisions relate to the use tax except that the name of the county as the taxing agency enacting the ordinance shall be substituted for that of the state (but the name of the county shall not be substituted for the word "state" in the

phrase "retailer engaged in business in this state" in Section 6203 nor in the definition of that phrase in Section 6203).

(2) ~~That~~ *A provision that* all amendments subsequent to the date of such ordinance to the provisions of the Revenue and Taxation Code relating to the use tax and not inconsistent with this part shall automatically become a part of the ordinance.

(3) A provision that the storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a Part 1 of Division 2 of this code, shall be exempt from the tax due under this ordinance.

(4) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California upon a retailer or consumer.

SEC. 96.5. Section 11003.4 of said code is amended to read:

11003.4. As soon as the report is returned to the auditor he shall distribute the amounts received by him under Section 11003.3 ~~in the same manner~~ according to situs of the trailer coaches as ~~is provided for the distribution of the proceeds of the tax on intangibles under Chapter 2 of Part 8 of Division 1 of this code~~ *follows:*

(a) One-half of the amount to the unified school district in which the trailer is located or one-fourth of the amount to the elementary school district in which the trailer is located and one-fourth to the high school district in which the trailer is located;

(b) Five percent (5%) to the junior college district in which the trailer is located;

(c) Thirty-three percent (33%) to the county in which the trailer is located; and

(d) Twelve percent (12%) to the city in which the trailer is located.

Where any one of these taxing jurisdictions does not exist, its share of the funds shall be given to the county.

SEC. 97. Section 11492 of said code is amended to read.

11492. The lien upon personal property attaches on the first day of January of each year with respect to taxes, together with the interest and penalties thereon, to be levied during the year.

SEC. 98. Section 13309 of said code is amended to read:

13309. "Class C transferee" means any transferee who is not a class A or B transferee.

SEC. 99. Section 13310 of said code is repealed.

SEC. 100. Section 13404 of said code is amended to read:

13404. In the case of a transfer to a class A transferee, the rates of tax are as follows:

(a) Two percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Three percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000).

(c) Four percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000).

(d) Nine percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Eleven percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Twelve percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000).

(g) Fourteen percent of the excess value over five hundred thousand dollars ($500,000).

SEC. 101. Section 13405 of said code is amended to read:

13405. In the case of a transfer to a class B transferee the rates of tax are as follows:

(a) Six percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Ten percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000).

(c) Thirteen percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000).

(d) Fifteen percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Sixteen percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Seventeen percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000).

(g) Eighteen percent of the excess value over five hundred thousand dollars ($500,000)

SEC. 102. Section 13406 of said code is repealed.

SEC. 103. Section 13407 of said code is amended and renumbered to read:

13406 In the case of a transfer to a class C transferee, the rates of tax are as follows:

(a) Ten percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Fifteen percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000).

(c) Eighteen percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000)

(d) Nineteen percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Twenty percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Twenty-two percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000).

(g) Twenty-four percent of the excess value over five hundred thousand dollars ($500,000).

SEC. 104. Section 13803 of said code is amended to read:

13803. Property of the clear market value of three hundred dollars ($300) transferred to any class C transferee is exempt from the tax imposed by this part.

SEC. 105. Section 13804 of said code is repealed.

SEC. 106. Section 13841 of said code is amended to read:

13841. Property transferred to any of the following is exempt from the tax imposed by this part:

(a) The United States

(b) This state.

(c) A public corporation of this state.

(d) A society, corporation, institution, or association exempt by the laws of this state from property taxation under Section 203, 206, 207 or 214 of this code.

SEC. 107. Section 13842 of this code is amended to read:

13842. Property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, or scientific purposes, which could qualify for a property tax exemption under Section 214 of this code, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, is exempt from the tax imposed by this part, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable or scientific purposes under the laws of this state or of the United States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of a territory or another state of the United States or of a foreign state or country, at the date of the decedent's death either of the following concurred:

(1) The territory, other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, or association organized or existing under the laws of this state;

(2) The laws of the territory, other state, foreign state, or foreign country contained a reciprocal provision under which

property transferred to a similar society, corporation, institution, or association organized or existing under the laws of another territory or state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other territory or state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, corporation, institution, or association organized or existing under the laws of another territory or state of the United States or foreign state or country.

SEC. 108. Section 15112 of said code is amended to read:

15112. "Class C donee" means any donee who is not a class A or B donee.

SEC. 109. Section 15113 of said code is repealed.

SEC. 110. Section 15205 of said code is amended to read:

15205. In the case of a transfer to a class A donee, the rates of tax are as follows:

(a) Two percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Three percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000).

(c) Four percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000).

(d) Nine percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Eleven percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Twelve percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000).

(g) Fourteen percent of the excess value over five hundred thousand dollars ($500,000).

SEC. 111. Section 15206 of said code is amended to read:

15206. In the case of a transfer to a class B donee, the rates of tax are as follows:

(a) Six percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Ten percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000).

(c) Thirteen percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000).

(d) Fifteen percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Sixteen percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Seventeen percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000).

(g) Eighteen percent of the excess value over five hundred thousand dollars ($500,000).

SEC 112 Section 15207 of said code is repealed

SEC 113. Section 15208 of said code is amended and renumbered to read:

15207. In the case of a transfer to a class C donee, the rates of tax are as follows:

(a) Ten percent of the clear market value of the property transferred up to twenty-five thousand dollars ($25,000).

(b) Fifteen percent of the excess value over twenty-five thousand dollars ($25,000) and up to fifty thousand dollars ($50,000)

(c) Eighteen percent of the excess value over fifty thousand dollars ($50,000) and up to one hundred thousand dollars ($100,000).

(d) Nineteen percent of the excess value over one hundred thousand dollars ($100,000) and up to two hundred thousand dollars ($200,000).

(e) Twenty percent of the excess value over two hundred thousand dollars ($200,000) and up to three hundred thousand dollars ($300,000).

(f) Twenty-two percent of the excess value over three hundred thousand dollars ($300,000) and up to five hundred thousand dollars ($500,000)

(g) Twenty-four percent of the excess value over five hundred thousand dollars ($500,000)

SEC 114 Section 15423 of said code is amended to read:

15423 Property of the clear market value of three hundred dollars ($300) transferred to any class C donee is exempt from the tax imposed by this part.

SEC 115. Section 15424 of said code is repealed

SEC 116 Section 17035 is added to said code, to read·

17035. The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of Sections 18805 or 18806

SEC 117 Section 17041 of said code is amended to read:

17041 (a) There shall be levied, collected, and paid for each taxable year upon the entire taxable income of every resident of this state and upon the entire taxable income of every nonresident which is derived from sources within this state, taxes in the following amounts and at the following rates upon the amount of taxable income:

Upon taxable incomes not in excess of one thousand five hundred dollars ($1,500), 1 percent of such taxable incomes

Fifteen dollars ($15) upon taxable incomes of one thousand five hundred dollars ($1,500); and upon taxable incomes in ex-

cess of one thousand five hundred dollars ($1,500), and not in excess of three thousand dollars ($3,000), 2 percent in addition of such excess

Forty-five dollars ($45) upon taxable incomes of three thousand dollars ($3,000); and upon taxable incomes in excess of three thousand dollars ($3,000), and not in excess of four thousand five hundred dollars ($4,500), 3 percent in addition of such excess.

Ninety dollars ($90) upon taxable incomes of four thousand five hundred dollars ($4,500); and upon taxable incomes in excess of four thousand five hundred dollars ($4,500), and not in excess of six thousand dollars ($6,000), 4 percent in addition of such excess.

One hundred fifty dollars ($150) upon taxable incomes of six thousand dollars ($6,000), and upon taxable incomes in excess of six thousand dollars ($6,000), and not in excess of seven thousand five hundred dollars ($7,500), 5 percent in addition of such excess

Two hundred twenty-five dollars ($225) upon taxable incomes of seven thousand five hundred dollars ($7,500); and upon taxable incomes in excess of seven thousand five hundred dollars ($7,500), and not in excess of nine thousand dollars ($9,000), 6 percent in addition of such excess.

Three hundred fifteen dollars ($315) upon taxable incomes of nine thousand dollars ($9,000), and upon taxable incomes in excess of nine thousand dollars ($9,000), and not in excess of ten thousand five hundred dollars ($10,500), 7 percent in addition of such excess.

Four hundred twenty dollars ($420) upon taxable incomes of ten thousand five hundred dollars ($10,500); and upon taxable incomes in excess of ten thousand five hundred dollars ($10,500), and not in excess of twelve thousand dollars ($12,000), 8 percent in addition of such excess.

Five hundred forty dollars ($540) upon taxable incomes of twelve thousand dollars ($12,000); and upon taxable incomes in excess of twelve thousand dollars ($12,000), and not in excess of thirteen thousand five hundred dollars ($13,500), 9 percent in addition of such excess.

Six hundred seventy-five dollars ($675) upon taxable incomes of thirteen thousand five hundred dollars ($13,500); and upon taxable incomes in excess of thirteen thousand five hundred dollars ($13,500), and not in excess of fifteen thousand dollars ($15,000), 10 percent in addition of such excess.

Eight hundred twenty-five dollars ($825) upon taxable incomes of fifteen thousand dollars ($15,000), and upon taxable incomes in excess of fifteen thousand dollars ($15,000), and not in excess of sixteen thousand five hundred dollars ($16,500), 11 percent in addition of such excess

Nine hundred ninety dollars ($990) upon taxable incomes of sixteen thousand five hundred dollars ($16,500); and upon taxable incomes in excess of sixteen thousand five hundred

dollars ($16,500), and not in excess of eighteen thousand dollars ($18,000), 12 percent in addition of such excess.

One thousand one hundred seventy dollars ($1,170) upon taxable incomes of eighteen thousand dollars ($18,000); and upon taxable incomes in excess of eighteen thousand dollars ($18,000), and not in excess of nineteen thousand five hundred dollars ($19,500), 13 percent in addition of such excess.

One thousand three hundred sixty-five dollars ($1,365) upon taxable incomes of nineteen thousand five hundred dollars ($19,500); and upon taxable incomes in excess of nineteen thousand five hundred dollars ($19,500), and not in excess of twenty-one thousand dollars ($21,000), 14 percent in addition of such excess.

One thousand five hundred seventy-five dollars ($1,575) upon taxable incomes of twenty-one thousand dollars ($21,000); and upon taxable incomes in excess of twenty-one thousand dollars ($21,000), 15 percent in addition of such excess.

(b) The tax imposed by this part is not a surtax.

SEC 118. Section 17048 of said code is amended to read:

17048. (a) In lieu of the tax imposed under Section 17041 of this part, there shall be levied, collected and paid for each taxable year upon the taxable income of each individual whose adjusted gross income is less than ten thousand dollars ($10,000), and who has elected to pay the tax imposed by this section for such year, the tax shown in the following table:

If the adjusted gross income is at least—	But less than	The tax shall be— (1) Single person (not head of household), and (2) married person making separate return	Head of household (unmarried person)	Joint return of married person
$0	$1,600	$0	$0	$0
1,600	1,700	1.50	0	0
1,700	1,800	2.50	0	0
1,800	1,900	3.50	0	0
1,900	2,000	4.50	0	0
2,000	2,100	5.50	0	0
2,100	2,200	6.50	0	0
2,200	2,300	7.50	0	0
2,300	2,400	8.50	0	0
2,400	2,500	9.50	0	0
2,500	2,600	10.50	0	0
2,600	2,700	11.50	0	0
2,700	2,800	12.50	0	0
2,800	2,900	13.50	0	0
2,900	3,000	14.50	0	0
3,000	3,100	16.00	0	0
3,100	3,200	18 00	1.50	1.50
3,200	3,300	20.00	2.50	2.50
3,300	3,400	22.00	3.50	3 50
3,400	3,500	24.00	4.50	4.50

If the adjusted gross income is at least—	But less than	The tax shall be— (1) Single person (not head of household), and (2) married person making separate return	Head of household (unmarried person)	Joint return of married person
3,500	3,600	26.00	5 50	5 50
3,600	3,700	28.00	6 50	6.50
3,700	3,800	30.00	7.50	7.50
3,800	3,900	32 00	8.50	8.50
3,900	4,000	34.00	9 50	9.50
4,000	4,100	36 00	10 50	10.50
4,100	4,200	38 00	11.50	11.50
4,200	4,300	40 00	12 50	12.50
4,300	4,400	42 00	13.50	13 50
4,400	4,500	44.00	14.50	14 50
4,500	4,600	46 50	16.00	15.50
4,600	4,700	49 50	18 00	16 50
4,700	4,800	52.50	20.00	17.50
4,800	4.900	55 50	22 00	18.50
4,900	5,000	58.50	24.00	19 50
5,000	5,100	61 50	26.00	20.50
5,100	5,200	64 50	28 00	21 50
5,200	5,300	67.50	30.00	22 50
5,300	5,400	70.50	32 00	23.50
5,400	5,500	73 50	34.00	24.50
5,500	5,600	76 50	36 00	25 50
5,600	5,700	79 50	38.00	26.50
5,700	5,800	82 50	40.00	27.50
5,800	5,900	85 50	42 00	28.50
5,900	6,000	88 50	44.00	29.50
6,000	6,100	92 00	46.50	31.00
6,100	6,200	96 00	49.50	33.00
6,200	6,300	100 00	52 50	35.00
6,300	6,400	104.00	55.50	37.00
6,400	6,500	108.00	58.50	39.00
6,500	6,600	112 00	61.50	41.00
6,600	6,700	116 00	64 50	43.00
6,700	6,800	120.00	67.50	45.00
6,800	6,900	124 00	70.50	47.00
6,900	7,000	128.00	73.50	49.00
7,000	7,100	132 00	76.50	51.00
7,100	7,200	136.00	79.50	53.00
7,200	7,300	140 00	82 50	55.00
7,300	7,400	144 00	85.50	57.00
7,400	7,500	148 00	88 50	59 00
7,500	7,600	152 50	92.00	61 00
7,600	7,700	157.50	96.00	63.00
7,700	7,800	162 50	100.00	65.00
7,800	7,900	167 50	104 00	67.00
7,900	8,000	172.50	108.00	69.00

If the adjusted gross income is at least—	But less than	The tax shall be— (1) Single person (not head of household), and (2) married person making separate return	Head of household (unmarried person)	Joint return of married person
8,000	8,100	177 50	112 00	71 00
8,100	8,200	182 50	116 00	73 00
8,200	8,300	187 50	120 00	75 00
8,300	8,400	192 50	124.00	77 00
8,400	8,500	197 50	128 00	79 00
8,500	8,600	202 50	132 00	81 00
8,600	8,700	207 50	136 00	83 00
8,700	8,800	212 50	140 00	85 00
8,800	8,900	217 50	144 00	87 00
8,900	9,000	222 50	148 00	89 00
9,000	9,100	228 00	152 50	91 50
9,100	9,200	234 00	157 50	94 50
9,200	9,300	240 00	162 50	97 50
9,300	9,400	246 00	167 50	100 50
9,400	9,500	252 00	172 50	103.50
9,500	9,600	258 00	177 50	106 50
9,600	9,700	264 00	182 50	109 50
9,700	9,800	270 00	187 50	112 50
9,800	9,900	276 00	192 50	115 50
9,900	10,000	282 00	197 50	118.50

In applying the above schedule to determine the tax of a taxpayer with one or more dependents, there shall be subtracted from his adjusted gross income six hundred dollars ($600) for each such dependent

(b) For the purpose of this section—

(1) "Married person" means a married person on the last day of the taxable year unless his spouse dies during the taxable year, in which case such determination shall be made as of the date of the spouse's death.

(2) "Dependent" means a person who is a dependent under Section 17182

(3) An individual not a head of a household or a married person shall be treated as a single person.

SEC 118.5. Section 17053 of said code is amended to read:

17053 (a) In the case of an individual who has received earned income before the beginning of the taxable year, there shall be allowed as a credit against the tax imposed by this part for the taxable year an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in Section 17041 for the first ~~two~~ *one* thousand five hundred dollars ~~($2,500)~~ *($1,500)* of taxable income, but the credit provided by this section shall not exceed the tax imposed under this part reduced by the credit allowable under Chapter 12 (relating to taxes paid to other states).

(b) For purposes of subsection (a), an individual shall be considered to have received earned income if he has received, in each of any 10 calendar years before the taxable year, earned income (as defined in subsection (g)) in excess of six hundred dollars ($600). A widow or widower whose spouse had received such earned income shall be considered to have received earned income.

(c) For purposes of subsection (a), the term "retirement income" means—

(1) In the case of an individual who has attained the age of 65 before the close of the taxable year, income from—

(A) Pensions and annuities,

(B) Interest,

(C) Rents, and

(D) Dividends, or

(2) In the case of an individual who has not attained the age of 65 before the close of the taxable year, income from pensions and annuities under a public retirement system (as defined in subsection (f)), to the extent included in gross income without reference to this section, but only to the extent such income does not represent compensation for personal services rendered during the taxable year.

(d) For purposes of subsection (a), the amount of retirement income shall not exceed one thousand five hundred twenty-four dollars ($1,524) less—

(1) In the case of any individual, any amount received by the individual as a pension or annuity—

(A) Under Title II of the Social Security Act,

(B) Under the Railroad Retirement Acts of 1935 or 1937, or

(C) Otherwise excluded from gross income, and

(2) In the case of any individual who has not attained the age of 72 before the close of the taxable year—

(A) If such individual has not attained age 62 before the close of the taxable year, any amount of earned income (as defined in subsection (g)) in excess of nine hundred dollars ($900) received by the individual in the taxable year—

(B) If such individual has attained age 62 before the close of the taxable year, the sum of (i) one-half the amount of earned income received by such individual in the taxable year in excess of one thousand two hundred dollars ($1,200) but not in excess of one thousand seven hundred dollars ($1,700), and (ii) the amount of earned income so received in excess of one thousand seven hundred dollars ($1,700).

(e) Subsection (d)(1) shall not apply to any amount excluded from gross income under Sections 17101 to 17112, inclusive (relating to annuities), 17131 to 17135, inclusive (relating to life insurance proceeds), 17138 (relating to compensation for injuries or sickness), 17139 (relating to amounts received under accident and health plans), 17503 to 17507, inclusive, (relating to taxability of beneficiary of employees' trust), or 17511 and 17512 (relating to taxation of employee annuities).

(f) For purposes of subsection (c)(2), the term "public retirement system" means a pension, annuity, retirement, or similar fund or system established by the United States, a state, a territory, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(g) For purposes of subsections (b) and (d)(2), the term "earned income" has the meaning assigned to such term in Section 911(b) of the Internal Revenue Code of 1954, except that such term does not include any amount received as a pension or annuity.

(h) (1) A husband and wife who make a joint return for the taxable year and both of whom have attained the age of 65 before the close of the taxable year may elect (at such time and in such manner as the Franchise Tax Board by regulations prescribes) to determine the amount of the credit allowed by subsection (a) by applying the provisions of paragraph (2).

(2) If an election is made under paragraph (1) for the taxable year, for purposes of subsection (a)—

(A) If either spouse is an individual who has received earned income within the meaning of subsection (b), the other spouse shall be considered to be an individual who has received earned income within the meaning of such subsection; and

(B) Subsection (d) shall be considered as providing that the amount of the combined retirement income of both spouses shall not exceed two thousand two hundred eighty-six dollars ($2,286), less the sum of the amounts specified in paragraphs (1) and (2) of subsection (d) for each spouse.

(i) No credit shall be allowed under subsection (a) to any nonresident

SEC. 119. Section 17101 of said code is amended to read:

17101. Except as otherwise provided in this part, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

SEC. 120. Section 17102 of said code is amended to read:

17102. Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This section shall not apply to any amount to which Section 17104(a) (relating to certain employee annuities) applies.

SEC. 121. Section 17103 of said code is amended to read:

17103 (a) For purposes of Section 17102, the investment in the contract as of the annuity starting date is—

(1) The aggregate amount of premiums or other consideration paid for the contract, minus

(2) The aggregate amount received under the contract before such date, to the extent that such amount was excludable

from gross income under this part or prior income tax laws.

(b) If—

(1) The expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(2) The contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(3) Such payments are in the nature of a refund of the consideration paid;

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under subdivision (a). Such value shall be computed in accordance with actuarial tables prescribed by the Franchise Tax Board. For purposes of this section and of Section 17105(b)(1), the term "refund of the consideration paid" includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under subdivision (a)(1)

(c) For purposes of Section 17102, the expected return under the contract shall be determined as follows:

(1) If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Franchise Tax Board.

(2) If subdivision (c)(1) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(d) For purposes of Sections 17101 to 17112, inclusive, the annuity starting date in the case of any contract is the first day of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1965, then the annuity starting date is January 1, 1965

SEC. 122. Section 17104 of said code is amended to read:

17104. (a) Where—

(1) Part of the consideration for an annuity, endowment, or life insurance contract is contributed by the employer, and

(2) During the three-year period beginning on or after January 1, 1965, the aggregate amount receivable by the employee under the terms of the contract is equal to or greater than the consideration for the contract contributed by the employee, then all amounts received as an annuity under the contract shall be excluded from gross income until there has been so excluded (under this article and prior income tax laws) an amount equal to the consideration for the contract contributed

by the employee. Thereafter all amounts so received under the contract shall be included in gross income.

(b) For purposes of subdivision (a), if the employee died before any amount was received as an annuity under the contract, the words "receivable by the employee" shall be read as "receivable by a beneficiary of the employee."

(c) For certain rules for determining whether amounts contributed by employer are includible in the gross income of the employee, see Article 1 (commencing at Section 17501) of Chapter 5 of this part, relating to pension, profit-sharing, and stock bonus plans, etc.

SEC. 123. Section 17105 of said code is amended to read:

17105. (a) If any amount is received under an annuity, endowment, or life insurance contract, if such amount is not received as an annuity, and if no other provision of this part applies, then such amount—

(1) If received on or after the annuity starting date, shall be included in gross income; or

(2) If subdivision (a)(1) does not apply, shall be included in gross income, but only to the extent that it (when added to amounts previously received under the contract which were excludable from gross income under this part or prior income tax laws) exceeds the aggregate premiums or other consideration paid.

For purposes of Sections 17101 to 17112, inclusive, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(b) For purposes of subdivision (a), the following shall be treated as amounts not received as ~~an annuity~~ *an annuity*:

(1) Any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract; and

(2) Any amount received under a contract on its surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of subdivision (a)(2) shall apply (and the rule of subdivision (a)(1)) shall not apply).

SEC 124. Section 17106 of said code is amended to read:

Except as provided in subdivision (c), in computing, for purposes of Section 17103(a)(1), the aggregate amount of premiums or other consideration paid for the contract for purposes of Section 17104(a), the consideration for the contract contributed by the employee, and for purposes of Section 17105(a)(2), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(a) Such amounts were includable in the gross income of the employee under this part or prior income tax laws; or

(b) If such amounts had been paid directly to the employee at the time they were contributed, they would not have been

includable in the gross income of the employee under the law at the time of such contribution.

(c) For purposes of Sections 17101, 17104, 17105, 17131 and 17132, where amounts are received by a surviving annuitant under a joint and survivor's annuity contract, the basis of such survivor annuitant's interest is the consideration paid for such annuity reduced by any amounts excluded from gross income under this part.

SEC. 125. Section 17107 of said code is amended to read:

17107. Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(a) For purposes of Sections 17101 to 17112, inclusive, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(b) For purposes of Section 17103(a)(2), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this part or prior income tax laws; and

(c) The annuity starting date is January 1, 1965, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

For purposes of this section, the term "transferee" includes a beneficiary of, or the estate of, the transferee

For the purposes of this section and Sections 18044 and 18045(f), the survivor's interest in a joint and survivor's annuity shall be considered to be property "acquired by bequest, devise or inheritance" from the decedent if the death of the decedent was after December 31, 1952 and ~~before December 31, 1965~~ *before January 1, 1965*, and if the value of any part of such interest was required to be included in determining the value of the decedent's interest taxable under the California Inheritance Tax Law

SEC. 126. Section 17108 of said code is amended to read:

17108 If—

(a) A contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(b) The option is exercised within 60 days after the day on which such lump sum first became payable; and

(c) Part or all of such lump sum would (but for this section) be includable in gross income by reason of Section 17105(a).

then, for purposes of this part, no part of such lump sum shall be considered as includable in gross income at the time such lump sum first became payable.

SEC. 127. Section 17109 is added to said code, to read:

17109. Where an annuitant died after December 31, 1952, and before January 1, 1965, and the basis of a surviving annuitant's interest in the joint and survivor annuity contract was determinable under Section 17746 5 of the Personal Income Tax Law of 1954 or Section 18045(f) then—

(a) Section 17104 shall not apply with respect to such contract;

(b) For purposes of Sections 17101 to 17112, inclusive, the aggregate amount of premiums or other consideration paid for the contract is the basis of the contract determined under such Section 17746 5 of the Personal Income Tax Law of 1954 or Section 18045(f);

(c) For purposes of Section 17103(a)(2), there shall be taken into account only the aggregate amount received by the surviving annuitant under the contract before the annuity starting date, to the extent that such amount was excludable from gross income under this part or prior income tax laws; and

(d) The annuity starting date is January 1, 1965, or the first day of the first period for which the surviving annuitant received an amount under the contract as an annuity, whichever is the later.

SEC. 128. Section 17110 is added to said code, to read:

17110. Notwithstanding any other provision of Sections 17101 to 17112, inclusive, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

SEC. 129. Section 17111 is added to said code, to read:

17111. (a) Sections 17101 to 17112, inclusive, shall not apply to so much of any payment under an annuity, endowment, or life insurance contract (or any interest therein) as is includable in the gross income of the wife under Sections 17081, 17082 and 17083 or Sections 17819 and 17820 (relating to income of an estate or trust in case of divorce, etc.).

(b) For definition of "wife," see Section 17021.

SEC. 130. Section 17112 is added to said code, to read:

17112. For purposes of Sections 17101 to 17112, inclusive, the term "endowment contract" includes a face-amount certificate, as defined in Section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-2), issued after December 31, 1964.

SEC. 131. Section 17132 of said code is amended to read:

17132. (a) Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

(b) (1) The aggregate amounts excludable under subdivision (a) with respect to the death of any employee shall not exceed five thousand dollars ($5,000).

(2) Subdivision (a) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living

This subdivision shall not apply to total distributions payable (as defined in Section 17503(c)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—

(i) By a stock bonus, pension, or profit-sharing trust described in Section 17501 which is exempt from tax under Section 17631,

(ii) Under an annuity contract under a plan which meets the requirements of paragraphs (c), (d), (e), and (f) of Section 17501, or

(iii) Under an annuity contract purchased by an employer which is an organization referred to in Section 23701d of this code but only with respect to that portion of such total distributions payable which bears the same ratio to the amount of such total distributions payable which is (without regard to this section) includable in gross income, as the amounts contributed by the employer for such annuity contract which are excludable from gross income under Section 17512 bear to the total amounts contributed by the employer for such annuity contract.

(3) Subdivision (a) shall not apply to amounts received by a surviving annuitant under a joint and survivor's annuity contract after the first day of the first period for which an amount was received as an annuity by the employee (or would have been received if the employee had lived)

(4) In the case of any amount to which Section 17101 to 17112, inclusive (relating to annuities, etc.), apply, the amount which is excludable under subdivision (a) (as modified by this subdivision) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under subdivision (a) shall, for purposes of Sections 17101 to 17112, inclusive, be treated as additional consideration paid by the employee.

SEC. 131.5. Section 17155 is added to said code, to read:

17155. Gross income does not include any reimbursement made to a claimant under Chapter 25 of this part.

SEC. 132. Section 17181 of the said code is amended to read:

17181. (a) In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) In the case of a single individual a personal exemption of one thousand ($1,000), or, in the case of a head of a household or a married individual, a personal exemption of two thousand dollars ($2,000). A husband and wife shall receive

but one personal exemption of two thousand dollars ($2,000). If the husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(c) (1) An additional exemption of six hundred dollars ($600) for the taxpayer if he is blind at the close of his taxable year.

(2) An additional exemption of six hundred dollars ($600) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) For the purposes of this section an individual is blind only if either: his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(d) An exemption of six hundred dollars ($600) for each dependent (as defined in Section 17182).

SEC. 133. Section 17181.5 is added to said code, to read:

17181.5 (a) A nonresident or an individual who either becomes or ceases to be a resident of this state during the taxable year shall apportion the deductions provided for by this article, and the standard deduction allowed by Section 17171, in the proportion to which the adjusted gross income from California bears to adjusted gross income from all sources. The allowance, after the apportionment required by this section, shall in no case be less than ~~one thousand dollars ($1,000)~~ *five hundred dollars ($500)*.

(b) An individual subject to the provisions of this section shall be permitted to apportion the minimum standard deduction provided for by Section 17171, regardless of the amount of his adjusted gross income, but shall not be permitted to determine his tax under the tax table prescribed by Section 17048.

SEC. 134. Section 17182 of said code is amended to read:

17182. For the purposes of this part, the term "dependents" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under Section 17184 as received from the taxpayer):

(a) A son or daughter of the taxpayer, or a descendant of either;

(b) A stepson or stepdaughter of the taxpayer;

(c) A brother, sister, stepbrother, or stepsister of the taxpayer;

(d) The father or mother of the taxpayer or an ancestor of either;

(e) A stepfather or stepmother of the taxpayer;

(f) A son or daughter of a brother or sister of the taxpayer;

(g) A brother or sister of the father or mother of the taxpayer;

(h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(i) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to Section 17186, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(j) An individual who—

(i) Is a descendant of a brother or sister of the father or mother of the taxpayer,

(ii) For the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(iii) Before receiving such institutional care, was a member of the same household as the taxpayer.

SEC. 135. Section 17183 of said code is amended to read:

17183. For purposes of Section 17182—

(a) The terms "brother" and "sister" include a brother or sister by the halfblood.

(b) In determining whether any of the relationships specified in Section 17182 or subsection (a) of this section exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual) shall be treated as a child of such individual by blood.

(c) The term "dependent" does not include any individual who is not a citizen of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer—

(i) Born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the armed forces of the United States at the time the child was born to him or legally adopted by him, or

(ii) Legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen of the United States.

(d) A payment to a wife which is includable in the gross income of the wife under Section 17081 or 17819 shall not be treated as a payment by her husband for the support of any dependent.

(e) If the taxpayer would not occupy the status of head of a household except by reason of there being one or more dependents for whom he would be entitled to claim a deduction under Section 17181, the deduction shall be disallowed with respect to one of the dependents.

(f) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

SEC. 136. Section 17202 of the said code is amended to read:

17202. (a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) Traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any delegate and resident commissioner) within the state, congressional district, territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of three thousand dollars ($3,000).

(b) No deduction shall be allowed under subdivision (a) for any contribution or gift which would be allowable as a deduction under Sections 17214 to 17216.5, inclusive, were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such sections.

(c) No deduction shall be allowed under subdivision (a) for any expenses paid or incurred if the payment thereof is made, directly or indirectly, to an official or employee of a foreign country, and if the making of the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee

(d) For special rule relating to expenses in connection with subdividing real property for sale, see Sections 18197 and 18198.

SEC 136 5. Section 17204 of said code is amended to read:

17204 (a) Except as otherwise provided in this section and Section 17205, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes;

(2) State and local personal property taxes;

(3) State and local general sales taxes;

(4) State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels; and

In addition, there shall be allowed as a deduction state and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in Section 17252 (relating to expenses for production of income).

(b) For purposes of this section and Section 17205—

(1) The term "personal property tax" means an ad valorem tax which is imposed on an annual basis in respect of personal property, and for the purpose of allowing a deduction under this part, includes, but is not limited to, fees imposed as an excise tax under Section 10751 of the Revenue and Taxation Code.

(2) (A) The term "general sales tax" means a tax imposed at one rate in respect of the sale at retail of a broad range of classes of items.

(B) In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) The fact that the tax does not apply in respect of some or all of such items shall not be taken into account in determining whether the tax applies in respect of a broad range of classes of items, and

(ii) The fact that the rate of tax applicable in respect of some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(C) Except in the case of a lower rate of tax applicable in respect of an item described in subparagraph (B), no deduction shall be allowed under this section for any general sales tax imposed in respect of an item at a rate other than the general rate of tax.

(D) A compensating use tax in respect of an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term "compensating use tax" means, in respect of any item, a tax which—

(i) Is imposed on the use, storage, or consumption of such item, and

(ii) Is complementary to a general sales tax, but only if a deduction is allowable under subsection (a)(3) in respect of items sold at retail in the taxing jurisdiction which are similar to such item.

(3) A state or local tax includes only a tax imposed by a state, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(4) A foreign tax includes only a tax imposed by the authority of a foreign country.

(5) If the amount of any general sales tax or of any tax on the sale of gasoline, diesel fuel, or other motor fuel is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(6) The deduction for real property taxes shall be allowed without reduction for any reimbursement provided for by Chapter 25.

(c) No deduction shall be allowed for the following taxes:

(1) Taxes paid or accrued to the state under this part;

(2) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of:

(A) The government of the United States or any foreign country;

(B) Any state, territory, county, city and county, school district, municipality, or other taxing subdivision of any state or territory;

(C) Taxes imposed by authority of the government of the United States includes—

(i) The tax imposed by Section 3101 of the Internal Revenue Code of 1954 (relating to the tax on employee under the Federal Insurance Contributions Act);

(ii) The taxes imposed by Sections 3201 and 3211 of the Internal Revenue Code of 1954 (relating to the taxes on railroad employees and railroad employee representatives); and

(iii) The tax withheld on wages under Section 3402 of the Internal Revenue Code of 1954

(3) Federal war profits and excess profits taxes

(4) Estate, inheritance, legacy, succession, and gift taxes;

(5) Taxes computed as an addition to, or as a percentage of, taxes which are not deductible under this section;

(6) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this does not exclude the allowance as a deduction of so much of the taxes assessed against local benefits as is properly allocable to maintenance or interest charges.

(7) Taxes on real property, to the extent that Section 17205 requires such taxes to be treated as imposed on another taxpayer

SEC 137. Section 17204.7 is added to said code, to read:

17204.7. The tax deducted and withheld under Sections 18805 and 18806 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under this part.

SEC 138. Section 17214 of said code is amended to read:

17214 There shall be allowed as a deduction any charitable contribution (as defined in Section 17216) payment of which is made within the taxable year A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board

SEC. 139. Section 17215 of said code is amended to read:

17215 In the case of an individual the deduction provided in Section 17214 shall be limited as provided in subdivisions (a), (b), (c), and (d).

(a) Any charitable contribution to—

(1) A church or a convention or association of churches;

(2) An educational organization referred to in Section 23736(b) of this code;

(3) A hospital referred to in Section 23736(e) or to a medical research organization (referred to in Section 23736(e)) directly engaged in the continuous active conduct of medical research in conjunction with a hospital, if during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made;

(4) An organization referred to in Section 23736(c) organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in paragraph (2) and which is an agency or instrumentality of a state or political subdivision thereof, or which is owned or operated by a state or political subdivision thereof or by an agency or instrumentality of one or more states or political subdivisions,

(5) A governmental unit referred to in Section 17216(a), or

(6) An organization referred to in Section 17216(b) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 23701) from a governmental unit referred to in Section 17216(a) or from direct or indirect contributions from the general public, shall be allowed to the extent that the aggregate of such contributions does not exceed 10 percent of the taxpayer's adjusted gross income,

(b) The total deductions under Section 17214 for any taxable year shall not exceed 20 percent of the taxpayer's adjusted gross income For purposes of this subdivision, the deduction under Section 17214 shall be computed without regard to any deduction allowed under subdivision (a) but shall take into account any charitable contributions described in subdivision (a) which are in excess of the amount allowable as a deduction under subdivision (a).

(c) The limitation in subdivision (b) shall not apply if, in the taxable year and in 8 of the 10 preceding taxable years, the amount of the charitable contributions, plus the amount of income tax paid during such year in respect of such year or preceding taxable years, exceeds 90 percent of the taxpayer's taxable income for such year, computed without regard to—

(1) This section, and

(2) Section 17181 (allowance of deductions for personal exemptions)

In lieu of the amount of income tax paid during any such year, there may be substituted for that year the amount of income tax paid in respect of such year, provided that any amount so included in the year in respect of which payment was made shall not be included in any other year.

(d) No deduction shall be allowed under Section 17214 for the value of any interest in property transferred after December 31, 1964, to a trust if—

(1) The grantor has a reversionary interest in the corpus or income of that portion of the trust with respect to which a deduction would (but for this subdivision) be allowable under Section 17214; and

(2) At the time of the transfer the value of such reversionary interest exceeds 5 percent of the value of the property constituting such portion of the trust.

For purposes of this subdivision, a power exercisable by the grantor or a nonadverse party (within the meaning of Section 17782(b)), or both, to revest in the grantor property or income therefrom shall be treated as a reversionary interest.

SEC. 140. Section 17216.1 of said code is amended and renumbered to read:

17215.1. If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section and Sections 17214 through 17216 as the amount of the charitable contribution—

(A) Shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) In the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year For purposes of this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

SEC 141. Section 17215.2 is added to said code, to read:

17215.2. If the amount of charitable contributions described in Section 17215(a), payment of which is made within a taxable year (hereinafter in this subdivision referred to as the "contribution year") beginning after December 31, 1964, exceeds 30 percent of the taxpayer's adjusted gross income for such year, such excess shall be treated as a charitable contribution described in Section 17215(a) paid in each of the five succeeding taxable years in order of time, but with respect to any succeeding taxable year, only to the extent of the lesser of the two following amounts:

(a) The amount by which 30 percent of the taxpayer's adjusted gross income for each succeeding taxable year exceeds the sum of the charitable contributions described in Section 17215(a), payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this section), and the charitable contributions described in Section 17215(a), payment of which was made in taxable years (beginning after December 31, 1964) before the contribution year which are treated under this section as having been paid in such succeeding taxable year; or

(b) In the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this paragraph as a charitable contribution described in Section 17215(a) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

SEC. 142. Section 17216 of said code is amended to read:

17216 For purposes of Section 17214, the term "charitable contribution" means a contribution or gift to or for the use of—

(a) A state, a territory, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(b) A corporation, trust, or community chest, fund, or foundation—

(1) Created or organized in the United States or in any possession thereof, or under the law of the United States, any state or territory, the District of Columbia, or any possession of the United States;

(2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

(c) A post or organization of war veterans, or any auxiliary unit or society of, or trust or foundation for, any such post or organization—

(1) Organized in the United States or any of its possessions, and

(2) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) A domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(e) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

(f) For purposes of Sections 17214 to 17216, inclusive, the term "charitable contribution" also means an amount treated under Section 17216.1 as paid for the use of an organization described in subdivision (b), (c), or (d).

SEC 143. Section 17216 1 is added to said code, to read:

17216 1. (a) Subject to the limitations provided by paragraph (b), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in Sections 17181 to 17185, inclusive, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(1) A member of the taxpayer's household under a written agreement between the taxpayer and an organization described in subdivisions (b), (c), or (d) of Section 17216 to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(2) A full-time pupil or student in the 12th or any lower grade at an educational institution (as defined in Section 17150(c)) located in the United States, shall be treated as amounts paid for the use of the organization

(b) (1) Subdivision (a) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in subdivision (a) For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month

(2) Subdivision (a) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in subdivision (a).

(c) For purposes of subdivision (a), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (a) through (h) of Section 17182.

(d) No deduction shall be allowed under Section 17214 for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in subdivision (a) (1) except as provided in this section.

SEC 144. Section 17216 2 is amended to read·

17216 2. The amount of any charitable contribution taken into account under Sections 17214 to 17216 5 shall be reduced by the amount which would have been treated as gain to which

Section 18211(a) or 18212 applies if the property contributed had been sold at its fair market value (determined at the time of such contribution).

SEC. 145. Section 17216.3 is added to said code, to read:

17216.3. For purposes of Sections 17214 to 17216.5, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to, the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in Section 17288. For purposes of the preceding sentence, a fixture which is intended to be ~~served~~ *severed* from the real property shall be treated as tangible personal property.

SEC. 146. Section 17216.4 is added to said code, to read:

17216.4. (a) If the taxable year begins after December 31, 1964—

(1) Section 17215(c) shall apply only if the taxpayer so elects (at such time and in such manner as the Franchise Tax Board by regulations prescribes), and

(2) For purposes of Section 17215(c), the amount of the charitable contributions for the taxable year (and for all prior taxable years beginning after December 31, 1964) shall be determined without the application of Section 17215.2 and solely by reference to charitable contributions described in subdivision (b).

If the taxpayer elects to have Section 17215(c) apply for the taxable year, then for such taxable year Section 17214 shall apply only with respect to charitable contributions described in subdivision (b), and no amount of charitable contributions made in the taxable year or any prior taxable year may be treated under Section 17215.2 as having been made in the taxable year or in any succeeding taxable year.

(b) The charitable contributions referred to in subdivision (a) are—

(1) Any charitable contribution described in Section 17215(a);

(2) Any charitable contribution, not described in Section 17215(a), to an organization described in Section 17216(b) substantially more than half of the assets of which is devoted directly to, and substantially all of the income of which is expended directly for, the active conduct of the activities constituting the purpose or function for which it is organized and operated;

(3) Any charitable contribution, not described in Section 17215(a), to an organization described in Section 17216(b) which meets the requirements of paragraph (c) with respect to such charitable contributions; and

(4) Any charitable contribution payment of which is made after December 31, 1964.

(c) An organization shall be an organization referred to in subdivision (b)(3), with respect to any charitable contribution, only if—

(1) not later than the close of the third year after the organization's taxable year in which the contribution is received (or before such later time as the Franchise Tax Board may allow upon good cause shown by such organization), such organization expends an amount equal to at least 50 percent of such contribution for—

(A) The active conduct of the activities constituting the purpose or function for which it is organized and operated,

(B) Assets which are directly devoted to such active conduct,

(C) Contributions to organizations which are described in Section 17215(a) or in subdivision (b)(2) of this subdivision, or

(D) Any combination of the foregoing; and

(2) for the period beginning with the taxable year in which such contribution is received and ending with the taxable year in which subdivision (c)(1) is satisfied with respect to such contribution, such organization expends all of its net income (determined without regard to capital gains and losses) for the purposes described in clauses (A), (B), (C) and (D) of subdivision (c)(1).

If the taxpayer so elects (at such time and in such manner as the Franchise Tax Board by regulations prescribes) with respect to contributions made by him to any organization then, in applying subdivision (c)(2) with respect to contributions made by him to such organization during his taxable year for which such election is made and during all his subsequent taxable years, amounts expended by the organization after the close of any of its taxable years and on or before the 15th day of the third month following the close of such taxable year shall be treated as expended during such taxable year.

(d) An organization shall be an organization referred to in subdivisions (b)(2) and (b)(3) only if at no time during the period consisting of the organization's taxable year in which the contribution is received, its three preceding taxable years, and its three succeeding taxable years, such organization—

(1) lends any part of its income or corpus to,

(2) pays compensation (other than reasonable compensation for personal services actually rendered) to,

(3) makes any of its services available on a preferential basis to,

(4) purchases more than a minimal amount of securities or other property from, or

(5) sells more than a minimal amount of securities or other property to,

the donor of such contribution, any member of his family (as defined in Section 17289(c)), any employee of the donor, any officer or employee of a corporation in which he owns

(directly or indirectly) 50 percent or more in value of the outstanding stock, or any partner or employee of a partnership in which he owns (directly or indirectly) 50 percent or more of the capital interest or profits interest. This subdivision shall apply to transactions occurring after December 31, 1964.

SEC. 147. Section 17216.5 is added to said code, to read:

17216.5. No gift or bequest for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), otherwise allowable as a deduction under Sections 17214, 17216 and 17734 shall be allowed as a deduction if made to an organization described in Section 23701d of this code which, in the taxable year of the organization in which the gift or bequest is made, is not exempt under Section 23701 by reason of Sections 23736.2 and 23736.3. With respect to any taxable year of the organization for which the organization is not exempt pursuant to Section 23736.2 by reason of having engaged in a prohibited transaction with the purpose of diverting the corpus or income of such organization from its exempt purposes and such transaction involved a substantial part of such corpus or income, and which taxable year is the same, or prior to, the taxable year of the organization in which such transaction occurred, such deduction shall be disallowed the donor only if such donor or any member of his family (as defined in Section 17289(d) was a party to such prohibited transaction.

SEC. 148. Section 17255 of said code is amended to read:

17255. Except as provided in subdivision (c) the deduction under Sections 17253 and 17254 shall not exceed five thousand dollars ($5,000), multiplied by the number of exemptions allowed for the taxable year as a deduction under Section 17181 (other than the exemption allowed by reason of subdivision (c), relating to additional exemption for blindness), provided that a husband and wife or head of a household receiving one personal exemption of two thousand dollars ($2,000) shall, for the purposes of this section, be considered as having received two exemptions; except that the maximum deduction under Sections 17253 to 17258, inclusive, shall be—

(a) Ten thousand dollars ($10,000), if the taxpayer is single and not the head of a household (as defined in Section 17042) or is married but files a separate return; or

(b) Twenty thousand dollars ($20,000) if the taxpayer files a joint return with his spouse under Section 18402, or is the head of a household (as defined in Section 17042).

(c) (1) Subject to the provisions of paragraph (2), the deduction under this section shall not exceed—

(A) Twenty thousand dollars ($20,000), if the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, or if his spouse has attained the age of 65 before the close of the taxable year and is disabled and if his spouse does not make a separate return for the taxable year, or

(B) Forty thousand dollars ($40,000), if both the taxpayer and his spouse have attained the age 65 before the close of the taxable year and are disabled and if the taxpayer files a joint return with his spouse under Section 18402.

(2) For purposes of paragraph (1)—

(A) Amounts paid by the taxpayer during the taxable year for medical care, other than amounts paid for—

(i) His medical care, if he has attained the age of 65 before the close of the taxable year and is disabled, or

(ii) The medical care of his spouse, if his spouse has attained the age of 65 before the close of the taxable year and is disabled, shall be taken into account only to the extent that such amounts do not exceed the maximum limitation provided in subdivisions (a) and (b) which would (but for the provisions of this subdivision) apply to the taxpayer for the taxable year;

(B) If the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, amounts paid by him during the taxable year for his medical care shall be taken into account only to the extent that such amounts do not exceed twenty thousand dollars ($20,000); and

(C) If the spouse of the taxpayer has attained the age of 65 before the close of the taxable year and is disabled, amounts paid by the taxpayer during the taxable year for the medical care of his spouse shall be taken into account only to the extent that such amounts do not exceed twenty thousand dollars ($20,000).

(3) For purposes of paragraph (1), an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Franchise Tax Board may require

(4) For purposes of paragraph (1), the determination as to whether the taxpayer or his spouse is disabled shall be made as of the close of the taxable year of the taxpayer, except that if his spouse dies during such taxable year such determination shall be made with respect to his spouse as of the time of such death

SEC 149. Section 17260 of said code is amended to read:

17260. (a) The maximum amount allowable for both medical expenses and adoption expenses in the case of a husband and wife who file a joint return and claim deductions for both medical expenses and adoption expenses, or the head of a household who claims deductions for both medical expenses and adoption expenses is that provided in Section 17255, except that subdivision (c) of Section 17255 shall not apply

(b) The maximum amount allowable for both medical expenses and adoption expenses in the case of a taxpayer who files a separate return and claims deductions for both medical

expenses and adoption expenses is that provided in Section 17255, except that subdivision (c) of Section 17255 shall not apply

SEC 150. Section 17501 of said code is amended to read:

17501. A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this article—

(a) If contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under Section 17516(b) (relating to deduction for contributions to profit-sharing and stock bonus plan), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(b) If under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(c) If the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this section which benefits either—

(1) Seventy percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding five years, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than five months in any calendar year, or

(2) Such employees as qualify under a classification set up by the employer and found by the Franchise Tax Board not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees; and

(d) If the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(e) A classification shall not be considered discriminatory within the meaning of subsection (c)(2) or (d) merely because it excludes employees the whole of whose remuneration constitutes "wages" under Section 3121(a)(1) of the Internal Revenue Code (relating to the Federal Insurance Contribu-

tions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by Section 3121(a)(1) of the Internal Revenue Code, or of the California Unemployment Insurance Act differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under state or federal law.

(f) A plan shall be considered as meeting the requirements of subsection (c) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements

(g) A trust or plan which meets the requirements of Public Law 87-792, 76 U S Stats 809, approved October 10, 1962 (The Self-Employed Individuals Tax Retirement Bill of 1962), but no deduction shall be allowed for contributions made to such plan or trust by the employer, or employee, or both.

SEC. 151. Section 17503 of said code is amended to read:

17503 (a) Except as provided in subdivision (b), the amount actually distributed or made available to any distributee by any employees' trust described in Section 17501 which is exempt from tax under Section 17631 shall be taxable to him, in the year in which so distributed or made available, under Sections 17101 to 17112, inclusive, (relating to annuities) The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Franchise Tax Board.

(b) In the case of an employees' trust described in Section 17501, which is exempt from tax under Section 17631, if the total distributions payable with respect to any employee are paid to the distributee within one taxable year of the distributee on account of the employee's death or other separation from the service, or on account of the death of the employee after his separation from the service, the amount of such distribution, to the extent exceeding the amounts contributed by the employee (determined by applying Section 17106), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includable in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than six months.

Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the

total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations prescribed by the Franchise Tax Board.

(c) For purposes of this section—

(1) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(2) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subdivisions (e) and (f) of Section 17535) of the employer corporation

(3) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service, or on account of his death after separation from the service.

SEC. 152. Section 17504 of said code is amended to read:

17504. Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under Section 17631 shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under Sections 17101 to 17112, inclusive (relating to annuities).

SEC 153 Section 17506 of said code is amended to read:

17506. Notwithstanding Section 17504 or any other provision of this part, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

(a) Such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(b) Such contribution is made to the trustee pursuant to a written agreement entered into prior to September 1, 1943, between the employer and the trustee, or between the employer and the employee; and

(c) Under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in Sections 17101 to 17112, inclusive (relating to annuities). This section shall have no application with respect to amounts contributed to a trust after June 1, 1951, if the trust on such

date was exempt under Sections 18156 to 18167, inclusive, of the Personal Income Tax Law of 1954 For purposes of this section, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in subsection (b) prior to September 1, 1943.

SEC 154 Section 17511 of said code is amended to read·

17511 Except as provided in subdivision (a), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of Section 17515 (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in Sections 17101 to 17112, inclusive (relating to annuities).

(a) If—

(1) An annuity contract is purchased by an employer for an employee under a plan which meets the requirements of Section 17501(c), (d), (e), and (f);

(2) Such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(3) The total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee,

then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying Section 17106), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includable in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than six months

(b) For purposes of subdivision (a), the term "total amounts" means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service.

SEC 155. Section 17512 of said code is amended to read:

17512 (a) (1) If an annuity contract is purchased—

(A) (i) For an employee by an employer described in Section 23701d of this code which is exempt from tax under Section 23701 of this code, or

(ii) For an employee (other than an employee described in clause (A)(i), who performs services for an educational institution (as defined in Section 17150(c)), by an employer which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing;

(B) Such annuity contract is not subject to Section 17511, and

(C) The employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year The employee shall include in his gross income the amounts received under such contract for the year received as provided in Sections 17101 to 17112, inclusive (relating to annuities)

(2) For purposes of this section, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(A) The amount determined by multiplying (i) 20 percent of his includable compensation, by (ii) the number of years of service, over

(B) The aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year.

(3) For purposes of this section, the term "includable compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in subdivision (a)(1)(A), and which is includable in gross income (computed without regard to Section 17139(d)) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this section applies.

(4) In determining the number of years of service for purposes of this section, there shall be included—

(A) One year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) A fraction of a year (determined in accordance with regulations prescribed by the Franchise Tax Board) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) If for any taxable year of the employee this section applies to two or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) For purposes of this section and Section 17106 (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subdivision) includable in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(b) If an annuity contract purchased by an employer for an employee is not subject to Section 17511 and the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the gross income of the employee in the year in which the amount is contributed. The employee shall include in his gross income the amounts received under such contract for the year received as provided in Sections 17101 to 17112, inclusive, (relating to annuities)

(c) Notwithstanding the first sentence of subdivision (b), if rights of an employee under an annuity contract purchased by an employer which is exempt from tax under Section 17631 or if subject to tax under this part would be exempt under Section 17631 or by an employer which claims the special deduction allowed by Sections 24404 through 24406 of this code change from forfeitable to nonforfeitable rights, the value of such contract on the date of such change (to the extent attributable to amounts contributed by the employer after December 31, 1960) shall, except as provided in subdivision (a), be included in the gross income of the employee in the year of such change.

SEC. 156. Section 17734 of said code is amended to read:

17734. In the case of an estate or trust (other than a trust meeting the specifications of Article 2) there shall be allowed as a deduction in computing its taxable income (in lieu of the deductions allowed by Sections 17214 and 17303, relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid or permanently set aside for a purpose specified in Sections 17216 and 17303, or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit.

For this purpose, to the extent that such amount consists of gain from the sale or exchange of capital assets held for

more than six months, proper adjustment of the deduction otherwise allowable under this section shall be made for any deduction allowable to the estate or trust under Section 18151 (relating to deduction for excess of capital gains over capital losses).

In the case of a trust, the deduction allowed by this section shall be subject to Sections 17811 to 17818, inclusive (relating to unrelated business income and prohibited transaction).

SEC. 157. Section 17783 of said code is amended to read:

17783. (a) The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom if, as of the inception of that portion of the trust, the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust.

(b) Subsection (a) shall not apply to the extent that the income of a portion of a trust in which the grantor has a reversionary interest is, under the terms of the trust, irrevocably payable for a period of at least two years (commencing with the date of the transfer) to a designated beneficiary, which beneficiary is of a type described in Section 17215(a)(1), (2), or (3).

(c) The grantor shall not be treated under subsection (a) as the owner of any portion of a trust where his reversionary interest in such portion is not to take effect in possession or enjoyment until the death of the person or persons to whom the income therefrom is payable.

(d) Any postponement of, the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includable in the absence of such postponement.

SEC. 158. Section 17785 of said code is amended to read:

17785. Section 17784 shall not apply to the following powers regardless of by whom held:

(a) A power described in Section 17791 to the extent that the grantor would not be subject to tax under that section.

(b) A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the expiration of a period such that a grantor would not be treated as the owner under Section 17783 if the power were a reversionary interest; but the grantor may be treated as the owner after the expiration of the period unless the power is relinquished.

(c) A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or

a nonadverse party, or both, without the approval or consent of any adverse party.

(d) A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in Section 17216 (relating to definition of charitable contributions)

(e) A power to distribute corpus either—

(1) To or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(2) To or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for afterborn or afteradopted children.

(f) A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable—

(1) To the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(2) On termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for afterborn or afteradopted children.

(g) A power exercisable only during—

(1) The existence of a legal disability of any current income beneficiary; or

(2) The period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for afterborn or afteradopted children.

(h) A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

SEC 159. Section 17812 of said code is amended to read:

17812. The amount otherwise allowable under Section 17734 as a deduction shall not exceed 20 percent of the taxable income of the trust (computed without the benefit of Section 17734 but with the benefit of Section 17215(a)) if the trust has engaged in a prohibited transaction as defined in Section 17813.

SEC 160. Section 17818 of said code is amended to read:

17818. If the amounts permanently set aside, or to be used exclusively for the charitable and other purposes described in Section 17734 during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year—

(a) Are unreasonable in amount or duration in order to carry out such purposes of the trust;

(b) Are used to a substantial degree for purposes other than those prescribed in Section 17734; or

(c) Are invested in such a manner as to jeopardize the interests of the religious, charitable, scientific, etc., beneficiaries;

the amount otherwise allowable under Section 17734 as a deduction shall be limited to the amount actually paid out during the taxable year and shall not exceed 20 percent of the taxable income of the trust (computed without the benefit of Section 17734 but with the benefit of Section 17215(a)). Paragraph (a) shall not apply to income attributable to property of a decedent dying before January 1, 1951, which is transferred under his will to a trust created by such will In the case of a trust created by the will of a decedent dying on or after January 1, 1951, if income is required to be accumulated pursuant to the mandatory terms of the will creating the trust, paragraph (a) shall apply only to income accumulated during a taxable year of the trust beginning more than 21 years after the date of death of the last life in being designated in the trust instrument

SEC 161 Section 17838 is added to said code, to read:

17838 (a) For purposes of computing the deduction under Section 17836(a), amounts received by a surviving annuitant—

(1) As an annuity under a joint and survivor annuity contract where the decedent annuitant died after December

31, 1964, and after the annuity starting date (as defined in Section 17103(d)); and

(2) During the surviving annuitant's life expectancy period;

shall, to the extent included in gross income under Sections 17101 to 17112, inclusive, be considered as amounts included in gross income under Sections 17831 to 17834, inclusive.

(b) In determining the net value for inheritance tax purposes under Section 17837(b) for purposes of this section, the value for inheritance tax purposes of the items described in subdivision (a) shall be computed—

(1) By determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under Sections 17101 to 17112, inclusive, during the surviving annuitant's life expectancy period, and

(2) By multiplying the figure so obtained by the ratio which the value of the annuity for inheritance tax purposes bears to the value of the annuity at the date of the death of the deceased.

(c) For purposes of this section—

(1) The term "life expectancy period" means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this section, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Franchise Tax Board.

(2) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Franchise Tax Board

SEC 162 Section 17852 of said code is amended to read:

17852. In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(a) Gains and losses from sales or exchanges of capital assets held for not more than six months;

(b) Gains and losses from sales or exchanges of capital assets held for more than six months;

(c) Gains and losses from sales or exchanges of property described in Section 18181 and 18182 (relating to certain property used in a trade or business and involuntary conversions);

(d) Charitable contributions (as defined in Section 17216);

(e) Political contributions (as defined in Section 17234);

(f) Taxes, described in Section 18006, paid to another state on such income;

(g) Other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Franchise Tax Board; and

(h) Taxable income or loss, exclusive of items requiring separate computation under other subsections of this section.

SEC. 163. Section 18044 of said code is amended to read:

18044. Except as otherwise provided in this article, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the same as it would be in the hands of the decedent or the last preceding owner by whom it was not acquired by bequest, devise, or inheritance, except that if such basis (adjusted for the period before the date it was acquired from a decedent as provided in Sections 18052 and 18053) is greater than the fair market value of the property at the time it was acquired from a decedent, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the decedent or the last preceding owner are unknown to the heir or legatee, the Franchise Tax Board shall, if possible, obtain such facts from the estate of the decedent or the last preceding owner or any other person cognizant thereof. If the Franchise Tax Board finds it impossible to obtain such facts, the basis in the hands of such decedent or last preceding owner shall be the fair market value of such property as found by the Franchise Tax Board as of the date or approximate date at which, according to the best information that the Franchise Tax Board is able to obtain, such property was acquired by such decedent or last preceding owner.

SEC. 164 Section 18045. of said code is amended to read:

18045. For purposes of Section 18044, the following property shall be considered to have been acquired from or to have passed from the decedent:

(a) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(b) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(c) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(d) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will.

SEC. 165. Section 18046 of said code is amended to read:

18046. If the property was acquired from a decedent before January 1, 1966, the basis shall be the fair market value of such property at the time of its acquisition.

SEC. 166. Section 18053 of said code is amended to read:

18053. Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in Section 18052 shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the decedent, transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases. The term "substituted basis" as used in this section means a basis determined under any provision of this chapter and Chapters 4 (relating to corporate distributions and adjustments), 10 (relating to partners and partnerships), and 14 (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(a) By reference to the basis in the hands of a decedent, transferor, donor, or grantor; or

(b) By reference to other property held at any time by the person for whom the basis is to be determined.

SEC. 167. Section 18057 is added to said code, to read:

18057. In the case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero.

SEC. 168. Section 18401 of said code is amended to read:

18401. Every individual taxable under this part shall make a return to the Franchise Tax Board, stating specifically the items of his gross income and the deductions and credits allowed by this part, if he has for the taxable year—

(a) An adjusted gross income of over one thousand five hundred dollars ($1,500), if single;

(b) An adjusted gross income of over three thousand dollars ($3,000), if married; or

(c) A gross income of over five thousand dollars ($5,000), regardless of the amount of adjusted gross income.

SEC 169. Section 18402 of said code is amended to read:

18402. If a husband and wife have for the taxable year an aggregate adjusted gross income of over three thousand dollars ($3,000), or an aggregate gross income of over five thousand dollars ($5,000)—

(a) Each shall make such a return, or

(b) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income, as provided in Section 17045 No joint return shall be made if husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under Section 17553.

(c) In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if (1) no return for the taxable year has been made by the decedent, (2) no executor or administrator has been appointed, and (3) no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

SEC 170. Section 18403 of said code is amended to read

18403. If the taxpayer is unable to make his own return (including the return required by Section 18412), the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of the taxpayer.

SEC 171 Section 18405 of said code is amended to read.

18405 Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, for any of the following taxpayers for whom he acts, stating specifically the items of gross income of the taxpayer and the deductions and credits allowed under this part.

(a) Every individual having an adjusted gross income for the taxable year of over one thousand five hundred dollars ($1,500), if single

(b) Every individual having an adjusted gross income for the taxable year of over three thousand dollars ($3,000), if married

(c) Every individual having a gross income for the taxable year of over five thousand dollars ($5,000), regardless of the amount of his net income.

(d) Every estate the net income of which for the taxable year is over one thousand dollars ($1,000)

(e) Every trust the net income of which for the taxable year is over one hundred dollars ($100)

(f) Every estate or trust the gross income of which for the taxable year is over five thousand dollars ($5,000), regardless of the amount of the net income

(g) Every decedent, for the year in which death occurred, and for prior years, if returns for such years should have been

filed but have not been filed by the decedent, under such rules and regulations as the Franchise Tax Board may prescribe.

SEC 172. Section 18405.5 is added to said code, to read:

18405.5. A nonresident or an individual who either becomes or ceases to be a resident of this state during the taxable year shall be required to file a return, regardless of the amount of his adjusted gross income, if he is required to pay any tax imposed by this part after his adjusted gross income has been apportioned as provided by Section 17181 5.

SEC 173. Section 18410 6 of said code is amended to read:

18410 6 For the purposes of Sections 18586 to 18589, inclusive (relating to period of limitations upon assessment and collection), and for the purposes of Section 18681 (relating to delinquent returns), a joint return made under Section 18410 shall be deemed to have been filed:

(a) Where both spouses filed separate returns prior to making the joint return, on the date the last separate return was filed, (but not ~~earlier that~~ *earlier than* the last date prescribed by this part for filing the return of either spouse).

(b) Where one spouse filed a separate return prior to the making of the joint return, and the other spouse had one thousand five hundred dollars ($1,500) or less of adjusted gross income and five thousand dollars ($5,000) or less of gross income for such taxable year, on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return)

(c) Where only one spouse filed a separate return prior to the making of a joint return and the other spouse had an adjusted gross income of more than one thousand five hundred dollars ($1,500) or a gross income of more than five thousand dollars ($5,000) for such taxable year, on the date of the filing of such joint return

SEC. 174 Section 18412 is added to said code, to read:

18412. (a) Every individual shall make a declaration of his estimated tax for the taxable year if—

(1) The gross income for the taxable year can reasonably be expected to exceed—

(A) Five thousand dollars ($5,000), in the case of—

(i) A single individual other than a head of a household (as defined in Section 17042);

(ii) A married individual not entitled under subsection (b) to file a joint declaration with his spouse; or

(iii) A married individual entitled under subsection (b) to file a joint declaration with his spouse, but only if the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed ten thousand dollars ($10,000); or

(B) Ten thousand dollars ($10,000), in the case of a head of a household (as defined in Section 17042); or

(2) The gross income can reasonably be expected to include more than two thousand dollars ($2,000) from sources other than wages (as defined in Section 18807).

Notwithstanding the provisions of this subsection, no declaration is required under this part if the estimated tax (as defined in subsection (c)), other than the tax withheld under Sections 18805 and 18806, can reasonably be expected to be less than forty dollars ($40).

(b) In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if a husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(c) For purposes of this part, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the amount of the income tax imposed by this part for the taxable year, minus the amount which the individual estimates as the sum of any credits against tax provided by Section 17053 (relating to the retirement income credit), Section 18551.1 (relating to tax withheld on wages), and Chapter 12 (commencing with Section 18001) (relating to taxes paid to other states).

(d) The declaration shall contain such pertinent information as the Franchise Tax Board may by forms or regulations prescribe.

(e) An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Franchise Tax Board.

(f) If on or before January 31 (or February 15, in the case of an individual referred to in Section 18435(b), relating to income from farming or fishing) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Franchise Tax Board—

(1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration, and

(2) If the tax shown on the return (reduced by the sum of the credits against tax provided by Section 17053 (relating to the retirement income credit) and Chapter 12 (commencing with Section 18001) (relating to taxes paid to other states) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (e) to be filed on or before January 15

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall

be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

(g) An individual with a taxable year of less than 12 months shall make a declaration in accordance with regulations described by the Franchise Tax Board.

(h) The provisions of this section shall not apply to an estate or trust

(i) This section shall be applicable only with respect to taxable years beginning after December 31, 1965

SEC 175. Section 18431 of said code is amended to read·

18431 Except as otherwise provided by the Franchise Tax Board, any return, declaration, statement, or other document required to be made under any provision of this part or regulations shall contain, or be verified by, a written declaration that it is made under the penalties of perjury Such returns, and all other returns, declarations, statements, or other documents or copies thereof, required by this part, shall be in such form as the Franchise Tax Board may from time to time prescribe, and shall be filed with the Franchise Tax Board The Franchise Tax Board shall prepare blank forms for the returns, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement, or other document required

SEC 176 Section 18433 of said code is amended to read·

18433. The Franchise Tax Board, whenever in its judgment good cause exists, and under such rules and regulations as it shall prescribe, may grant a reasonable extension of time for filing any return, declaration, statement, or other document, or for payment of the tax, disclosed by the return, due or to become due within the period of the extension Except in the case of taxpayers who are abroad, no such extension shall be for more than six months

SEC 177. Section 18434 of said code is amended to read:

18434. (a) In the case of a taxpayer who is serving as a member of the armed forces of the United States or any auxiliary branch thereof, or the merchant marine, beyond the boundaries of the United States, the Franchise Tax Board shall automatically grant, without application being made therefor, an extension of time, free from interest and penalties, for filing the return (except income tax withheld at source), for payment of the tax (except income tax withheld at source), for taking any of the steps required by Sections 18590, 18593, 19053, 19057 and 19058 of the Revenue and Taxation Code, until 180 days after his return to the United States.

(b) "United States," as used in subsection (a) means the 50 states of the United States and the District of Columbia.

SEC 178 Section 18435 is added to said code, to read·

18435 (a) Declarations of estimated tax required by Section 18412 from individuals regarded as neither farmers nor

fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of Section 18412 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(b) Declarations of estimated tax required by Section 18412 from individuals whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.

(c) An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board

(e) In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto

SEC 179 Article 5 (commencing with Section 18491) is added to Chapter 17 of Part 10 of Division 2 of said code, to read:

Article 5. Returns of Withheld Tax on Wages

18491 (a) Every employer required to deduct and withhold any tax under Section 18806 shall, for the calendar quarter beginning January 1, 1966, and for each calendar quarter thereafter (whether or not wages are paid therein), on or before the last day of the month following the close of each such quarter, file a withholding return in a form prescribed by the Franchise Tax Board and pay over to the Franchise Tax Board the taxes so required to be deducted and withheld

(b) The Franchise Tax Board may, if it believes such action necessary, require any employer to make the return required by this section and pay to it the tax deducted and withheld at any time, or from time to time.

(c) The Franchise Tax Board may in its discretion, under regulations prescribed by it, when satisfied that amounts withheld will be adequately safeguarded, permit an employer to

file a withholding return and pay over taxes deducted and withheld for other than quarterly periods.

18492. (a) Whenever any person who is required to collect, account for, and pay over any tax imposed by this part—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) Is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) Any person who is required to collect, account for, and pay over any tax imposed by this part, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by this part, which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank located within the limits of this state, and shall keep the amount of such taxes in such account until payment over to the Franchise Tax Board. Any such account shall be designated as a special fund in trust for the Franchise Tax Board, payable to the Franchise Tax Board by such person as trustee.

(c) Whenever the Franchise Tax Board is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by this part, will henceforth be complied with, it may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.

18493. The Franchise Tax Board is authorized to require such information with respect to persons subject to the taxes imposed by Article 1 (commencing with Section 18801) of Chapter 19 (relating to tax withheld on wages) as is necessary or helpful in securing proper identification of such persons.

SEC 180. Section 18551.1 of said code is amended to read:

18551.1. (a) (1) For purposes of this part, the amount withheld under Sections 18805 and 18806 during any calendar year shall be allowed to the recipient of the income as a credit against the tax imposed by this part.

(2) The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year, except that in the case of amounts deducted and withheld under Section 18805 the amount withheld shall be allowed as a credit for the taxable year with respect to which such amount was withheld. In the case of amounts withheld under Section 18806, if more than one taxable year begins in

a calendar year, such amounts shall be allowed as a credit for the last taxable year so beginning

(b) For purposes of Section 19053, any tax actually deducted and withheld during any calendar year under Sections 18805 and 18806 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit under subsection (a). For purposes of Section 19053, any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Section 18401 for such taxable year.

(c) Notwithstanding subsection (b), for purposes of Section 19053 with respect to any tax deducted and withheld under Sections 18805 and 18806—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to an amount paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) If any overpayment of income tax is, in accordance with Section 19051.1, claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

SEC. 181. Section 18556 is added to said code, to read:

18556. (a) The amount of estimated tax (as defined in Section 18412(c)) with respect to which a declaration is required under Section 18412 shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by Section 18435 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by Section 18435 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments.

The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year, and is not required by Section 18435(a) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in Section 18435 (including cases in which an extension of time for filing the declaration has been granted under Section 18433), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been filed within the time prescribed in Section 18435(a), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) If an individual referred to in Section 18435(b) (relating to income from farming or fishing) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration

(c) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board

(e) In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto

(f) At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment

SEC 182 Section 18557 is added to said code, to read·

18557. Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by this part for the taxable year.

SEC 183. Section 18588 of said code is amended to read.

18588 (a) For the purposes of Sections 18586, 18586 1 and 18587, a return of tax imposed by this part, except tax imposed by Article 1 (commencing with Section 18801) of Chapter 19 (relating to withholding at the source), filed before the last day prescribed by law for filing, shall be considered as filed on that day. For purposes of Section 19053, payment of

any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day.

(b) For purposes of this section, if a return of tax imposed by Article 1 (commencing with Section 18801) of Chapter 19 (relating to withholding at the source), for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year

SEC 184 Section 18591 1 is added to said code, to read.

18591 1 (a) For purposes of this part, the term "deficiency" means the amount by which the tax imposed by this part exceeds the excess of—

(1) The sum of

(A) The amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in subsection (b) (2), made

(b) For purposes of this section—

(1) The tax imposed by this part and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, and without regard to the credit under Section 18551 1.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this part was less than the excess of the amount specified in subsection (a) (1) over the rebates previously made.

SEC 185 Section 18602 is added to said code, to read·

18602 (a) If on any return or claim for refund of taxes imposed under this part there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Franchise Tax Board in the same manner as is provided by Section 18601 in the case of a mathematical error appearing upon the return

(b) No unpaid amount of estimated tax under Section 18556 shall be assessed

SEC 186 Section 18681 of said code is amended to read:

18681 (a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each 30 days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed 25 percent of the tax.

The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

(b) For purposes of subsection (a), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return

(c) This section shall not apply to any failure to file a declaration of estimated tax required by Section 18412.

SEC. 187. Section 18681.1 is added to said code, to read:

18681.1. In the case of each failure—

(a) To file a statement of the aggregate amount of payments to another person required by Section 18802 (relating to information at source), Section 18803 (relating to payments of corporate dividends), Section 18823(c) (relating to information returns with respect to income tax withheld), or Section 18802.1 (relating to payments of patronage dividends),

(b) To make a return required by Section 18802.7 (relating to reporting information in connection with certain options) with respect to a transfer of stock or a transfer of legal title to stock, or

(c) To make a return required by Section 18802.5 (relating to reporting payment of wages in the form of group-term life insurance) with respect to group-term life insurance on the life of an employee.

On the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Franchise Tax Board and in the same manner as tax), by the person failing to file a statement referred to in paragraph (a) or failing to make a return referred to in paragraph (b) or (c), one dollar ($1) for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed one thousand dollars ($1,000).

SEC. 188. Section 18681.5 is added to said code, to read:

18681.5. If an employer fails to file the annual report of compensation paid and taxes withheld, required under Section 18823(d) on or before 30 days after notice has been given to the employer of his failure, unless such failure is due to reasonable cause, the employer, in addition to any other penalties imposed by this part, shall be subjected to a penalty of twenty-five dollars ($25) for each month of delinquency, but the total penalty shall not exceed five hundred dollars ($500). The penalty shall be assessed and collected in the same manner as the tax.

SEC. 189 Section 18682 of said code is amended to read:

18682. If any taxpayer, upon notice and demand by the Franchise Tax Board, fails or refuses to make and file a return

(other than a declaration of estimated tax required under Section 18412) required by this part, the Franchise Tax Board, notwithstanding the provisions of Section 18648, may estimate the net income and compute and levy the amounts of the tax due from any available information. In such case 25 percent of the tax, in addition to the penalty added under Section 18681, shall be added to the tax and shall be due and payable upon notice and demand from the Franchise Tax Board.

SEC. 190. Section 18685.1 is added to said code, to read:

18685.1 (a) In case of failure by any person required by this part or by regulation of the Franchise Tax Board under this part to deposit with the Franchise Tax Board on the date prescribed therefor any amount of tax imposed by this part or in a bank located within the limits of this state when required by Section 18492 to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 1 percent of the amount of the underpayment if the failure is for not more than one month, with an additional 1 percent for each additional month or fraction thereof during which such failure continues, not exceeding 6 percent in the aggregate For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or beyond the date the tax is paid, whichever is earlier.

SEC. 191. Section 18685 2 is added to said code, to read:

18685.2 Any person required to collect, truthfully account for, and pay over any tax imposed by this part who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under Sections 18684 or 18685 for any offense to which this section is applicable.

SEC. 192. Section 18685 3 is added to said code, to read:

18685.3. In addition to the criminal penalty provided by Section 19410, any person required under the provisions of Section 18823 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under Section 18823, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this chapter of fifty dollars ($50), which shall be assessed and collected in the same manner as the tax.

SEC. 193 Section 18685.4 is added to said code, to read:

18685.4. (a) In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent ($66\frac{2}{3}$ percent in the case of individuals referred to in Section 18435(b) relating to income from farming or fishing) of the tax shown on the return for the taxable year, or, if no return was filed, 70 percent ($66\frac{2}{3}$ percent in the case of individuals referred to in Section 18435(b), relating to income from farming or fishing) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

(d) Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser—

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(A) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under Section 17181 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 70 percent (66⅔ percent in the case of individuals referred to in Section 18435(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid.

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under Section 18551.1 (relating to tax withheld at source on wages), ~~and~~

(2) The amount of the credit allowed under Section 18551.1 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under Section 18556) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld:, *and*

(3) For purposes of subparagraphs (d) (1) (A) and (B), the term "preceding taxable year" shall mean the last preceding taxable year for which a tax was imposed upon all of an individual's taxable income

(f) For purposes of subsections (b) and (d), the term "tax" means the tax imposed by this part reduced by the credits against tax allowed by Section 17053 (relating to retirement income) and Chapter 12 (commencing with Section 18001) (relating to taxes paid other states), other than the credit against tax provided by Section 18551 1 (relating to tax withheld on wages).

(g) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board.

(h) This section shall apply only with respect to taxable years beginning after December 31, 1965.

SEC. 194. Section 18685.5 is added to the said code, to read:

18685.5. (a) If any person who is required by regulations prescribed under Section 18934—

(1) To include his identifying number in any return, statement, or other document.

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of five dollars ($5) for each such failure, unless it is shown that such failure is due to reasonable cause

(b) Article 2 (commencing with Section 18581) of Chapter 18 (relating to deficiency procedures for income taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

SEC. 195. Section 18687 1 is added to said code, to read:

18687.1. The last date prescribed for payment by Section 18687 shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in Article 4 (commencing with Section 18641) of Chapter 18), prior to the last date otherwise prescribed for such payment.

SEC. 196. Section 18696 is added to said code, to read:

18696. Sections 18686 to 18695, inclusive, shall not apply to any failure to pay estimated tax required by Section 18556.

SEC 197. Section 18805 of said code is amended to read:

18805. The Franchise Tax Board may, by regulation, require any person, including any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, to withhold from payments of interest (other than interest coupons payable to bearer), dividends, rent, prizes and winnings, and compensation for personal services, including bonuses, (except wages, as defined in Section 18807), an amount equal to the tax that would be imposed by this part upon such payments if they, together with all similar payments since the beginning of the calendar year, represented net income and the only net income of the payee, and to transmit the amount withheld to the Franchise Tax Board at such time as it may designate.

SEC. 197 5 Section 18805 5 is added to said code, to read:

18805 5 Notwithstanding any provision of this law, no returns for the calendar year 1965 will be required under Sections 18802, 18802 1, 18803 or 18805, and withholding

agents may, in accordance with regulations of the Franchise Tax Board, refund to any person any tax deducted and withheld for such calendar year

SEC 198 Section 18806 is added to said code, to read:

18806 (a) Every employer making payment of any wages on or after January 1, 1966, to an employee for services performed within this state shall deduct and withhold from such wages (except as provided in subsection (f)) for each payroll period, a tax computed in such manner as to result, so far as practicable, with due regard to the exemptions allowable under Article 5 (commencing at Section 17181) of Chapter 3, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under this part resulting from the inclusion in the gross income of the employee of his wages received during such calendar year The method of determining the amount to be withheld shall be prescribed by regulations of the Franchise Tax Board.

(b) The Franchise Tax Board upon request may permit the use of accounting machines to calculate the proper amount to be deducted and withheld from such wages; provided, that such calculation produces an amount substantially equivalent to the amount of tax required to be withheld under subsection (a).

(c) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(d) The Franchise Tax Board may, under regulations prescribed by it, authorize employers to estimate the wages which will be paid to any employee in any quarter of the calendar year, to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee was quarterly.

(e) The Franchise Tax Board may provide by regulation, under such conditions and to such extent as it deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and employee agree to such additional withholding Such additional withholding shall for all purposes be considered a tax required to be deducted and withheld under this chapter.

(f) In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this

article with respect to such remuneration, provided that such employer files with the Franchise Tax Board such information with respect to such remuneration as the Franchise Tax Board may by regulation prescribe

SEC 199. Section 18807 is added to said code, to read:

18807 For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including all remuneration paid to a nonresident employee for services performed in this state and, the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(a) For active service as a member of the armed forces of the United States; or

(b) For agricultural labor (as defined in Section 3121(g) of the Internal Revenue Code of 1954); or

(c) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(d) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars ($50) or more and such service is performed by an individual who is regularly employed by such employer to perform such service For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(1) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(2) Such individual was regularly employed (as determined under subparagraph (1)) by such employer in the performance of such service during the preceding calendar quarter; or

(e) For services by a citizen or resident of the United States for a foreign government or an international organization; or

(f) For services performed by a nonresident alien individual, other than—

(1) A resident of a contiguous country who enters and leaves the United States at frequent intervals; or

(2) A resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof; or

(g) For such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Franchise Tax Board; or

(h) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(i) (1) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(2) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(j) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(k) To, or on behalf of, an employee or his beneficiary—

(1) From or to a trust described in Section 17501 which is exempt from tax under Section 17631 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(2) Under or to an annuity plan which, at the time of such payment, meets the requirements of Section 17501(c), (d), (e) and (f), or

(l) To a master, officer or any other seaman who is a member of a crew on a vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade; or

(m) Pursuant to any provision of law other than Section 5(c) or 6(l) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such act; or

(n) In the form of group-term life insurance on the life of an employee, or

(o) To or on behalf of an employee (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under Section 17266.

SEC. 200. Section 18808 is added to said code, to read

18808. (a) For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer.

(b) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days, includ-

ing Sundays and holidays, which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1st of such year, which ever is the later In any case in which the period of time described, or the time prescribed in the preceding sentence, in respect of any wages is less than one week, the Franchise Tax Board, under regulations issued by it, may authorize an employer, in computing the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by Section 18806 for a weekly payroll period

(c) If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

SEC 201 Section 18809 is added to said code, to read:

18809 For purposes of this chapter, the term "employee" means a resident or a nonresident individual who receives remuneration for services performed within this state and includes an officer, employee, or elected official of the United States, a state, territory, or any political subdivisions thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

SEC 202 Section 18810 is added to said code, to read:

18810 (a) For purposes of this chapter, the term "employer" means any individual, corporation, association or partnership, or any agent thereof, doing business in this state, deriving income from sources within this state, or in any manner whatsoever subject to the laws of this state, the State of California or any political subdivision or agency thereof, any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state and any person, officer, employee, department or agency thereof, making payment of wages to employees for services performed within this state, except as provided in subsection (b).

(b) If the employer (as defined in subsection (a)) for whom the employee performs or performed the service does not have control of the payment of wages for such services, the term "employer" (except for purposes of Section 18807) means the person having control of the payment of such wages (as provided in Section 18824), whether or not the person having control of the payment of such wages is subject to the jurisdiction of the laws of this state.

SEC. 203 Section 18811 is added to said code, to read:

18811. (a) Unless the employee files a state withholding exemption certificate, in such form and containing such information as the Franchise Tax Board may by regulations prescribe, an employer shall use the exemption certificate filed by the employee with the employer under the income tax withholding provisions of the United States Internal Revenue Code, for determining the number of withholding exemptions to be allowed in computing the tax required to be deducted and withheld under Section 18806; however, unless the employer can determine the employee's marital status from the federal exemption certificate the exemption allowed for each dependent claimed by the employee shall be six hundred dollars ($600).

(b) No withholding exemptions shall be allowed until the employee files a new withholding exemption certificate if the Franchise Tax Board finds that the withholding exemption certificate filed under this chapter or under the Internal Revenue Code does not properly reflect the number of exemptions allowable and so advises the employer in writing

SEC. 204 Section 18812 is added to said code, to read:

18812 The number and amount of withholding exemptions allowed shall be based upon the persons claimed in a withholding exemption certificate in effect under Section 18811, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

SEC. 205. Section 18813 is added to said code, to read·

18813. (a) A new withholding exemption certificate filed under the income tax provisions of the Internal Revenue Code in cases in which a previous such certificate was in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section the term "status determination date" means January 1, and July 1 of each year

(b) If a state withholding exemption certificate is furnished the employer such certificate shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

SEC 206. Section 18814 is added to said code, to read:

18814. If a payment of wages is made to an employee by an employer—

(a) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(b) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other

period with respect to which wages are also paid to such employee by such employer, or

(c) With respect to a period beginning in one and ending in another calendar year, or

(d) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this article shall be determined in accordance with regulations prescribed by the Franchise Tax Board under which the withholding exemptions allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

SEC. 207 Section 18806 of said code is amended and renumbered to read:

18815. (a) The employer shall be liable for the payment of the tax required to be deducted and withheld under Section 18806, and shall not be liable to any person for the amount of such payment. Every employer or person required to deduct and withhold any tax is hereby made liable for such tax, to the extent provided by this section, and, insofar as they are not inconsistent with the provisions of this section, all the provisions of this part relating to penalties, interest, assessment and collection shall apply to persons or employers subject to the provisions of this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under Sections 18805 and 18806 shall be considered the tax of the employer or person Any employer or person who fails to withhold from any payments any amount required to be withheld under Section 18805 is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause

(b) Whenever any employer or person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California The amount of tax required to be deducted and withheld under Sections 18805 or 18806 shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by this part.

SEC. 208. Section 18816 is added to said code, to read:

18816 If the employer, in violation of the provisions of this article, fails to deduct and withhold the tax under this article, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this section shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

SEC. 209. Section 18807 of said code is amended and renumbered to read:

18817. The Franchise Tax Board may by notice, served personally or by registered mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, city organized under a freeholder's charter, or political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to a person or employer who has failed to withhold and transmit amounts due pursuant to Sections 18815 and 18818, to withhold, from such credits or other personal property or other things of value, the amount of any tax, interest or penalties due from the taxpayer or the amount of any liability incurred by such employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at such times as it may designate.

SEC 210. Section 18808 of said code is amended and renumbered to read

18818. Any employer or person failing to withhold the amount due from any taxpayer and to transmit the same to the Franchise Tax Board after service of a notice pursuant to Section 18817 is liable for such amounts.

SEC. 211 Section 18809 of said code is amended and renumbered to read.

18819. Any employer or person required to withhold and transmit any amount pursuant to this article shall comply with the requirement without resort to any legal or equitable action in a court of law or equity Any employer or person paying to the Franchise Tax Board any amount required by it to be withheld is not liable therefor to the person from whom withheld unless the amount withheld is refunded to the withholding agent

SEC 212. Section 18810 of said code is amended and renumbered to read

18820. Any taxpayer from whom a tax is collected by withholding under this article is entitled to the remedies set forth in Articles 1 and 2 of Chapter 20 of this part In the case of an overpayment of tax required to be withheld by this article, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

SEC 213. Section 18811 of said code is amended and renumbered to read.

18821. Whenever, under any provision of this article, service is authorized upon the state of any notice to withhold, unless expressly exempted from the provisions of this section, such service to be effective must, in addition to any other re-

quirements, be made on the state agency owing the obligation prior to the time such agency presents the claim for payment thereof to the State Controller.

SEC 214. Section 18822 is added to said code, to read.

18822. If the employer is the United States, or this state, or political subdivision thereof, a city organized under a freeholder's charter, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such state, city organized under a freeholder's charter, or political subdivision, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose

SEC 215 Section 18823 is added to said code, to read:

18823. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 18806, or who would have been required to deduct and withhold a tax under Section 18806 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) The name of such person;

(2) The name of the employee (and his social security or identifying number if wages as defined in Section 18807 have been paid);

(3) The total amount of wages as defined in Section 18807; and

(4) The total amount deducted and withheld as tax under Section 18806.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Franchise Tax Board may by regulations prescribe.

(c) A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Franchise Tax Board shall, when required by such regulations be filed with the Franchise Tax Board.

(d) Every employer shall make an annual return on forms prescribed by the Franchise Tax Board, summarizing the total compensation paid and the tax withheld for each employee during the calendar year, which shall be filed on or before January 31 of the year following that for which the report is made.

SEC. 216. Section 18824 is added to said code, to read:

18824. In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Franchise Tax Board, under regulations prescribed by it, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this part and as the Franchise Tax Board may specify. Except as may be otherwise prescribed by the Franchise Tax Board, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

SEC. 217 Section 18934 is added to said code, to read:

18934. (a) When required by regulations prescribed by the Franchise Tax Board:

(1) Any person or employer required under the authority of this part to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) Any person with respect to whom a return, statement, or other document is required under the authority of this part to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) Any person or employer required under the authority of this part to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person

(b) (1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust

(c) For purposes of this section, the Franchise Tax Board is authorized to require such information as may be necessary to assign an identifying number to any person.

SEC. 217.5. Section 18935 is added to said code, to read:

18935. (a) The Franchise Tax Board is authorized to provide with respect to any amount required to be shown on a form, return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by one dollar ($1).

(b) Any person making a return, statement, or other document shall be allowed under regulations prescribed by the Franchise Tax Board, to make such return, statement, or other document without regard to subsection (a).

(c) The provisions of subdivisions (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

SEC. 217.7. Section 18936 is added to said code, to read:

18936. The Franchise Tax Board may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this part, a fractional part of a dollar shall be disregarded, unless it amounts to fifty cents ($0 50) or more, in which case it shall be increased to one dollar ($1).

SEC. 218. Section 19051.1 is added to said code, to read:

19051 1. The Franchise Tax Board is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Franchise Tax Board to be an overpayment of the income tax for a preceding taxable year.

SEC. 219. Section 19052 of said code is amended to read:

19052. (a) No credit or refund exceeding one thousand dollars ($1,000) shall be allowed or made until approved by the State Board of Control.

(b) If the Franchise Tax Board determines that an amount not exceeding one thousand dollars ($1,000) was not required to be paid under this part, the Franchise Tax Board without obtaining the approval of the State Board of Control shall set forth that fact in its records. The Franchise Tax Board may credit the amount on any amounts then due and payable under this part from the taxpayers by whom the amount was paid and may refund the balance to the taxpayer or his successors, administrators, or executors.

SEC 220 Section 19053 of said code is amended to read:

19053. No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the Franchise Tax Board allows a credit or makes a refund where the overpayment does not exceed one thousand dollars ($1,000) or if the overpayment exceeds one thousand dollars ($1,000) certifies such overpayment to the State Board of Control for approval of the refunding or the crediting thereof

SEC. 221. Section 19053.1 is added to said code, to read:

19053 1. For purposes of Section 19053, a return filed within four years from the last day prescribed for filing the return, showing a credit for (a) tax withheld under Sections 18805 and 18806 or (b) estimated tax paid under Section 18556 in excess of the tax due, shall be considered a claim for refund of such excess if the amount thereof is more than one dollar ($1) No refund of tax withheld or estimated tax paid shall be allowed to an employee or taxpayer who fails to file a return for the taxable year in respect of which the tax withheld or estimated tax was allowable as a credit.

SEC. 222. Section 19053 9 of said code is amended to read:

19053 9. Notwithstanding any statute of limitations provided in this part, any overpayment due a taxpayer for any year which results from a transfer of items of income or deductions or both to or from another year for the same taxpayer, or for the same year for a related taxpayer described in Section 18691 1, shall be allowed as an offset in computing any deficiency in tax for any other year resulting from the transfer of such income or deductions or both, but no refund shall be allowed unless the Franchise Tax Board has allowed a credit or made a refund where the overpayment does not exceed one thousand dollars ($1,000), or where the overpayment exceeds one thousand dollars ($1,000), such overpayment is certified to the State Board of Control, or a claim for refund is filed within the time otherwise provided for in this part.

The offset provided herein, however, shall not be allowed after the expiration of seven years from the due date of the return on which the overpayment is determined.

SEC. 223 Section 19062.11 is added to said code, to read:

19062 11 If any overpayment of tax imposed by this part is refunded within 90 days after the return is filed, or within 90 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), whichever is later, no interest shall be allowed under Section 19062 on such overpayment.

SEC. 224. Section 19062 12, is added to said code, to read:

19062.12. If the amount allowable as a credit under Section 18551 1 (relating to credit for tax withheld at the source) exceeds the tax imposed by this part against which such credit is allowable, the amount of such excess shall be considered an overpayment.

SEC 225. Section 19062 13, is added to said code, to read:

19062 13. An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

SEC. 226 Section 19062 14 is added to said code, to read:

19062.14. Any action of the Franchise Tax Board in refunding the excess of tax withheld under Sections 18805 and 18806 or estimated tax paid under Section 18556 shall not constitute a determination of the correctness of the return of the taxpayer for purposes of this part.

SEC 227 Section 19082 1 is added to said code, to read:

19082 1. The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

SEC. 228 Section 19290 is added to said code, to read:

19290. For purposes of this article, a declaration of estimated tax shall be held and considered a return under this part

SEC. 229. Section 19409 is added to said code, to read:

19409 Any person required under this part to pay any estimated tax or tax, or required by this part or by regulations made under authority thereof to make a return (other than a return required under authority of Section 18412), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars ($10,000), or imprisoned not more than one year, or both, together with the costs of prosecution.

SEC. 230 Section 19410 is added to said code, to read:

19410. In lieu of any other penalty provided by law (except the penalty provided by Section 18685 3) any person required under the provisions of Section 18823 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under Section 18823, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than one thousand dollars ($1,000), or imprisoned not more than one year, or both.

SEC 231. Section 19411 is added to said code, to read:

19411. Any individual required to supply information to his employer under Sections 18811 to 18813, inclusive, who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under Section 18806, shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than five hundred dollars ($500), or imprisoned not more than one year, or both

SEC 232 Section 19412 is added to said code, to read:

19412 Any person who willfully delivers or discloses to the Franchise Tax Board any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than one thousand dollars ($1,000), or imprisoned not more than one year, or both

SEC 233. Section 19413 is added to said code, to read:

19413 (a) Any person who fails to comply with any provision of Section 18492(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars ($5,000), or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) This section shall not apply—

(1) To any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

(2) To any person, if such person shows that the failure to comply with the provisions of Section 18492(b) was due to circumstances beyond his control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person

SEC. 234. Chapter 25 (commencing with Section 19501) is added to Part 10 of Division 2 of said code, to read:

CHAPTER 25. SENIOR CITIZENS PROPERTY TAX REIMBURSEMENT

Article 1. Definitions

19501 This chapter may be known as the Unruh-Petris Senior Citizens Property Tax Reimbursement Act.

19502 "Income" shall mean all income of the claimant and spouse and of all other individuals living in the principal personal residence from whatever source derived. It shall include but not be limited to the sum of adjusted gross income as used for purposes of the California Personal Income Tax Law

(including items of income excluded by Article 3 of Chapter 3), plus alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act and veteran's disability payments, all interest received from the federal government or any of its instrumentalities, all interest received from the State of California or any of its political subdivisions, realized capital gains, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance proceeds, and gifts It does not include surplus food or other relief in kind supplied by a governmental agency *or reimbursements received under this chapter*

Total income shall be determined for the calendar year (or approved fiscal year ending within such calendar year) which ends within the fiscal year for which the property taxes have been assessed

19503. "Principal personal residence" means:

(a) A single family residence and the area of land on which it stands, not exceeding one acre, and any additional structures that are customary in combination with a single family residence; and

(b) Which is occupied during the calendar year by the claimant as his principal and permanent dwelling place except for temporary absences; and

(c) The real property is owned by the claimant and/or his spouse, or by the claimant and an individual related to him (as defined in Section 17182).

For purposes of this subdivision, ownership must be evidenced by a duly recorded document.

19504. "Claimant" means an individual who has filed a claim under this chapter, who is a resident of this state and at least one of the owner-occupants is 65 years of age or older prior to June 30 of the fiscal year for which a claim for reimbursement is filed pursuant to Chapter 3 of this act.

19505. When a principal personal residence is owned by two or more individuals as joint tenants or tenants-in-common and one or more such persons is not a member of the claimant's personal dwelling unit, the term "property tax" shall include only that part of the taxes levied which reflects the ownership of the claimant and his spouse.

19506. "Property tax" shall mean only those taxes paid currently which are assessed for fiscal years beginning on or after July 1, 1965 Included taxes are those amounts due on December 10th and April 10th of fiscal years ended on the succeeding June 30th

19507. "Property taxes accrued" means current property taxes (exclusive of special assessments, interest, penalties, principal payments on improvement bonds and charges for service) assessed against a claimant's principal residence by

any city, city and county, or county for any fiscal year beginning on or after July 1, 1965 When a claimant owns his principal personal residence for only part of a year the "property taxes accrued" means only taxes assessed against the residence, multiplied by the percentage of 12 months that such property was owned and occupied as the principal personal residence in such year Whenever a principal personal residence is an integral part of a larger unit such as a farm, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the principal residence is of the total value.

Article 2. Property Tax Reimbursement

19521. Every claimant who was a resident for the entire calendar year which ends in the fiscal year of the tax reimbursement claim may file with the Franchise Tax Board, pursuant to Article 3, an application for reimbursement from the state of a sum equal to a percentage of the property taxes accrued and paid by the claimant on his principal personal residence as provided in Section 19523.

19522. (a) If the amount of the reimbursement exceeds five dollars ($5) the Franchise Tax Board, pursuant to the provisions of Article 3, shall reimburse to the claimant a percentage of the property tax accrued and paid by the claimant on his principal personal residence as provided in Section 19523 Such reimbursement shall be equal to the applicable percentage of property taxes paid on the assessed value of the property up to and including five thousand dollars ($5,000). No reimbursement shall be made for property taxes paid on that portion of assessed value of a principal personal residence exceeding five thousand dollars ($5,000).

(b) For purposes of allowing reimbursement provided for by this section·

(1) Only one claim for each principal personal residence shall be allowed. If two or more individuals are able to meet the qualifications for a claimant, they may determine who the claimant shall be. If they are unable to agree, the matter shall be referred to the Franchise Tax Board and its decision shall be final.

(2) The right to file a claim shall be personal to the claimant and shall not survive his death; however, when a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to the spouse of the claimant if occupying the residence at the date of death.

19523 The amount of reimbursement shall be based on the income of all the individuals living in the principal personal residence of the claimant *Any reimbursement received under this chapter shall be deemed to be inconsequential resources.* The percentage of reimbursement for which each claimant shall be eligible shall be based on the following scale:

If the total income (as defined in this chapter) of all residents is not more than:	The percentage of *tax on* the first $5,000 of assessed value to be reimbursed is.	If the total income (as defined in this chapter) of all residents is not more than.	The percentage of *tax on* the first $5,000 of assessed value to be reimbursed is	If the total income (as defined in this chapter) of all residents is not more than:	The percentage of *tax on* the first $5,000 of assessed value to be reimbursed is.
$1,000	95%	$1,800	63%	$2,600	31%
1,025	94	1,825	62	2,625	30
1,050	93	1,850	61	2,650	29
1,075	92	1,875	60	2,675	28
1,100	91	1,900	59	2,700	27
1,125	90	1,925	58	2,725	26
1,150	89	1,950	57	2,750	25
1,175	88	1,975	56	2,775	24
1,200	87	2,000	55	2,800	23
1,225	86	2,025	54	2,825	22
1,250	85	2,050	53	2,850	21
1,275	84	2,075	52	2,875	20
1,300	83	2,100	51	2,900	19
1,325	82	2,125	50	2,925	18
1,350	81	2,150	49	2,950	17
1,375	80	2,175	48	2,975	16
1,400	79	2,200	47	3,000	15
1,425	78	2,225	46	3,025	14
1,450	77	2,250	45	3,050	13
1,475	76	2,275	44	3,075	12
1,500	75	2,300	43	3,100	11
1,525	74	2,325	42	3,125	10
1,550	73	2,350	41	3,150	9
1,575	72	2,375	40	3,175	8
1,600	71	2,400	39	3,200	7
1,625	70	2,425	38	3,225	6
1,650	69	2,450	37	3,250	5
1,675	68	2,475	36	3,275	4
1,700	67	2,500	35	3,300	3
1,725	66	2,525	34	3,325	2
1,750	65	2,550	33	3,350	1
1,775	64	2,575	32		

Article 3. Administration

19531. Each claimant applying for reimbursement under Article 2 of this chapter shall file with the Franchise Tax Board, on forms supplied by the Franchise Tax Board, annually, a statement describing the property on which the claim is based and showing at least, the assessed value of the land and the principal personal residence, the size and nature of the personal residence, and the annual income of all residents of the principal personal residence, together with a re-

ceipt from the city, city and county, and/or county to which the property tax for the principal personal residence has been paid. No interest shall be allowed on any payment made to any claimant pursuant to this chapter

19532. The statement on which the reimbursement is claimed shall be filed after May 15 but on or before July 31 succeeding the fiscal year ended June 30 for which reimbursement is claimed The state shall reimburse the claimant before November 30 of the calendar year in which the claim is filed, except that if the claim is defective, reimbursement shall be made as promptly as is practicable after the claim has been perfected. The Franchise Tax Board, whenever in its judgment good cause exists, may grant a reasonable extension of time for filing a claim. No extension or extensions shall aggregate more than six months from the due date provided for filing the claim The first claim filed shall include a proof of the claimant's age, acceptable to the Franchise Tax Board.

19533. The amount of any claim otherwise payable under this chapter may be applied by the Franchise Tax Board against any liability due from the claimant under any law administered by the Franchise Tax Board.

19535. Forms filed pursuant to this chapter shall not be under oath but shall contain, or be verified by, a written declaration that they are made under the penalties of perjury. Such forms and all other forms required by this chapter, shall require such information as the Franchise Tax Board may from time to time prescribe, and shall be filed with the Franchise Tax Board The Franchise Tax Board shall prepare blank forms for the claimant and shall distribute them throughout the state and furnish them upon application.

19536. The Franchise Tax Board shall prescribe all rules and regulations necessary for the enforcement of this chapter and may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

19537. If any claimant fails or refuses to furnish any information requested in writing by the Franchise Tax Board, pursuant to this chapter, or files a fraudulent claim, the reimbursement required by this chapter shall be disallowed.

19538. Any claim for reimbursement which is less than that claimed on the form due to a mathematical error is not a fraudulent claim. Reimbursement of any amount erroneously claimed on the form is prohibited

19539. The Franchise Tax Board may recover any refund or any portion thereof of any reimbursement which is erroneously made or allowed, together with interest at the rate of 6 percent per annum from the date the reimbursement was made or the credit allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California within two years after the refund or credit was made.

19540. Taxpayers who fraudulently claim the refund allowed under this part are subject to a fine of up to five hundred dollars ($500), or 30 days imprisonment, or both. The place of trial for any violation of this section shall be in the county of residence of the claimant at the time the offense was committed.

19541. Any person aggrieved by the denial in whole or in part of the reimbursement claimed (except when the denial is based upon late filing of claim for reimbursement or is based upon a mathematical error) may appeal such denial to the Board of Equalization, or commence an action in the Superior Court of the County of Sacramento in the County of Los Angeles or in the City and County of San Francisco against the Franchise Tax Board, subject to the limitations and provisions of Chapter 20 of Part 10.

SEC. 235. Chapter 26 (commencing with Section 19601) is added to Part 10 of Division 2 of said code, to read:

CHAPTER 26. FORGIVENESS OF 1965 TAX ON NET INCOME

19601. (a) Notwithstanding any provisions of this part, except as provided by subdivision (b), with respect to the calendar year 1965 and any fiscal year ending in 1966; (1) no taxes under this part shall be payable by or on behalf of any taxpayer, provided however, taxes shall be paid thereunder by or on behalf of (A) all trusts and estates, with respect to taxable income and net capital gain, and (B) all other taxpayers, with respect to net capital gain; and (2) returns shall be made thereunder by or on behalf of (A) all trusts and estates and (B) all other taxpayers whose net capital gain exceeds ~~two thousand dollars ($2,000) if single, or four thousand dollars ($4,000) if married.~~ *one thousand dollars ($1,000) if single, or two thousand dollars ($2,000) if married. Taxes which are payable by or on behalf of trusts and estates, and with respect to net capital gain shall be determined on the basis of the exemption and rates provided for by this act. If only the tax on net capital gain is required to be paid, only the exemptions provided for in Section 17181 of the Revenue and Taxation Code as amended by this act, shall be allowed with respect to such net capital gains.* In the event of a change in accounting period the foregoing provisions of this section (other than those applicable to trusts and estates), shall apply only to the first taxable period commencing on or after January 1, 1965. If any such taxes which are not payable under the provisions of this section have been paid, such taxes, in accordance with regulations prescribed by the Franchise Tax Board, shall be credited against any taxes imposed by this part for the immediately succeeding calendar or fiscal year, or shall be refunded, or shall be otherwise credited. Notwithstanding the fact that no tax on taxable income shall be payable (by taxpayers other than trusts and estates and on net capital gain)

the Franchise Tax Board may require such returns for such years as it shall deem necessary or appropriate.

(b) This section shall not apply in any case in which the individual is convicted of any criminal offense with respect to the tax for the taxable year 1965 or in which additions to the tax for such taxable year are applicable by reason of fraud.

(c) With respect to taxable years for which no taxes on taxable income are required to be paid under the provisions of subdivision (a), taxable income shall be deemed to have been computed in the same manner as if taxes thereon had been required to be paid for such years.

SEC. 236. Section 23040 of said code is repealed.

SEC. 237. Section 23041 of said code is amended to read:

23041. "Taxable year" means the calendar year or the fiscal year for which the tax is imposed and upon the basis of which the net income is computed. "Taxable year" means, in the case of a return made for a fractional part of a year, the period for which such return is made.

SEC. 238. Section 23042 of said code is amended to read:

23042 "Annual accounting period" means the annual period on the basis of which the taxpayer regularly computed or now computes its income and on the basis of which it kept or now keeps its books.

SEC. 239. Section 23058 of said code is amended to read:

23058. Unless otherwise specifically provided the provisions of any law effecting changes in the computation of taxes shall be applied only in the computation of taxes for taxable years beginning after December 31st of the year preceding enactment and the remaining provisions of any such law shall become effective on the date it becomes law.

SEC. 240. Section 23115 is added to said code, to read:

23115. (a) The provisions of this part in effect on December 31, 1964, shall be applicable in the computation and payment of taxes imposed under Sections 23151, 23181, 23183 and ~~23186, disclosed by returns required to be filed for income~~ *23186 on or measured by net income of* years beginning prior to January 1, 1965.

(b) Sections 23151, 23181, 23183 and 23186, Articles 4, 5 and 6 of Chapter 2 and Sections 23332, 23364a and 23504 shall not be applied in the computation of taxes on or measured by net income of years beginning on or after January 1, 1965.

(c) Notwithstanding any other provisions of this act, the provisions of Sections 23151, 23181, 23183 and 23186 shall be applicable in the computation of taxes on or measured by net income for years which began on or after January 1, 1965 and terminated by dissolution or withdrawal prior to the effective date of this act.

SEC. 241. Section 23151.5 is added to said code, to read:

23151.5. With the exception of financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay

to the state for each taxable year beginning with the calendar year 1965, and fiscal years beginning in 1965, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 6 percent upon the basis of its net income for the taxable year. In any event, each such corporation shall pay annually to the state, for the said privilege, a minimum tax of one hundred dollars ($100).

SEC. 242. Section 23153 of said code is amended to read:

23153. Every corporation not otherwise taxed under this chapter and not expressly exempted by the provisions of this part or the Constitution of this state shall pay annually to the state a tax of one hundred dollars ($100), except that the following corporations shall pay annually to the state a tax of twenty-five dollars ($25):

(a) A credit union not otherwise taxed under this chapter whose gross income is twenty thousand dollars ($20,000) or less.

(b) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950

Every such domestic corporation taxable under this section shall be subject to the said tax from the date of incorporation until the effective date of dissolution

For the purpose of paragraph (b) a corporation shall not be considered to have done business if it engages in incidental activities, other than mining

SEC. 243. Section 23153 2 is added to said code, to read·

23153 2 A corporation which incorporates or organizes under the laws of this state or qualifies to do business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25) The prepayment shall be made before the corporation files with the Secretary of State its articles of incorporation or a duly certified copy thereof.

SEC. 244. Section 23153.5 is added to said code, to read:

23153.5. If a corporation which has been subject to the provisions of Chapter 3 commences to do business in this state, its tax shall be computed as follows:

(a) Such corporation shall pay a tax under Chapter 3 for the period prior to the date on which it commences to do such business;

(b) Such corporation shall pay a tax under this chapter measured by its income for the period beginning with the date on which it commences to do such business

~~SEC. 245. Section 23181.2 is added to said code, to read·~~

~~23181.2. A tax is hereby imposed, for the calendar year 1965 and fiscal years beginning in 1965, upon every bank located within the limits of this state according to or measured by its net income, upon the basis of its net income for the~~

~~taxable year at the rate of 6 percent. With respect to the taxation of national banking associations, the state adopts the method numbered (4) authorized by the act of March 25, 1926, amending Section 5219 of the Revised Statutes of the United States, Title 12, Section 548, United States Code.~~

SEC. 246. Section 23181.5 is added to said code, to read:

23181.5. An annual tax is hereby imposed for each taxable year, beginning with the calendar year ~~1966~~ *1965* and fiscal years beginning in ~~1966~~ *1965*, upon every bank located within the limits of this state according to or measure by its net income, upon the basis of its net income for the taxable year at the rate provided under Section 23186.5. With respect to the taxation of national banking associations, the state adopts the method numbered (4) authorized by the act of March 25, 1926, amending Section 5219 of the Revised Statutes of the United States, Title 12, Section 548, United States Code.

SEC. 247. Section 23182.5 is added to said code, to read:

23182.5. The tax imposed under Section ~~23181.2 or~~ 23181.5 upon banks is in lieu of all other taxes and licenses, state, county and municipal upon the said banks except taxes upon their real property.

~~SEC. 248. Section 23183.2 is added to said code, to read:~~

~~23183.2. A tax is hereby imposed for the calendar year 1965 and fiscal years beginning in 1965 upon every financial corporation doing business within the limits of this state and taxable under the provisions of Section 16 of Article XIII of the Constitution of this state, for the privilege of exercising its corporate franchises within this state, according to or measured by its net income, upon the basis of its net income for the taxable year at the rate of 6 percent. A financial corporation shall not be allowed the offset provided by Section 23184 against the tax imposed by this section.~~

SEC. 249. Section 23183.5 is added to said code, to read:

23183.5. An annual tax is hereby imposed for each taxable year, beginning with the calendar year ~~1966~~ *1965* and fiscal years beginning in ~~1966~~ *1965*, upon every financial corporation doing business within the limits of this state and taxable under the provisions of Section 16 of Article XIII of the Constitution of this state, for the privilege of exercising its corporate franchises within this state, according to or measured by its net income, upon the basis of its net income for the taxable year at the rate provided under Section 23186.5.

SEC. 250. Section 23184 of said code is amended to read:

23184. Financial corporations may offset against the franchise tax the amounts paid during the ~~year~~ *preceding* the taxable year to this state or to any county, city, town, or other political subdivisions of the state as personal property taxes, or as license fees or excise taxes for the following privileges:

(a) Operating as personal property brokers or brokers as defined in the Personal Property Brokers Act.

(b) Operating motor vehicles under Part 5 of this division.

(c) Engaging in the business of loaning money, advancing credit, or loaning credit or arranging for the loan of money or advancing of credit or loaning of credit.

(d) Storing, using or otherwise consuming in this state of tangible personal property by savings and loan associations.

The tax on a financial corporation after the allowance of offset shall not be less than 6 percent of its net income for the taxable year nor less than the following minimum tax:

(1) In the case of financial corporations, other than credit unions whose gross income is twenty thousand dollars ($20,000) or less, one hundred dollars ($100).

(2) In the case of credit unions whose gross income is twenty thousand dollars ($20,000) or less, twenty-five dollars ($25).

SEC. 251. Section 23185a of said code is amended to read:

23185a. If a financial corporation, in paying the tax provided for in this chapter, desires to claim an offset in the computation of its tax, the rate provided in Section 23186.5 for financial corporations shall be applied to the offset and the amount so computed shall be added to and included in the tax of the financial corporation.

SEC. 252. Section 23185b of said code is amended to read:

23185b. If the taxes described in Section 23184 are at any time refunded to any taxpayer, and said taxpayer has been allowed an offset under Section 23184 for such taxes against any tax imposed under this chapter, said taxpayer shall pay a tax not subject to offset in an amount equivalent to any offset which has been allowed against any tax at any time imposed under this chapter on account of such refunded taxes. Said taxpayer shall report such taxes in its return for the taxable year in which the same are refunded. The tax herein provided for shall be due and payable in one amount on or before the due date for filing the return. The provisions of this part relating to delinquent taxes shall be applicable to such tax if it is not paid on or before its due date.

SEC. 253. Section 23186.5 is added to said code, to read:

23186.5. The rate of tax on banks and financial corporations, beginning with the calendar year ~~1966~~ *1965* and fiscal years beginning in ~~1966~~, *1965, and ending after the effective date of this act,* shall be 6 percent plus a percentage equal to the percentage of the total amount of net income, allocable to this state, of every corporation taxable under Section 23151.5, other than public utilities as defined in the Public Utilities Act, for the ~~next~~ ~~preceding~~ calendar year or fiscal years ended during such calendar year, required to be paid to this state or its political subdivisions by such corporations as personal property taxes during the ~~preceding~~ calendar year or fiscal years ended in such calendar year; provided, however, that said rate of tax shall not exceed 10 percent. The percentage of the net income of every corporation taxable under Section 23151.5, other than public utilities, as defined in the Pub-

lic Utilities Act, required to be paid to this state or its political subdivisions in personal property taxes shall be determined by ascertaining the ratio which the total amount of such personal property taxes, less 6 percent thereof, bears to the total amount of net income of such corporations allocable to California, increased by the amount of such personal property taxes; provided, however, that if any such corporation sustains a net loss allocable to California the personal property taxes required to be paid by such corporation to this state or its political subdivisions during the preceding calendar year or fiscal years ended during such calendar year shall be considered for the purpose of determining such ratio only to the extent which such personal property taxes exceed such net loss allocable to California.

SEC 253 5. Section 23186.7 is added to said code, to read:

23186 7 The rate of tax on banks and financial corporations, beginning with the calendar year 1966 and fiscal years ended in 1966 shall be 6 percent plus a percentage equal to the percentage of the total amount of net income, allocable to this state, of every corporation taxable under Section 23151.5, other than public utilities as defined in the Public Utilities Act, for the calendar year or fiscal years ended during such calendar year, required to be paid to this state or its political subdivisions by such corporations as personal property taxes during the calendar year or fiscal years ended in such calendar year; provided, however, that said rate of tax shall not exceed 10 percent. The percentage of the net income of every corporation taxable under Section 23151 5, other than public utilities, as defined in the Public Utilities Act, required to be paid to this state or its political subdivisions in personal property taxes shall be determined by ascertaining the ratio which the total amount of such personal property taxes, less 6 percent thereof, bears to the total amount of net income of such corporations allocable to California, increased by the amount of such personal property taxes; provided, however, that if any such corporation sustains a net loss allocable to California the personal property taxes required to be paid by such corporation to this state or its political subdivisions during the preceding calendar year or fiscal years ended during such calendar year shall be considered for the purpose of determining such ratio only to the extent which such personal property taxes exceed such net loss allocable to California.

SEC. 254. Article 3.5 (commencing with Section 23201) is added to Chapter 2 of Part 11 of Division 2 of said code, to read:

Article 3.5. Credit for Prepaid Tax

23201. In the case of a taxpayer whose tax for the first taxable year in which it did business in the state was computed under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), there shall be allowed as a credit against the tax imposed under Chapter 2 according to or meas-

ured by the net income of the taxable year of dissolution or withdrawal, an amount equal to the amount by which the tax paid for the first taxable year which constituted a full 12 months of doing business exceeded the minimum tax then in effect.

23202 In the case of a taxpayer, which has been a transferee in a reorganization to which Sections 23251 to 23254, inclusive (or corresponding sections of prior laws), were applicable, there shall be allowed as a credit against the tax imposed under Chapter 2 according to or measured by the net income of the taxable year of dissolution or withdrawal, an amount equal to the amount by which any tax paid by prior transferors or by the transferee as a transferor under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), for the first taxable year of the transferors which constituted a full 12 months of doing business exceeded the minimum tax then in effect The credit allowable under this section shall be in addition to any credit which may be allowable to the taxpayer under Section 23201

23203 The credits provided by Sections 23201 and 23202 shall be allowable only upon submission by the taxpayer of evidence establishing to the satisfaction of the Franchise Tax Board the amount of the tax paid pursuant to Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), and with respect to which the credit is claimed

Should the credits allowable to a taxpayer under Sections 23201 and 23202 exceed the amount of tax due from the taxpayer under Chapter 2 for the taxable year of dissolution or withdrawal, the excess of the credits over the tax shall not be deemed an overpayment which is subject to refund under the provisions of Chapter 22.

23204 No credit shall be allowed or made after four years from the last day prescribed for filing the return for the taxable year of dissolution or withdrawal, or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period a claim therefor is filed by the taxpayer.

23205 Notwithstanding the provisions of Sections 23201 and 23202, no credit shall be allowed to any corporation that discontinued business in any prior year and did not dissolve or withdraw from the state, but resumed doing business in any succeeding taxable year beginning or or after January 1, 1965, if it did not pay a tax measured by the net income of either the year of cessation of business or the preceding calendar or fiscal year.

SEC 255 Section 23301 of said code is amended to read·

23301 Except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer shall be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state shall be forfeited if any of the following conditions occur:

(a) If any tax, penalty or interest, or any portion thereof, which is due and payable at the time the return is required to be filed, is not paid on or before 6 o'clock p m on the last day of the 12th month after the close of the taxable year, or

(b) If any tax, penalty or interest, or any portion thereof, other than jeopardy or fraud assessments, due and payable upon notice and demand from the Franchise Tax Board, is not paid on or before 6 o'clock p m on the last day of the 11th month following the due date of said tax; or

(c) If any jeopardy or fraud assessment, or any interest or penalty thereon, is not paid within 40 days from the date such tax, penalty and interest are due and payable upon notice and demand from the Franchise Tax Board, unless the bond required by Section 25761a is filed to stay the collection of said tax, penalty and interest, and said tax, interest and penalty are paid within 60 days after notice by the Franchise Tax Board on the taxpayer's petition for reassessment.

SEC 256. Section 23333 of said code is amended to read:

23333 For the calendar year ~~1966~~ *1965* and fiscal years beginning in ~~1966,~~ *1965 and ending after the effective date of the amendments to this section enacted at the 1965 Regular Session of the Legislature,* a taxpayer subject to Section 23186a shall, if it dissolves or withdraws prior to the date the rate is determined under Section 23186a, pay a tax at the maximum rate prescribed in said Section 23186 5, if the rate is subsequently determined to be less than the maximum prescribed in Section 23186 5, a refund shall, within thirty (30) days of such determination, be made as prescribed in Article 1 of Chapter 22.

SEC. 257 Section 23361 of said code is amended to read:

23361 "Affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if during the period when the income was accrued or realized and on the 16th day of the first month after the close of the taxable year—

(a) At least 80 percent of the stock of each of the corporations, except the common parent corporation, is owned directly by one or more of the other corporations, and

(b) The common parent corporation owns directly at least 80 percent of the stock of at least one of the other corporations; and

(c) Each of the corporations is either (1) a corporation whose principal business is that of a common carrier by railroad or (2) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for

such railroad properties shall be considered as the business of a common carrier by railroad.

Except in paragraph (c) "stock" does not include non-voting stock which is limited and preferred as to dividends.

SEC. 258. Section 23362 of said code is amended to read:

23362. An affiliated group, subject to the provisions of this article, shall have the privilege of making a consolidated return for the taxable year in lieu of separate returns The making of a consolidated return shall be upon the condition that all the corporations, which have been members of the affiliated group at any time during the taxable year for which the return is made, consent to all regulations under Section 23363 prescribed prior to the making of such return and the making of a consolidated return shall be considered as such consent. In the case of a corporation, which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the taxable year as it is a member of the affiliated group.

SEC. 259. Section 23501 of said code is amended to read:

23501. There shall be imposed upon every corporation for each taxable year, a tax at the rate of 6 percent upon its net income derived from sources within this state on or after January 1, 1937, other than income for any period for which the corporation is subject to taxation under Chapter 2 of this part, according to or measured by its net income.

SEC. 260. Section 23505 is added to said code, to read:

23505 Where a corporation formerly subject to tax under Chapter 2 becomes subject to tax under Chapter 3, the tax for the period prior to the date on which the change occurs will be assessed under Chapter 2, and the tax for the period beginning with the date on which the change occurs will be assessed under Chapter 3.

SEC. 261. Section 23571 of said code is amended to read:

23571. (a) Except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer shall be suspended and shall not be exercised for any purpose or in any manner in this state:

(1) If any tax, penalty or interest, or any portion thereof, which is due and payable at the time the return is required to be filed is not paid on or before 6 o'clock p m. of the last day of the 12th month after the close of the taxable year; or

(2) If any tax, penalty or interest, or any portion thereof, other than jeopardy or fraud assessments, due and payable upon notice and demand from the Franchise Tax Board, is not paid on or before 6 o'clock p.m. on the last day of the 11th month following the due date of said tax; or

(3) If any jeopardy or fraud assessment, or any interest or penalty thereon, is not paid within 40 days from the date such tax, penalty and interest are due and payable upon notice and demand from the Franchise Tax Board, unless the bond re-

quired by Section 25761a is filed to stay the collection of said tax, penalty and interest, and said tax, interest and penalty are paid within 60 days after notice by the Franchise Tax Board on the taxpayer's petition for reassessment.

(b) Any taxpayer which has been suspended under subsection (a), may be revived in the manner provided for by Sections 23305 and 23305a.

SEC 262 Section 23701n of said code is amended to read:

23701n. (1) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(A) Under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(B) Such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Franchise Tax Board not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(C) Such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(2) In determining whether a plan meets the requirements of subparagraph (1), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(A) Merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (1) are then reduced by any sick, accident, or unemployment compensation benefits received under state or federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(B) Merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under state or federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(C) Merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (1)) of supplemental unemployment compensation benefits provided wholly by the employer

the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees were eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (1).

(3) A plan shall be considered to meet the requirements of subparagraph (1) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(4) The term "supplemental unemployment compensation benefits" means only—

(A) Benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(B) Sick and accident benefits subordinate to the benefits described in clause (A).

(5) Exemption shall not be denied under this article to any organization entitled to such exemption as an association described in Section 23701i merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (4)(A)).

SEC 263. Section 23701o is added to said code, to read

23701o A trust or plan which meets the requirements of Public Law 87-792, 76 U.S. Stats 809, approved October 10, 1962 (The Self-Employed Individuals Tax Retirement Bill of 1962), but only if such trust or plan is not exempt from taxation under Section 17631.

SEC. 264. Section 23731 of said code is amended to read:

23731 Every organization described in Section 23731a shall be subject to the tax imposed under Chapter 2 or Chapter 3 upon its "Article 2" net income as defined in Section 23731b.

SEC. 265. Section 23734a of said code is amended to read·

23734a If a publishing business carried on by an organization during an annual accounting period beginning before January 1, 1954, is, without regard to this sentence, an unrelated trade or business, but before the beginning of the third succeeding annual accounting period the business is carried on by it (or by a successor who acquired such business in a liquidation which would constitute a tax-free exchange under Section 24502) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in Section 23701d, such publishing business shall not be considered, for the taxable year, as an unrelated trade or business.

SEC 266 Section 23736 3 of said code is amended to read:

23736 3. An organization described in Section 23701n or Section 23701d, except as specified in Section 23736, shall be denied exemption under Section 23736 2 only for taxable years subsequent to the taxable years during which it is notified by

the Franchise Tax Board that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization

SEC. 267. Section 23736.4 of said code is amended to read:

23736.4. Any organization denied exemption under Section 23701d or Section 23701n by reason of the provisions of Section 23736.2 with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Franchise Tax Board, file claim for exemption, and if the Franchise Tax Board pursuant to such regulations, is satisfied that such organizations will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed

SEC. 268. Section 23771 of said code is amended to read:

23771. Every organization, otherwise exempt under Article 1 of this chapter, but having income of the character described in Article 2, shall file a return, verified by an executive officer under penalties of perjury in the form prescribed by the Franchise Tax Board, within 2 months and 15 days of the close of the taxable year, reporting its income from such activities and shall pay a tax of 6 percent on its Article 2 net income as defined in Section 23731.b

SEC. 269. Section 23772 of said code is amended to read:

23772. Every organization exempt under Article 1 except:

(a) A religious organization exempt under Section 23701d;

(b) An educational organization exempt under Section 23701d, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(c) A charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if such organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; or

(d) An organization exempt under Section 23701d, if such organization is operated, supervised, or controlled by or in connection with a religious organization described in subsection (a); or

(e) An organization exempt solely under Section 23701b, shall file an annual return with the Franchise Tax Board on or before the 15th day of the fifth full calendar month following the close of the taxable year setting forth—

(1) Its gross receipts for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursement within the year for the purpose for which it is exempt,

(4) Its accumulation of income within the year,

(5) Its aggregate accumulations of income at the beginning of the year,

(6) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt,

(7) A balance sheet showing its assets, liabilities and net worth as of the beginning of such year, and

(8) Such other information as the Franchise Tax Board may by regulation prescribe.

(f) Any organization exempt from taxes under Article 1 (commencing at Section 23701) of Chapter 4 of this part shall pay the minimum tax provided for by Section 23153 for any year or years for which it fails to file, on or before the due date, the annual return required by this section.

SEC. 270 Section 24273 of said code is amended to read:

24273. (a) Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received

(b) If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Franchise Tax Board a change to a different method is authorized

SEC. 271. Section 24273.5 of said code is amended to read:

24273 5 (a) Noncash patronage allocations from farmers' cooperative and mutual associations (whether paid in capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or in some other manner that discloses the dollar amount of such noncash patronage allocations) may, at the election of the taxpayer, be considered as income and included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subdivision (a), the amount included in gross income shall be the face amount of such allocations.

(c) If a taxpayer elects to exclude noncash patronage allocations from gross income for the taxable year in which received, such allocations shall be included in gross income in the year that they are redeemed or realized upon.

(d) If a taxpayer exercises the election provided for in subdivision (c), the face amount of such noncash patronage allocations shall be disclosed in the return made for the taxable year in which such noncash patronage allocations were received

(e) If a taxpayer exercises the election provided for in subdivision (a) or (c) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the

Franchise Tax Board a change to a different method is authorized

(f) If a taxpayer has made the election provided for in subdivision (e), then (1) the statutory period for the assessment of a deficiency for any taxable year in which the amount of any noncash patronage allocations are realized shall not expire prior to the expiration of four years from the date the Franchise Tax Board is notified by the taxpayer (in such manner as the Franchise Tax Board may by regulation prescribe) of the realization of gain on such allocations, and (2) such deficiency may be assessed prior to the expiration of such four-year period, notwithstanding the provisions of Section 25663 or the provisions of any other law or rule of law which would otherwise prevent such assessment.

SEC. 272 Section 24307 of said code is amended to read:

24307. (a) No amount shall be included in gross income by reason of the discharge, in whole or in part, within the taxable year, of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if—

(1) The indebtedness was incurred or assumed—

(A) By a corporation; or

(B) By an individual in connection with property used in his trade or business; and

(2) Such taxpayer makes and files a consent to the regulations prescribed under Section 24918 (relating to adjustment of basis) then in effect at such time and in such manner as the Franchise Tax Board by regulations prescribes.

In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction.

(b) No amount shall be included in gross income by reason of the discharge, cancellation, or modification, in whole or in part, within the taxable year, of any indebtedness of a railroad corporation, as defined in Section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)), if such discharge, cancellation, or modification is effected pursuant to an order of a court in a receivership proceeding or in a proceeding under Section 77 of the Bankruptcy Act commenced before January 1, 1961. In such cases, the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. Subsec-

tion (a) of this section shall not apply with respect to any discharge of indebtedness to which this subsection applies

SEC 273 Section 24310 of said code is amended to read:

24310 (a) Gross income does not include income attributable to the recovery during the taxable year of a bad debt, prior tax, or delinquency amount, to the extent of the amount of the recovery exclusion with respect to such debt, tax, or amount

(b) For purposes of subsection (a)—

(1) The term "bad debt" means a debt on account of the worthlessness or partial worthlessness of which a deduction was allowed for a prior year.

(2) The term "prior tax" means a tax on account of which a deduction or credit was allowed for a prior year

(3) The term "delinquency amount" means an amount paid or accrued on account of which a deduction or credit was allowed for a prior year and which is attributable to failure to file return with respect to a tax, or pay a tax, within the time required by the law under which the tax is imposed, or to failure to file return with respect to a tax or pay a tax

(4) The term "recovery exclusion," with respect to a bad debt, prior tax, or delinquency amount, means the amount, determined in accordance with regulations prescribed by the Franchise Tax Board, of the deductions or credits allowed, on account of such bad debt, prior tax, or delinquency amount, which did not result in a reduction of the taxpayer's tax under this part or corresponding provisions of prior tax laws, reduced by the amount excludable in previous annual accounting periods with respect to such debt, tax or amount under this section.

SEC 274 Section 24343 of said code is amended to read:

24343 (a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered; and

(2) Rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which it has no equity.

(b) No deduction shall be allowed under subsection (a) for any expenses paid or incurred if the payment thereof is made, directly or indirectly, to an official or employee of a foreign country, and if the making of the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee.

(c) No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under Section 24357 were it not for the percentage limitations, or the requirements as to the time of payment, set forth in Sections 24357 and 24358.

(d) For purposes of this part, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to Section 303 (c) of the Federal National Mortgage Association Charter Act (12 U.S C . Section 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business

SEC 275. Section 24344 of said code is amended to read:

24344. (a) Except as limited by subsection (b), there shall be allowed as a deduction all interest paid or accrued during the taxable year on indebtedness of the taxpayer

(b) If income of the taxpayer is determined by the allocation formula contained in Section 25101, the interest deductible shall be an amount equal to interest income subject to allocation by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under the provisions of Section 24402) not subject to allocation by formula Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under the provisions of Section 24402) not subject to allocation by formula.

SEC. 276. Section 24345 of said code is amended to read:

24345. There shall be allowed as a deduction—

(a) Taxes or licenses paid or accrued during the taxable year except·

(1) Taxes paid to the state under this part.

(2) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of

(A) The government of the United States or any foreign country; or

(B) Any state, territory, county, school district, municipality, or other taxing subdivision of any state or territory.

(3) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this does not exclude the allowance as a deduction of so much of the taxes assessed against local benefits as is properly allocable to maintenance or interest charges. Nor does this exclude the allowance of any irrigation or other water district taxes or assessments which are levied for the payment of the principal of any improvement or other bonds for which a general assessment on all lands within the district is levied as distinguished from a special assessment levied on part of the area within the district.

(4) Federal stamp taxes (not described in subsections (a) 2 or (3); but this subsection shall not prevent such taxes from being deducted under Section 24343 (relating to trade or business expenses).

(b) (1) In this subsection, "retail sales tax" means a tax imposed by any state, territory, district, or possession of the United States, or any political subdivision thereof, upon persons engaged in:

(A) Selling tangible personal property at retail, which is measured by the gross sales price or the gross receipts from the sale or which is a stated sum per unit of the property sold

(B) Furnishing services at retail, which is measured by the gross receipts for furnishing the services.

(2) If the amount of a retail sales tax is separately stated, to the extent that the amount so stated is paid by the purchaser (otherwise than in connection with the purchaser's trade or business) the amount shall be allowed as a deduction in computing the net income of the purchaser as if the amount were a tax imposed upon and paid by the purchaser.

SEC. 277. Section 24346 of said code is amended to read.

24346. (a) For purposes of Section 24345(a), if real property is sold during any real property tax year, then—

(1) So much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller; and

(2) So much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser

(b) (1) In the case of any sale of real property; if—

(A) A bank or corporation may not, by reason of its method of accounting, deduct any amount for taxes unless paid; and

(B) The other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year;

then for purposes of Section 24345(a) the bank or corporation shall be treated as having paid, on the date of the sale, so much of such tax as, under subsection (a), is treated as imposed on the bank or corporation. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(2) Subsection (a) shall apply to annual accounting periods beginning after December 31, 1960, but only in the case of sales after December 31, 1960.

(3) Subsection (a) shall not apply to any real property tax, to the extent that such tax was allowable as a deduction under the Bank and Corporation Tax Law of 1954 to the seller for an annual accounting period which began before January 1, 1961

(4) In the case of any sale of real property, if the bank or corporation's net income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under Section 24681(b) (relat-

ing to the accrual of real property taxes) applies, then, for purposes of Section 24345(a), that portion of such tax which—

(A) Is treated, under subsection (a), as imposed on the bank or corporation; and

(B) May not, by reason of the bank or corporation's method of accounting, be deducted by the bank or corporation for any taxable year, shall be treated as having accrued on the date of the sale.

SEC 278 Section 24347 of said code is amended to read:

24347 (a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise

(b) For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in Section 24911 for determining the loss from the sale or other disposition of property.

(c) For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss

(d) If any security becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this part, be treated as a loss from its sale or exchange, on the last day of the taxable year

SEC 279. Section 24348 of said code is amended to read:

24348. There shall be allowed as a deduction debts which become worthless within the taxable year; or, in the discretion of the Franchise Tax Board, a reasonable addition to a reserve for bad debts When satisfied that a debt is recoverable ~~in part only~~ *only in part* the Franchise Tax Board may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction, provided, however, that if a debt was actually worthless prior to January 1, 1943, but was not ascertained to be worthless and charged off prior to said date, a deduction may be taken therefor during the first annual accounting period ending after December 31, 1942; and, provided, that if a portion of a debt is claimed and allowed as a deduction in any year no deduction shall be allowed in any subsequent year for any portion of the debt which in any prior year was charged off, regardless of whether claimed as a deduction in such prior year.

SEC. 280 Section 24349 of said code is amended to read.

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) For annual accounting periods ending after December 31, 1958, the term "reasonable allowance" as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods

(1) The straight line method;

(2) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1);

(3) The sum of the years-digits method; and

(4) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).

SEC. 281 Section 24351 of said code is amended to read:

24351. Where, under regulations prescribed by the Franchise Tax Board, the taxpayer and the Franchise Tax Board have, after the date of enactment of this section, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Franchise Tax Board in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years, before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

SEC 282. Section 24356 of said code is amended to read:

24356. (a) In the case of Section 24356 property, the term "reasonable allowance" as used in Section 24349(a) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under Sections 24349 through 24354 to the taxpayer with respect to such property, of 20 percent of the cost of such property

(b) If in any one taxable year the cost of Section 24349 property with respect to which the taxpayer may elect an allowance under subsection (a) for such taxable year exceeds ten thousand dollars ($10,000), then subsection (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of ten thousand dollars ($10,000).

(c) (1) The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Franchise Tax Board may by regulations prescribe.

(2) Any election made under this section may not be revoked except with the consent of the Franchise Tax Board

(d) (1) For purposes of this section, the term "Section 24356 property" means tangible personal property—

(A) Of a character subject to the allowance for depreciation under Sections 24349 through 24354,

(B) Acquired by purchase after December 31, 1958, for use in a trade or business, and

(C) With a useful life (determined at the time of such acquisition) of six years or more.

(2) For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Sections 24427 through 24429 (but, in applying Sections 24428 and 24429 for purposes of this section, paragraph (d) of Section 24429 shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) For purposes of subsection (b) of this section—

(A) All members of an affiliated group shall be treated as one taxpayer, and

(B) The Franchise Tax Board shall apportion the dollar limitation contained in such subsection (b) among the members of such affiliated group in such manner as it shall by regulations prescribe.

(5) For purposes of paragraphs (2) and (4), the term "affiliated group" has the meaning assigned to it by Section 1504 of the Internal Revenue Code of 1954, except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code of 1954.

(6) In applying Section 24353, the adjustment under Section 24916(b)(1) resulting by reason of an election made under this section with respect to any Section 24356 property shall be made before any other deduction allowed by Section 24349(a) is computed.

(e) The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

SEC 283 Section 24356 1 of said code is amended to read:

24356 1 (a) Any taxpayer who held retirement-straight line property on his 1959 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Franchise Tax Board shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided in this section (including such property for periods when held by predecessors of the taxpayer).

(b) For purposes of this section, the term "retirement-straight line property" means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for it by the Franchise Tax Board) for any annual accounting period beginning after December 31, 1940, and before January 1, 1959, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation

(c) If the taxpayer has made an election under this section, then in determining the adjusted basis on the 1959 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustment for depreciation provided in Section 24916(b)(1) or (2) the following adjustments shall be made (effective as of its 1959 adjustment date) in respect of all periods before the 1959 adjustment date

(1) For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

(A) Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913 In the case of any such property retired during any annual accounting period beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted or would have resulted, had the taxpayer been subject to this part during such years (by reason of the deduction so allowed) in a reduction in taxes under this part or prior tax laws.

(B) Was held by the taxpayer or a predecessor on the changeover date This subparagraph shall not apply to property to which paragraph (2) applies

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Franchise Tax Board) among all retirement-straight line property held by the taxpayer on its 1959 adjustment date.

(2) For that portion of the reserve prescribed by the Commissioner of Internal Revenue and which was also adopted by the Franchise Tax Board in connection with the changeover which was applicable to property—

(A) Sold, or

(B) With respect to which a deduction was allowed for tax purposes by reason of casualty or "abnormal" retirement in the nature of special obsolescence, if such sale occurred in, or such deduction was allowed for a period on or after the changeover date and before the taxpayer's 1959 adjustment date

(3) For depreciation allowable, under the terms and conditions prescribed by the commissioner which terms and conditions are equally applicable under this part in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1959 adjustment date.

This subsection shall apply only with respect to annual accounting periods beginning after December 31, 1958.

(d) If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1959 adjustment date, in lieu of the adjustments for depreciation provided in Section 24916(b)(1) or (2) and the corresponding provisions of prior laws, the following adjustments shall be made

(1) For the amount of the reserve prescribed by the commissioner (and determined by the Franchise Tax Board to be applicable under this part) in connection with the changeover.

(2) For the depreciation allowable under the terms and conditions prescribed by the commissioner (and determined by the Franchise Tax Board to be applicable under this part) in connection with the changeover

This subsection shall apply only with respect to annual accounting periods beginning on or after the changeover date and before the taxpayer's 1959 adjustment date

(e) For purposes of this section—

(1) The term "depreciation" means exhaustion, wear and tear, and obsolescence.

(2) The term "changeover" means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation

(3) The term "changeover date" means the first day of the first annual accounting period for which the changeover was effective

(4) The term "1959 adjustment date" means, in the case of any taxpayer, the first day of his first annual accounting period beginning after December 31, 1958

(5) The term "predecessor" means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

(6) The term "commissioner" means the Commissioner of Internal Revenue.

SEC 284. Section 24357 of said code is amended to read:

24357. (a) There shall be allowed as a deduction any charitable contribution (as defined in Section 24359) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Franchise Tax Board

(b) In the case of a bank or corporation reporting its income on the accrual basis, if—

(1) The board of directors authorizes a charitable contribution during any taxable year; and

(2) Payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the bank or corporation may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Franchise Tax Board shall by regulations prescribe

SEC 285. Section 24358 of said code is amended to read:

24358 In the case of a bank or corporation, the total deductions under Section 24357 for any taxable year shall not exceed 5 percent of the taxpayer's net income computed without regard to—

(a) Sections 24357, 24358 or 24359, inclusive;

(b) Article 2 (commencing at Section 24401) of Chapter 7 (except Sections 24407 to 24409, inclusive).

SEC 286 Section 24360 of said code is amended to read:

24360. In the case of any bond, as defined in Section 24363, the following rules shall apply to the amortizable bond premium (determined under Section 24361 on the bond):

(a) In the case of a bond, the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(b) In the case of any bond the interest on which is excludable from gross income under Chapter 3, no deduction shall be allowed for the amortizable bond premium for the taxable year.

SEC 287. Section 24361 of said code is amended to read·

24361. (a) For purposes of subsection (b), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(1) With reference to the amount of the basis (for determining loss on sale or exchange) of such bond:

(2) With reference to the amount payable on maturity or on earlier call date; and

(3) With adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which Section 24360 becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(b) The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond described in Section 24362(a) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than three years after the date of such issue, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bonds or (if greater) the amount payable on maturity.

(c) The determinations required under subsections (a) and (b) shall be made—

(1) In accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

(2) In all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Franchise Tax Board.

SEC. 288. Section 24362 of said code is amended to read:

24362. (a) Sections 24360 to 24363, inclusive, shall apply to the bonds only if the taxpayer has elected to have these ~~sections apply, in the case of any taxpayer, bonds the interest on which is not excludable from gross income~~ *sections apply*.

(b) The election authorized under this section shall be made in accordance with such regulations as the Franchise Tax Board shall prescribe. If such election is made with respect to any bond (described in subsection (a)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first annual accounting period to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent annual accounting periods with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Franchise Tax Board permits him, subject to such conditions as the Franchise Tax Board deems necessary, to revoke such election.

SEC. 289. Section 24363 of said code is amended to read:

24363. For purposes of Sections 24360 to 24363, inclusive, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

SEC. 290. Section 24364 of said code is amended to read:

24364. Notwithstanding Article 3, Chapter 7, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Franchise Tax Board, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Franchise Tax Board permits a revocation of such election subject to such conditions as it deems necessary

SEC. 291. Section 24365 of said code is amended to read:

24365. (a) A bank or corporation may treat research or experimental expenditures which are paid or incurred by it during the taxable year in connection with its trade or business as expenses which are not chargeable to capital account The expenditures so treated shall be allowed as a deduction

(b) (1) A bank or corporation may, without the consent of the Franchise Tax Board, adopt the method provided in subsection (a) for its first annual accounting period—

(A) Which begins after December 31, 1960, and ends after the date on which this section is enacted; and

(B) For which expenditures described in subsection (a) are paid or incurred.

(2) A bank or corporation may, with the consent of the Franchise Tax Board, adopt at any time the method provided in subsection (a).

(c) The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing net income for the taxable year and for all subsequent years unless, with the approval of the Franchise Tax Board, a change to a different method is authorized with respect to part or all of such expenditures

SEC. 292 Section 24366 of said code is amended to read.

24366. (a) At the election of a bank or corporation, made in accordance with regulations prescribed by the Franchise Tax Board, research or experimental expenditures which are—

(1) Paid or incurred by the bank or corporation in connection with its trade or business;

(2) Not treated as expenses under Section 24365; and

(3) Chargeable to capital account but not chargeable to property of a character which is subject to the allowance under Sections 24349 to 24354, inclusive, (relating to allowance for depreciation, etc.) or Section 24831 (relating to allowance for

depletion); may be treated as deferred expenses. In computing net income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the bank or corporation (beginning with the month in which the bank or corporation first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of Section 24916 (relating to adjustments to basis of property).

(b) The election provided by subsection (a) may be made for any annual accounting period beginning after December 31, 1960, but only if made not later than the time prescribed by law for filing the return for such period (including extensions thereof) The method so elected, and the period selected by the bank or corporation, shall be adhered to in computing net income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Franchise Tax Board, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures The election shall not apply to any expenditure paid or incurred during any annual accounting period before the taxable year for which the bank or corporation makes the election

SEC. 293. Section 24368.1 of said code is amended to read:

24368.1. (a) Any trademark or trade name expenditure paid or incurred during an annual accounting period beginning after December 31, 1960, may, at the election of the taxpayer (made in accordance with regulations prescribed by the Franchise Tax Board), be treated as a deferred expense In computing net income, all expenditures paid or incurred during the year which are so treated shall be allowed as a deduction ratably over such period of not less than 60 months (beginning with the first month in such year) as may be selected by the taxpayer in making such election The expenditures so treated are expenditures properly chargeable to capital account for purposes of Section 24916(a) (relating to adjustments to basis of property)

(b) For purposes of subsection (a), the term "trademark or trade name expenditure" means any expenditure which—

(1) Is directly connected with the acquisition, protection, expansion, registration (federal, state, or foreign) or defense of a trademark or trade name;

(2) Is chargeable to capital account; and

(3) Is not part of the consideration paid for a trademark, trade name, or business

(c) The election provided by subsection (a) shall be made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which the expenditure is paid or incurred The period selected by the taxpayer under subsection (a) with respect to the expenditures paid or incurred during the taxable year which are treated as deferred expenses shall be adhered to in computing

its net income for the taxable year for which the election is made and all subsequent years.

(d) For adjustments to basis of property for amounts allowed as deductions for expenditures treated as deferred expenses under this section, see Section 24916(h).

SEC. 294. Section 24372 of said code is amended to read:

24372. (a) Every taxpayer, at its election, shall be entitled to a deduction with respect to amortization of the adjusted basis (for determining gain) of any device, machinery, or equipment for the collection at the source of atmospheric pollutants and contaminants based on a period of 60 months Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the device, machinery, or equipment at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month The amortization deductions provided by this section with respect to any month shall be in lieu of the deduction with respect to such device, machinery, or equipment provided in Section 24349 relating to exhaustion, wear and tear, and obsolescence. The 60-month period shall begin, at the election of the taxpayer, with the month following the month in which the device, machinery, or equipment was completed or acquired, or with the succeeding taxable year

(b) The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the device, machinery, or equipment was completed or acquired, or with the taxable year succeeding the taxable year in which such device, machinery, or equipment was completed or acquired, shall be made in an appropriate statement in the taxpayer's return for the taxable year in which the device, machinery, or facility was completed or acquired, or in which the certification required by subdivision (d) was made, whichever is later.

(c) A taxpayer which has elected under subdivision (b) to take the amortization deduction provided in subdivision (a) may, at any time after making such election, discontinue the amortization deductions with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Franchise Tax Board before the beginning of such month. The deduction provided under Section 24349 shall be allowed beginning with the first month as to which the amortization deduction is not applicable, and the taxpayer shall not be entitled to any further amortization deductions with respect to such device, machinery, or equipment.

(d) In determining for the purposes of this section the adjusted basis of such device, machinery, or equipment, there shall be included only so much of the amount of such adjusted basis (computed without regard to this section) as is properly

attributable to the construction, reconstruction, remodeling, installation, or acquisition of such device, machinery, or equipment after December 31, 1954, as certified by the State Department of Public Health.

SEC. 295. Section 24373 of said code is amended to read:

24373. Except as provided in Section 24374, in determining the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(a) In respect of any building erected (or other improvement made) on the leased property, if the portion of the term of lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining upon the completion of such building or other improvement is less than 60 percent of the useful life of such building or other improvement, or

(b) In respect of any cost of acquiring the lease, if less than 75 percent of such cost is attributable to the portion of the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining on the date of its acquisition,

the term of the lease shall be treated as including any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, unless the lessee establishes that (as of the close of the taxable year) it is more probable that the lease will not be renewed, extended, or continued for such period than that the lease will be so renewed, extended, or continued.

SEC. 296. Section 24374 of said code is amended to read:

24374. (a) If a lessee and lessor are related persons (as determined under subsection (b)) at any time during the taxable year then, in determining the amount allowable to the lessee as a deduction for such taxable year for exhaustion, wear and tear, obsolescence, or amortization in respect of any building erected (or other improvement made) on the leased property, the lease shall be treated as including a period of not less duration than the remaining useful life of such improvement.

(b) For purposes of subsection (a), a lessor and lessee shall be considered to be related persons if—

(1) The lessor and the lessee are members of an affiliated group (as defined in Section 1504 of the Internal Revenue Code of 1954), or

(2) The relationship between the lessor and lessee is one described in Section 24428(2) and (3), except that for purposes of this subparagraph, the phrase "80 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in such subsection.

For purposes of determining the ownership of stock in applying subparagraph (2), the rules of Section 24429 shall apply,

except that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

SEC. 297. Section 24375 of said code is amended to read:

24375. In any case in which neither Section 24373 nor Section 24374 applies, the determination as to the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(a) In respect of any building erected (or other improvement made) on the leased property, or

(b) In respect of any cost of acquiring the lease, shall be made with reference to the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee), unless the lease has been renewed, extended, or continued or the facts show with reasonable certainty that the lease will be renewed, extended, or continued.

SEC 298. Section 24377 of said code is amended to read:

24377. (a) A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by it during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) For purposes of subsection (2), the term "land used in farming" means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or its tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Franchise Tax Board may by regulations prescribe Such election may not be revoked except with the consent of the Franchise Tax Board

SEC. 299. Section 24402 of said code is amended to read:

24402. Dividends received during the taxable year declared from income which has been included in the measure of the taxes imposed under Chapter 2 or Chapter 3 of this part upon the taxpayer declaring the dividends.

SEC 300. Section 24404 of said code is amended to read:

24404. In the case of farmers, fruitgrowers, or like associations organized and operated in whole or in part on a cooperative or mutual basis, (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, which may include reasonable reserves, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing, or producing,

supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses, all income resulting from or arising out of such business activities for or with their members carried on by them or their agents, or when done on a nonprofit basis for or with nonmembers

For the purposes of this section "all income resulting from or arising out of such business activities for or with their members" shall include all amounts, whether or not derived from patronage, allocated to members during the taxable year Amounts allocated include cash, merchandise, capital stock, revolving fund certificates, certificates of indebtedness, retain certificates, letters of advice, or written instruments which in some other manner disclose to each member the dollar amount allocated to him Allocations made after the close of the taxable year and on or before the 15th day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to income derived before the close of such year.

SEC 301 Section 24409 of said code is amended to read:

24409 The election provided by Section 24407 may be made for any annual accounting period beginning after December 31, 1960, but only if made not later than the time prescribed by law for filing the return for such period (including extensions thereof) The period so elected shall be adhered to in computing the income of the bank or corporation for the taxable year for which the election is made and all subsequent taxable years The election shall apply only with respect to expenditures paid or incurred on or after the date of enactment of this section

SEC 302 Section 24425 of said code is amended to read:

24425 Any amount otherwise allowable as a deduction which is allocable to one or more classes of income not included in the measure of the tax imposed by this part, regardless of whether such income was received or accrued during the taxable year

SEC 303 Section 24427 of said code is amended to read:

24427 No deduction shall be allowed—

In respect of losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations), directly or indirectly, between persons specified within any one of the paragraphs of Section 24428.

In respect of expenses, otherwise deductible under Section 24343, or of interest, otherwise deductible under Section 24344—

(a) If within the period consisting of the taxable year of the taxpayer and 2½ months after the close thereof (1) such expenses or interest are not paid, and (2) the amount thereof is not includable in the gross income of the person to whom the payment is to be made; and

(b) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includable in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(c) If, at the close of the taxable year of the taxpayer or at any time within 2½ months thereafter, both the taxpayer and the person to whom the payment is to be made are persons specified within Section 24428.

(d) The amount of expenses incurred or interest accrued, the deduction of which is disallowed under this section in the year incurred or accrued, may be deducted in the year paid.

SEC. 304. Section 24430 of said code is amended to read:

24430. If—

(a) In case of a sale or exchange of property to a bank or corporation a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of Section 24427 (or by reason of Section 24201e of the Bank and Corporation Tax Law of 1954); and

(b) After December 31, 1960, the bank or corporation sells or otherwise disposes of such property (or of other property the basis of which in its hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the bank or corporation. This section applies with respect to annual accounting periods beginning after December 31, 1960. This section shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of Section 24998 (relating to wash sales) or by reason of Section 24121e of the Bank and Corporation Tax Law of 1954.

SEC. 305. Section 24482 of said code is amended to read:

24482. (a) If a corporation inventorying goods under the method provided in Sections 24702 to 24706, inclusive (relating to last-in, first-out inventories), distributes inventory assets (as defined in subsection (b)(1), then the amount (if any) by which—

(1) The inventory amount (as defined in subsection (b)(2)) of such assets under a method authorized by Section 24701 (relating to general rule for inventories), exceeds

(2) The inventory amount of such assets under the method provided in Sections 24702 to 24706, inclusive,

shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(b) For purposes of subsection (a)—

(1) The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(2) The term "inventory amount" means, in the case of inventory assets distributed during an taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(c) For purposes of this section, the inventory amount of assets under a method authorized by Section 24701 shall be determined—

(1) If the corporation uses the retail method of valuing inventories under Sections 24702 to 24706, inclusive, by using such method; or

(2) If paragraph (1) does not apply, by using cost or market, whichever is lower.

SEC. 306 Section 24485 of said code is amended to read:

24485. (a) On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in subsection (b)(1)) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation—

(1) Shall be increased by the amount of such excess; and

(2) Shall be decreased by whichever of the following is the lesser:

(A) The fair market value of the inventory assets distributed; or

(B) The earnings and profits (as increased under paragraph (1)).

(b) (1) For purposes of subsection (a), the term "inventory assets" means—

(A) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year;

(B) Property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and

(C) Unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this paragraph.

(2) For purposes of paragraph (1)(C), the term "unrealized receivables or fees" means, to the extent not previously includable in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for—

(A) Goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset; or

(B) Services rendered or to be rendered.

SEC 307. Section 24495 of said code is amended to read

24495 For purposes of this part, the term "dividend" means any distribution of property made by a corporation to its shareholders—

(a) Out of its earnings and profits accumulated after February 28, 1913; or

(b) Out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made

Except as otherwise provided in this part, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits To the extent that any distribution is, under any provision of this chapter, treated as a distribution of property to which Sections 24451 and 24453 apply, such distribution shall be treated as a distribution of property for purposes of this section.

SEC. 308 Section 24502 of said code is amended to read:

24502. (a) No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) For purposes of subsection (a), a distribution shall be considered to be in complete liquidation only if—

(1) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either

(2) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the annual accounting period during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Franchise Tax Board may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed

within such three-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in Section 24551, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in Section 24531, of the shares not owned by the taxpayer.

(c) If—

(1) A corporation is liquidated and subsection (a) applies to such liquidation; and

(2) On the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80-percent stock ownership requirements specified in subsection (b);

then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

SEC. 309. Section 24512 of said code is amended to read:

24512 If—

(a) A corporation adopts a plan of complete liquidation on or after December 31, 1954; and

(b) Within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims;

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

SEC 310. Section 24516 of said code is amended to read:

24516. (a) For purposes of this chapter, a distribution shall be treated as in partial liquidation of a corporation if—

(1) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(2) The distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year

in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of subsection (b).

(b) A distribution shall be treated as a distribution described in subsection (a)(2) if the requirements of paragraphs (1) and (2) of this subsection are met.

(1) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the five-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the five-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

Whether or not a distribution meets the requirements of paragraphs (1) and (2) of this subsection shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

SEC. 311. Section 24565 is added to said code, to read:

24565. In the case of the acquisition of assets of a corporation by another corporation—

(a) In a distribution to such other corporation to which Section 24502 (relating to liquidations of subsidiaries) applies, except in a case in which the basis of the assets distributed is determined under Section 24504(b)(2); or

(b) In a transfer to which Section 24551 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (1), (3), (4) (but only if the requirements of subparagraphs (A) and (B) of Section 24531(b) (1) are met), or (6) of Section 24562(a),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in Section 24567 of the distributor or transferor corporation, subject to the conditions and limitations specified in Sections 24566 and 24567.

SEC. 312. Section 24566 is added to said code, to read:

24566. Except in the case of an acquisition in connection with a reorganization described in subparagraph (6) of Section 24562—

(a) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(b) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Franchise Tax Board, the date when substantially all of

the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

SEC. 313. Section 24567 is added to said code, to read:

24567. The items referred to in Section 24565 are:

(a) In the case of a distribution or transfer described in Section 24565—

(1) The earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (2), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer, and

(2) A deficit in earnings and profits by the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in paragraph (1) of this subsection) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year

(b) The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Franchise Tax Board

(c) In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Franchise Tax Board.

(d) The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under paragraphs (2), (3), and (4) of subsection (b) of Section 24349 on property acquired in a distribution or transfer with respect to that part or all of the basis in the hands of the acquiring corporation as does

not exceed the basis in the hands of the distributor or transferor corporation

(e) If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation has elected, under Sections 24667 to 24670, inclusive, to report on the installment basis) the acquiring corporation shall, for purposes of Sections 24667 to 24670, inclusive, be treated as if it were the distributor or transferor corporation

(f) If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includable with respect to such discount or premium

(g) The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation, expenses deferred under Sections 24836 and 24837 (relating to exploration and development expenditures, respectively) if the distributor or transferor corporation has so elected For the purpose of applying the limitation provided in Section 24837, if, for any taxable year, the distributor or transferor corporation was allowed the deduction in Section 24837(a) or made the election in Section 24837(b), the acquiring corporation shall be deemed to have been allowed such deduction or to have made such election, as the case may be

(h) The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under Chapter 12 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

(i) If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includable by the distributor or transferor corporation in accordance with Section 24310 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).

(j) The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying Sections 24943 to 24949 2, inclusive

(k) If the acquiring corporation—

(1) Assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(2) Such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its net income

The acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this chapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1964, on account of such obligations of the distributor or transferor corporation This subdivision shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(*l*) Notwithstanding the other provisions of this section, or Section 24668, a corporation which has acquired the properties and assumed the liabilities of a wholly owned subsidiary shall be considered to have succeeded to and to be entitled to take into account contributions of the subsidiary to a pension plan, and shall be considered to be the distributor or transferor corporation after the date of distribution or transfer (but not for the taxable years with respect to which this paragraph does not apply) for the purpose of determining the amounts deductible under Chapter 12 with respect to contributions to a pension plan if—

(1) The corporate laws of the state of incorporation of the subsidiary required the surviving corporation in the case of merger to be incorporated under the laws of the state of incorporation of the subsidiary; and

(2) The properties were acquired in a liquidation of the subsidiary in a transaction subject to Section 24502

(m) The acquiring corporation shall take into account any net amount of any adjustment described in Sections 24721–24724 of the distributor or transferor corporation—

(1) To the extent such net amount of such adjustment has not been taken into account by the distributor or transferor corporations, and

(2) In the same manner and at the same time as such net amount would have been taken into account by the distributor or transferor corporation.

SEC. 314. Section 24575.1 of said code is amended to read:

24575.1 (a) (1) If the taxpayer has acquired property in a transaction described in Section 24577 or 24578(b), and if any such property constitutes retirement-straight line property, then, in determining the adjusted basis of all retirement-straight line property held by the taxpayer on his adjustment date, adjustment shall be made (in lieu of the adjustment provided in Section 1016(b) (1) and (2)) for depreciation sustained before March 1, 1913, on retirement-straight line

property which was held on such date for which cost was or is claimed as basis, and which either—

(A) Was retired before the acquisition of the retirement-straight line property by the taxpayer, but only if a deduction was allowed in computing net income by reason of such retirement, and such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913 In the case of any such property retired during any annual accounting period beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted or would have resulted, had the taxpayer been subject to this part during such years, (by reason of the deduction so allowed) in a reduction in taxes under this part or prior tax laws

(B) Was acquired by the taxpayer.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Franchise Tax Board) among all retirement-straight line property held by the taxpayer on his adjustment date. Such adjustment shall apply to all periods on and after the adjustment date.

(2) For purposes of this subsection, the term "retirement-straight line property" means any property of a kind or class with respect to which (A) the corporation transferring such property to the taxpayer was using (at the time of transfer) the retirement method of computing the allowance of deductions for depreciation, and (B) the acquiring corporation has adopted any other method of computing such allowance

(3) For purposes of this subsection

(A) The term "depreciation" means exhaustion, wear and tear, and obsolescence.

(b) In the case of any kind or class of property, the term "adjustment date" means whichever of the following is the later·

(i) The first day of the taxpayer's first annual accounting period beginning after December 31, 1958, or

(ii) The first day of the first annual accounting period after June 24, 1959 in which the taxpayer uses a method of computing the allowance of deductions for depreciation other than the retirement method

SEC. 315. Section 24601 of said code is amended to read:

24601 If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under Section 24343 (relating to trade or business expenses) but if they satisfy the conditions of the section, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or

with a taxable year of the trust for which the trust is exempt under Section 17501 of this code, in an amount determined as follows:

(a) An amount not in excess of 5 percent of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Franchise Tax Board upon periodical examinations at not less than five-year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan; plus

(b) Any excess over the amount allowable under paragraph (a) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Franchise Tax Board, but if such remaining unfunded cost with respect to any three individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least five taxable years, or

(c) In lieu of the amounts allowable under paragraphs (a) and (b) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Franchise Tax Board, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the Franchise Tax Board, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased.

(d) Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

SEC. 316. Section 24602 of said code is amended to read:

'24602. In the taxable year when paid, in an amount determined in accordance with Section 24601, if the contributions are paid toward the purchase of retirement annuities and such purchase is a part of a plan which meets the requirements of Section 17501(c), (d), (e), and (f) of Part 10 of Division 2 of this code, and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities.

SEC. 317. Section 24603 of said code is amended to read:

24603 (a) In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under Section 17501 of this code, in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the ~~preceding sentence,~~ *Section 24602* the excess, or if no amount is paid, the amounts deductible shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subsection shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subsection shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan The term "stock bonus or profit-sharing trust," as used in this subsection, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in Section 24601 If the contributions are made to two or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subsection

(b) In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of Section 1504 of the Federal Internal Revenue Code of 1954, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment

for its contribution deductible without regard to this subsection which the total prevented contribution bears to the total current and accumulated earnings or profits of all members of the group remaining after adjustment for all contributions deductible without regard to this subsection Contributions made under the preceding sentence shall be deductible under subsection (a) by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subsection (a) in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made

SEC 318 Section 24606 of said code is amended to read·

24606 In the taxable year when paid, if the plan is not one included in Sections 24601, 24602, and 24603, if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid

SEC 319 Section 24607 of said code is amended to read·

24607. For purposes of Sections 24601, 24602, and 24603, a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

SEC 320 Section 24608 of said code is amended to read:

24608 If amounts are deductible under Sections 24601 and 24603, or Sections 24602 and 24603, or Sections 24601, 24602, and 24603, in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this section shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this section shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans This section shall not have the effect of reducing the amount otherwise deductible under Sections 24601, 24602, and 24603, if no employee is a beneficiary under more than one trust, or a trust and an annuity plan.

SEC 321 Section 24611 of said code is amended to read·

24611 The amount of any unused deductions or contributions in excess of the deductible amounts for annual accounting periods to which this article does not apply which under Sections 17324 to 17324.17, inclusive, ~~or Part 10~~ *of Part 10* of Di-

vision 2 of this code would be allowable as deductions in later years had such Sections 17324 to 17324 17, inclusive, of Part 10 of Division 2 of this code remained in effect, shall be allowable as deductions in annual accounting periods to which this part applies as if such Sections 17324 to 17324 17, inclusive, of Part 10 of Division 2 of this code were continued in effect for such years. However, the deduction under the preceding sentence shall not exceed an amount which, when added to the deduction allowable under Sections 24601 to 24608, inclusive, for contributions made in annual accounting periods to which this article applies, is not greater than the amount which would be deductible under Sections 24601 to 24608, inclusive, if the contributions which give rise to the deduction under the preceding sentence were made in an annual accounting period to which this article applies

SEC 322 Section 24613 of said code is amended to read:

24613. For purposes of applying Sections 24601 to 24611, inclusive, with respect to contributions made to or under a pension, profit-sharing, stock bonus or annuity, plan by a domestic corporation (i e, a corporation created or organized within the United States), or by another corporation which is entitled to deduct its contributions under Section 24603(b), on behalf of an individual who is treated as an employee of such domestic corporation under Section 17527(a) of the Personal Income Tax Law—

(1) Except as provided in paragraph (2), no deduction shall be allowed to such domestic corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) There shall be allowed as a deduction to the foreign subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under Sections 24601 to 24611, by the domestic corporation if he were an employee of the domestic corporation, and

(3) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2) of Section 17527 of the Personal Income Tax Law)

Any amount deductible by a foreign subsidiary under this section shall be deductible for its year with or within which the taxable year of such domestic corporation ends.

SEC 323 Section 24614 of said code is amended to read·

24614 For purposes of applying Sections 24601 to 24611, inclusive, with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity, plan by a domestic parent corporation (i.e., a corporation created or organized within the United States), or by another corporation which is entitled to deduct its contributions under Section 24603(b), on behalf of an individual who is treated as an employee of such domestic corporation under Section 17528(a) of the Personal Income Tax Law—

(1) Except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) There shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under Sections 24601 to 24611, inclusive, by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2) of Section 17528 of the Personal Income Tax Law).

Any amount deductible by a domestic subsidiary under this section shall be deductible for its income year with or within which the taxable year of such domestic parent corporation ends.

SEC. 324. Section 24622 of said code is amended to read:

24622. (a) If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of Section 17532(a), 17533(a), or 17534(a) of the Personal Income Tax Law except that there is a failure to meet any of the holding period requirements of Section 17532(a)(1), 17533(a)(1), or 17534(a)(1) of the Personal Income Tax Law, then any deduction from the income of the employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as a deduction from income in the taxable year of such employer corporation in which such disposition occurred.

(b) If an individual who has acquired a share of stock by the exercise of a qualified stock option makes a disposition of such share within the three-year period described in Section 17532(a)(1) of the Personal Income Tax Law, and such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual, then the amount which is deductible from the income of the employer corporation, shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

SEC. 325. Section 24631 of said code is amended to read:

24631. (a) Income shall be computed on the basis of the taxpayer's taxable year.

(b) For purposes of this part, the term "taxable year" means—

(1) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) The calendar year, if subsection (g) applies; or

(3) The period for which the return is made, if a return is made for a period of less than 12 months.

(c) For purposes of this part, the term "annual accounting period" means the annual period on the basis of which the

taxpayer regularly computes its income in keeping its books

(d) For purposes of this part, the term "calendar year" means a period of 12 months ending on December 31st

(e) For purposes of this part, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f), the term means the annual period (varying from 52 to 53 weeks) so elected

(f) (1) A taxpayer who, in keeping its books, regularly computes its income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) On whatever date such same day of the week last occurs in a calendar month, or

(B) On whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute its income for purposes of this part on the basis of such annual period. This paragraph shall apply to annual accounting periods ending after December 31, 1954

(2) (A) In any case in which the effective date or the applicability of any provision of this part is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall be treated—

(i) As beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) As ending with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be.

(B) In the case of a change from or to a taxable year described in paragraph (1)—

(i) If such change results in a short period (within the meaning of Section 24634) of 359 days or more, or less than 7 days, Section 24636 shall not apply;

(ii) If such change results in a short period of less than seven days, such short period shall, for purposes of this part, be added to and deemed a part of the following taxable year; and

(iii) If such change results in a short period to which Section 24634 applies, the income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying such income by 365 and dividing the result by the number of days in a short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) The Franchise Tax Board shall prescribe such regulations as it deems necessary for the application of this subsection.

(g) Except as provided in Section 24634 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) The taxpayer keeps no books;

(2) The taxpayer does not have an annual accounting period; or

(3) The taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

SEC. 326. Section 24633 of said code is amended to read:

24633. If a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Franchise Tax Board. For purposes of this part, if a taxpayer to whom Section 24631(g) applies adopts an annual accounting period (as defined in Section 24631(c)) other than a calendar year, the taxpayer shall be treated as having changed its annual accounting period.

SEC. 327. Section 24634 of said code is amended to read:

24634 (a) A return for a period of less than 12 months (referred to in this article as "short period") shall be made under any of the following circumstances:

(1) When the taxpayer, with the approval of the Franchise Tax Board, changes its annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) When the taxpayer is in existence during only part of what would otherwise be its taxable year.

(3) When the Franchise Tax Board terminates the taxpayer's taxable year under Section 25761 (relating to tax in jeopardy).

SEC. 328. Section 24636 of said code is amended to read:

24636 (a) If a separate return is made by a taxpayer subject to the tax imposed by Chapter 2, under Section 24634 on account of a change in the accounting period the net income, computed on the basis of the period for which separate return is made, referred to in this section as "the short period," shall be placed on an annual basis by multiplying the amount thereof by 12, and dividing by the number of months in the short period The Franchise Tax Board shall compute the amount of a tax on the income placed on such annual basis, and shall allow the offset provided for in Article 3 of Chapter 2, from such tax The tax due under this section, which shall not be subject to offset, shall be such part of the tax, less the offset allowed, computed on such annual basis as the number of months in the short period is of 12 months

(b) If a taxpayer subject to the tax imposed by Chapter 2 establishes the amount of its net income for the period of 12 months beginning with the first day of the short period, computed as if such 12-month period were a taxable year, under the law applicable to such year, then the tax for the

short period shall be reduced to an amount which is such part of the tax computed on the net income for such 12-month period as the net income computed on the basis of the short period is of the net income for the 12-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this section If the taxpayer has disposed of substantially all its assets prior to the end of such 12-month period, then in lieu of the net income for such 12-month period there shall be used for the purposes of this section the net income for the 12-month period ending with the last day of the short period. The tax computed under this section shall in no case be less than the tax computed on the net income for the short period without placing such net income on an annual basis The benefits of this section shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require (but not after the time prescribed for the filing of the return for the first taxable year which ends on or after 12 months after the beginning of the short period), makes application therefor in accordance with such regulations. Such application, in case the return was filed without regard to this section, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this section. The Franchise Tax Board shall prescribe such regulations as it may deem necessary for the application of this section.

SEC. 329. Section 24661 of said code is amended to read:

24661. The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing income, such amount is to be properly accounted for as of a different period.

SEC. 330. Section 24667 of said code is amended to read:

24667. (a) Under regulations prescribed by the Franchise Tax Board, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(b) For purposes of subdivision (a), the total contract price of all sales of personal property on the installment plan includes the amount of carrying charges or interest which is determined with respect to such sales and is added on the books of account of the seller to the established cash selling price of such property. This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan or with respect to sales or other dispositions of property the income from which is, under Section 24668, returned on the basis and in the manner prescribed in subdivision (a).

(c) The amendments in this section shall apply in respect to sales made in annual accounting periods beginning after December 31, 1963.

SEC. 331. Section 24668 of said code is amended to read:

24668. (a) Income from—

(1) A sale or other disposition of real property; or

(2) A casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding one thousand dollars ($1,000),

may (under regulations prescribed by the Franchise Tax Board) be returned on the basis and in the manner prescribed in Section 24667.

(b) Subsection (a) shall apply—

(1) In the case of a sale or other disposition during an annual accounting period beginning after December 31, 1954, only if in the taxable year of the sale or other disposition—

(A) There are no payments; or

(B) The payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

(2) In the case of a sale or other disposition during an annual accounting period beginning before January 1, 1955, only if the income was (by reason of Section 25292 of the Bank and Corporation Tax Law of 1954) returnable on the basis and in the manner prescribed in Section 25292 of such law.

SEC. 332. Section 24669 of said code is amended to read:

24669. (a) If a taxpayer entitled to the benefits of Section 24667 elects for any taxable year to report its income on the installment basis, then in computing its income for such year (referred to in this section as "year of change") or for any subsequent year—

(1) Installment payments actually received during any such year on account of sales or other dispositions of property made in any annual accounting period before the year of change shall not be excluded; but

(2) The tax imposed by this part for any annual accounting period (referred to in this section as "adjustment year") beginning after December 31, 1954, shall be reduced by the adjustment computed under subsection (b).

(b) In determining the adjustment referred to in subsection (a)(2), first determine, for each annual accounting period before the year of change, the amount which equals the lesser of—

(1) The portion of the tax for such prior accounting period which is attributable to the gross profit which was included in gross income for such prior accounting period, and which by reason of subsection (a)(1) is includable in gross income for the taxable year; or

(2) The portion of the tax for the adjustment year which is attributable to the gross profit described in paragraph (1) The adjustment referred to in subsection (a)(2) for the adjustment year is the sum of the amounts determined under the preceding sentence.

(3) For purposes of subsection (b), the portion of the tax for a prior annual accounting period, or for the adjustment year, which is attributable to the gross profit described in such subsection is that amount which bears the same ratio to the tax imposed by this part (or by the corresponding provisions of prior laws) for such accounting period (computed without regard to subsection (b)) as the gross profit described in such subsection bears to the gross income for such accounting period. For purposes of the preceding sentence, the provisions of this part of the Bank and Corporation Tax Law of 1954 shall be treated as the corresponding provisions of the Bank and Corporation Tax Law of 1954.

SEC. 333. Section 24670 of said code is amended to read:

24670. (a) If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(1) The amount realized, in the case of satisfaction at other than face value or a sale or exchange; or

(2) The fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(b) The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(c) (1) If—

(A) An installment obligation is distributed by one corporation to another corporation in the course of a liquidation, except in the case of a distribution to which Section 24504 (b)(2) applies; and

(B) Under Section 24502 (relating to complete liquidations of subsidiaries) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation;

then except as provided in subparagraph (A) no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation.

(2) If—

(A) An installment obligation is distributed by a corporation in the course of a liquidation; and

(B) Under Sections 24512, 24513 and 24514 (relating to gain or loss on sales or exchanges in connection with certain

liquidations) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such installment obligation on the day of such distribution; then no gain or loss shall be recognized to such corporation by reason of such distribution.

(d) In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in Section 801(a) of the Internal Revenue Code of 1954) to such an insurance company, no provision of this part providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding annual accounting period) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding annual accounting period, all installment obligations which it held on such last day.

SEC. 334 Section 24672 of said code is amended to read:

24672 Where a taxpayer elects to report income arising from the sale or other disposition of property as provided in this article, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part, the unreported income shall be included in the measure of the tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part This section shall not be applicable where the installment obligation is transferred pursuant to a reorganization as defined in Sections 24562 and 24563 to another taxpayer a party to the reorganization subject to tax under the same chapter as the transferor, or is transferred to any exempt nonprofit cemetery corporation as defined in Section 23701e of this code.

SEC. 335 Section 24673 of said code is amended to read:

24673. Where a corporation subject to the tax imposed by Chapter 2 is engaged in the performance of a contract in this state which will require more than a year to complete, the Franchise Tax Board may require that the income from the contract be reported on the basis of percentage of completion unless the corporation furnishes bond or other security guaranteeing the payment of a tax measured by the income received on the completion of the contract

SEC. 336. Section 24674 of said code is amended to read·

24674 (a) If, in the case of a taxpayer owning any noninterest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing its income) constitute income to it in such year, such taxpayer may, at its election made in its return for any taxable year, treat such increase as income received in

such taxable year If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by it and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Franchise Tax Board permits it, subject to such conditions as the Franchise Tax Board deems necessary, to change to a different method.

(b) In the case of any obligation—

(1) Of the United States, or

(2) Of a state, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia, which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

SEC. 337. Section 24675 of said code is amended to read:

24675 If an amount representing compensatory damages is received or accrued by a taxpayer during a taxable year as the result of an award in a civil action for infringement of a patent issued by the United States, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month during which such infringement occurred.

SEC. 338 Section 24676 of said code is amended to read:

24676 (a) Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists

(b) In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includable in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to be subject to tax measured by net income imposed under Chapter 2 (commencing at Section 23101) or Chapter 3 (commencing at Section 23501) of this part, then so much of such income as was not includable in gross income under subsection (a) for preceding taxable years shall be included in the measure of tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part.

(c) (1) This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made

in such manner as the Franchise Tax Board may by regulations prescribe No election may be made with respect to a trade or business if in computing net income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Franchise Tax Board, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) (A) A taxpayer may, with the consent of the Franchise Tax Board, make an election under this section at any time.

(B) A taxpayer may, without the consent of the Franchise Tax Board, make an election under this section for his first annual accounting period (i) which begins after December 31, 1960, and (ii) in which it receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Franchise Tax Board to the revocation of such election. For purposes of this part, the computation of net income under an election made under this section shall be treated as a method of accounting.

(d) For purposes of this section—

(1) The term "prepaid subscription income" means any amount (includable in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) The term "liability" means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Prepaid subscription income shall be treated as received during the taxable year for which it is includable in gross income under Section 24661 (without regard to this section).

(e) Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would

apply if an election were made) may continue to report his income for taxable years to which this part applies in accordance with such method or practice

SEC. 339. Section 24677 of said code is amended to read:

24677. (a) If an amount representing damages is received or accrued by a bank or corporation during a taxable year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross income for the taxable year of that part of such amount which would have been received or accrued by the bank or corporation in a prior taxable year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes which would have resulted had such part been included in gross income for such prior taxable year or years.

(b) A bank or corporation in computing said tax shall be entitled to deduct all credits and deductions for depletion, depreciation, and other items to which it would have been entitled, had such income been received or accrued by the bank or corporation in the year during which it would have received or accrued it, except for such breach of contract or for such breach of fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the bank or corporation's share of income from the actual operation of such property.

(c) Subsection (a) shall not apply unless the amount representing damage is three thousand dollars ($3,000) or more.

SEC. 340. Section 24678 of said code is amended to read:

24678. (a) If an amount representing damages is received or accrued during a taxable year as a result of an award in, or settlement of, a civil action brought under Section 4 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (commonly known as the Clayton Act), for injuries sustained by a bank or corporation in its business or property by reason of anything forbidden in the antitrust laws, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month during the period in which such injuries were sustained by the bank or corporation.

(b) This section shall apply to annual accounting periods ending after the date that this section is enacted, but only with respect to amounts received or accrued after such date as a result of awards or settlements made after such date.

SEC 341. Section 24681 of said code is amended to read:

24681. (a) The amount of any deduction or credit allowed by this part shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing income.

(b) (1) If the income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period

(2) Paragraph (1) shall not apply to any real property tax, to the extent that such tax was allowable as a deduction under the Bank and Corporation Tax Law of 1954 for an annual accounting period which began before January 1, 1955. In the case of any real property tax which would, but for this subsection, be allowable as a deduction for the first annual accounting period of the taxpayer which begins after December 31, 1954, then, to the extent that such tax is related to any period before the first day of such first accounting period, the tax shall be allowable as a deduction for such first accounting period

(3) (A) A taxpayer may, without the consent of the Franchise Tax Board, make an election under this subsection for its first annual accounting period which begins after December 31, 1954, and ends after the date of enactment of this part in which the taxpayer incurs real property taxes Such an election shall be made not later than the time prescribed by law for filing the return for such accounting period (including extensions thereof)

(B) A taxpayer may, with the consent of the Franchise Tax Board, make an election under this subsection at any time.

SEC 342. Section 24684 of said code is amended to read:

24684 If—

(a) The taxpayer contests an asserted liability,

(b) The taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(c) The contest with respect to the asserted liability exists after the time of the transfer, and

(d) But for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year), then the deduction shall be allowed for the taxable year of the transfer

SEC. 343. Section 24703 of said code is amended to read:

24703. In inventorying goods specified in the application described in Section 24702, the taxpayer shall:

(a) Treat those remaining on hand at the close of the taxable year as being first, those included in the opening inventory of the taxable year (in order of acquisition) to the extent thereof, and second, those acquired in the taxable year;

(b) Inventory them at cost; and

(c) Treat those included in the opening inventory of the taxable year in which such method is first used as having

been acquired at the same time and determine their cost by the average cost method.

SEC. 344. Section 24704 of said code is amended to read:

24704. Section 24702 shall apply only if the taxpayer establishes to the satisfaction of the Franchise Tax Board that the taxpayer has used no procedure other than that specified in subsections (a) and (c) of Section 24703 in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in Section 24703 is to be used, for the purpose of a report or statement covering such taxable year—

(a) To shareholders, partners, or other proprietors, or to beneficiaries; or

(b) For credit purposes.

SEC. 345. Section 24705 of said code is amended to read:

24705. In determining income for the annual accounting period preceding the taxable year for which the method described in Section 24703 is first used, the closing inventory of such preceding year of the goods specified in the application referred to in Section 24702 shall be at cost

SEC. 346. Section 24706 of said code is amended to read:

24706. If a taxpayer, having complied with Section 24702, uses the method described in Section 24703 for any annual accounting period, then such method shall be used in all subsequent taxable years unless—

(a) With the approval of the Franchise Tax Board a change to a different method is authorized; or,

(b) The Franchise Tax Board determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in Section 24703(a) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (1) to shareholders, partners, or other proprietors, or beneficiaries, or (2) for credit purposes, and requires a change to a method different from that prescribed in Section 24703 beginning with such subsequent taxable year or any taxable year thereafter

If subsections (a) or (b) of this section applies, the change to, and the use of, the different method shall be in accordance with such regulations as the Franchise Tax Board may prescribe as necessary in order that the use of such method may clearly reflect income.

SEC 347. Section 24721 of said code is amended to read:

24721. In computing the taxpayer's net income for any taxable year (referred to in this article as the "year of the change")—

(a) If such computation is under a method of accounting different from the method under which the taxpayer's net income for the preceding annual accounting period was computed, then

(b) There shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this article does not apply unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

SEC. 348. Section 24722 of said code is amended to read:

24722. (a) If—

(1) The method of accounting from which the change is made was used by the taxpayer in computing his income for the two annual accounting periods preceding the year of the change, and

(2) The increase in net income for the year of the change which results solely by reason of the adjustments required by Section 24721(b), other than the amount of such adjustments to which Section 24722.1 applies, exceeds three thousand dollars ($3,000),

then the tax under this part attributable to such increase in net income shall not be greater than the aggregate increase in the taxes under this part (or under the corresponding provisions of prior laws) which would result if one-third of such increase in net income were included in net income for the year of the change and one-third of such increase were included for each of the two preceding annual accounting periods.

(b) If—

(1) The increase in net income for the year of the change which results solely by reason of the adjustments required by Section 24721(b), other than the amount of such adjustments to which Section 24722.1 applies, exceeds three thousand dollars ($3,000); and

(2) The taxpayer establishes its net income (under the new method of accounting) for one or more annual accounting periods consecutively preceding the year of the change for which the taxpayer in computing net income used the method of accounting from which the change is made;

then the tax under this part attributable to such increase in net income shall not be greater than the net increase in the taxes under this part (or under the corresponding provision of prior tax laws) which would result if the adjustments required by Section 24721(b), other than the amount of such adjustments to which Section 24722.1 applies, were allocated to the year or years specified in paragraph (2) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by Section 24721(b), other than the amount of such adjustments to which Section 24722.1 applies, was allocated to the year of the change.

(c) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of

law, shall be determined by reference to the tax previously determined for such year.

SEC. 349. Section 24722 1 of said code is amended to read:

24722 1. Except as provided in Section 24722.2—

(a) The net amount of the adjustments required by Section 24721, to the extent that such amount does not exceed the net amount of adjustments which would have been required if the change in method of accounting had been made in the first annual accounting period beginning after December 31, 1954, shall be taken into account by the taxpayer in computing net income in the manner provided in subsection (b), but only if such net amount of such adjustment would increase the net income of such taxpayer by more than three thousand dollars ($3,000).

(b) One-tenth of the net amount of the adjustments described in subsection (a) shall (except as provided in subsection (c)) be taken into account in each of the 10 taxable years beginning with the year of the change The amount to be taken into account for each taxable year in the 10-year period shall be taken into account whether or not for such year the assessment of tax is prevented by operation of any law or rule of law If the year of the change was an annual accounting period ending before January 1, 1961, and if the taxpayer so elects (at such time and in such manner as the Franchise Tax Board shall by regulations prescribe), the 10-year period shall begin with the first annual accounting period which begins after December 31, 1960 If the taxpayer elects under the preceding sentence to begin the 10-year period with the first annual accounting period which begins after December 31, 1960, the 10-year period shall be reduced by the number of years, beginning with the year of the change, in respect of which assessment of tax is prevented by operation of any law or rule of law on the date of the enactment of this section.

(c) The net amount of any adjustments described in subsection (a), to the extent not taken into account in prior annual accounting periods under subsection (b), shall, if the taxpayer ceases to be subject to tax measured by net income imposed under Chapter 2 (commencing at Section 23101) or Chapter 3 (commencing at Section 23501) of this part, be included in the measure of the tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part unless such net amount of such adjustment is required to be taken into account by the acquiring corporation under Section 24567(m).

(d) The provisions of this section shall not apply with respect to changes in methods of accounting made in annual accounting periods beginning after December 31, 1964.

SEC. 350 Section 24722 3 of said code is amended to read

24722.3 (a) The provisions of Sections 24722 1 and 24722 2 and the 1961 amendments to Sections 24721 and 24722

shall apply with respect to any change in a method of accounting where the year of the change (within the meaning of Sections 24721 through 24724) is an annual accounting period beginning after December 31, 1954

(b) The amendments to Sections 24721 and 24722 shall not apply if before the date of enactment of this section—

(i) The taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Franchise Tax Board, and

(ii) The taxpayer and the Franchise Tax Board agreed to the terms and conditions for making the change.

SEC 351. Section 24723 of said code is amended to read:

24723 In the case of any change described in Section 24721, the taxpayer may, in such manner and subject to such conditions as the Franchise Tax Board may by regulations prescribe, take the adjustments required by Section 24721(b) into account in computing the tax imposed by this part for the taxable year or years permitted under such regulations.

SEC. 352 Section 24832 of said code is amended to read:

24832. In the case of oil and gas wells the allowance for depletion under Section 24835 shall be 27½ percent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under Section 24835 be less than it would be if computed without reference to this section.

SEC 353 Section 24833 of said code is amended to read:

24833 The allowance for depletion under Section 24835 shall be:

(a) In the case of sand, gravel, slate, stone (including pumice and scoria), brick and tile clay, shale, oystershell, clamshell, granite, marble, sodium chloride, and, if from brine wells, calcium chloride, magnesium chloride, and bromide, 5 percent;

(b) In the case of coal, asbestos, brucite, dolomite, magnesite, perlite, wollastonite, calcium carbonates, and magnesium carbonates, 10 percent,

(c) In the case of metal mines aplite, bauxite, fluorspar, flake graphite, vermiculite, beryl, garnet, feldspar, mica, talc (including pyrophyllite), lepidolite, spodumene, barite, ball clay, sagger clay, china clay, phosphate rock, rock asphalt, trona, bentonite, gilsonite, thenardite, borax, fuller's earth, tripoli, refractory and fire clay, quartzite, diatomaceous earth, metallurgical grade limestone, chemical grade limestone, and potash, 15 percent;

(d) In the case of sulfur, 23 percent;

of the gross income from the property during the taxable year, excluding from such gross income an amount equal to

any rents or royalties paid or incurred by the taxpayer in respect of the property.

Such allowance shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property except that in no case shall the depletion allowance under Section 24835 be less than it would be if computed without reference to this section.

SEC. 354. Section 24835 of said code is amended to read:

24835. In the case of mines, oil and gas wells, other natural deposits and timber, *there shall be allowed as a deduction in computing net income* a reasonable allowance for depletion and for depreciation of improvements according to the peculiar conditions in each case, such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Franchise Tax Board. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and the lessee.

SEC. 355. Section 24836 of said code is amended to read:

24836. (a) Except as provided in subsection (b), there shall be allowed as a deduction in computing income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existance of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in Section 24349, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) At the election of the taxpayer, made in accordance with regulations prescribed by the Franchise Tax Board, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit,

except that such amount, and the adjustments to basis provided in Section 24916, shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under Section 24831.

SEC. 356. Section 24837 of said code is amended to read:

24837. (a) In the case of expenditures paid or incurred during the taxable year for the purpose of ascertaining the existance, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred prior to the beginning of the development stage of the mine or deposit, in computing net income there shall be allowed as a deduction so much of such expenditures as does not exceed seventy-five thousand dollars ($75,000).

This section shall apply only with respect to the amount of such expenditures which, but for this section, would not be allowable as a deduction for the taxable year.

This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in Section 24349, but allowances for depreciation shall be considered, for the purposes of this section, as expenditures paid or incurred.

In no case shall this section apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas.

(b) If the taxpayer elects, in accordance with regulations prescribed by the Franchise Tax Board, to treat as deferred expenses any portion of the amount deductible for the taxable year under subsection (a), such portion shall not be deductible under subsection (a) but shall be deductible on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made for any taxable year shall be binding for such year.

(c) This section shall not apply to any amounts paid or incurred in any taxable year if in any four preceding years the taxpayer, or any individual or corporation who has transferred to the taxpayer any mineral property under circumstances which make the provisions of Section 17883, 18135, 24552, 24553, 24577, 24575, 24988, 25404, or 29461 applicable to such transfer, has either (1) been allowed a deduction under subsection (a) of this section or (2) made the election provided under subsection (b) of this section.

(d) The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, but such amounts, and the adjustments to basis provided in Section 24916 shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under this chapter.

SEC. 357. Section 24916 of said code is amended to read:

24916. Proper adjustment in respect of the property shall in all cases be made—

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account, but no such adjustment shall be made for taxes or other carrying charges or for expenditures described in Section 24364 and Section 24369 for which deductions have been taken by a bank or corporation in determining net income for the taxable year or prior annual accounting periods,

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion

(1) In the case of banks or corporations subject to the tax imposed by Chapter 2, to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to Janaury 1, 1932

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3, to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349, and 24372

(c) In the case of stock (to the extent not provided for in the foregoing subsections) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of banks or corporations subject to the tax imposed by Chapter 2, in the case any bond (as defined in Section 24363) to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3, in the case of any bond (as defined in Section 24363) the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to Section 24361, and in the case of any other bond (as defined in Section 24363) to the extent of the deductions allowable pursuant to Section 24361 with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under subdivision (b), of Section 24836 (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under such section for the taxable year and prior years

(f) For amounts allowable as deductions as deferred expenses under subdivision (b) of Section 24837 (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under such section for the taxable year and prior years

(g) For amounts allowed as deductions as deferred expenses under Section 24366(a) (relating to research and experimental expenditures) and resulting in a reduction of the bank or corporations' taxes under this part, but not less than the amounts allowable under such section for the taxable year and prior years

(h) For amounts allowed as deductions for expenditures treated as deferred expenses under Section 24368 1 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer's taxes under this part, but not less than the amounts allowable under such section for the taxable year and prior years.

SEC. 358 Section 24918 of said code is amended to read:

24918. Where any amount is excluded from gross income under Section 24307(a) (relating to income from discharge of indebtedness) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under Section 24307(a)) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the Franchise Tax Board) in effect at the time of the filing of the consent by the taxpayer referred to in Section 24307(a). The reduction shall be made as of the first day of the taxable year in which the discharge occurred, except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began.

SEC. 359. Section 24943 of said code is amended to read:

24943. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(a) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(b) Into money, and the disposition of the converted property occurred before January 1, 1953, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the Franchise Tax Board, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For purposes of this subsection and Section 24944, the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

For purposes of this section and Section 24944, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

SEC. 360. Section 24944 of said code is amended to read:

24944. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in Section 24943(b)) occurred after December 31, 1952, the gain (if any) shall be recognized except to the extent hereinafter provided in this section:

(a) If the taxpayer during the period specified in subsection (b), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock Such election shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe. For purposes of this subsection—

(1) No property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(2) The taxpayer shall be considered to have purchased property or stock only if, but for the provisions of Section 24947, the unadjusted basis of such property or stock would be its cost within the meaning of Section 24912.

(b) The period referred to in subsection (a) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(1) One year after the close of the first annual accounting period in which any part of the gain upon the conversion is realized; or

(2) Subject to such terms and conditions as may be specified by the Franchise Tax Board, at the close of such later date as the Franchise Tax Board may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Franchise Tax Board may by regulations prescribe.

SEC. 361 Section 24945 of said code is amended to read:

24945. If a taxpayer has made the election provided in Section 24944(a), then—

(a) The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of four years from the date the Franchise Tax Board is notified by the taxpayer (in such manner as the Franchise Tax Board may by regulations prescribe) of the replacement of the converted property or of an intention not to replace; and

(b) Such deficiency may be assessed before the expiration of such four-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

SEC. 362. Section 24946 of said code is amended to read:

24946. If the election provided in Section 24944(a) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any annual accounting period ending before such last taxable year may be assessed (notwithstanding the provisions of Section 25663 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

SEC. 363. Section 24961 of said code is amended to read:

24961. In the case of the property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Franchise Tax Board without regard to intercompany transactions in respect of which gain or loss was not recognized. The basis in case of property acquired by a corporation during any period, in the year 1929 or any subsequent year, in respect of which a consolidated return is made by such corporation under Article 9 of Chapter 2 or Section 141 of the Federal Revenue Act of 1928 or the Federal Revenue Act of 1932 or the Federal Revenue Act of 1934 or the Federal Revenue Act of 1936, or in the case of a corporation subject to the tax imposed by Chapter 3, the Federal Revenue Act of 1938, shall be determined in accordance with regulations prescribed under Article 9 of Chapter 2 or Section 141 of the Federal Revenue Act of 1928 or the Federal Revenue Act of 1932 or the Federal Revenue Act of 1936, or in the case of a corporation subject to the tax imposed by Chapter 3, the Federal Revenue Act of 1938. The basis in the case of property held by a corporation during any period, in the year 1929 or any subsequent year, in respect of which a consolidated return is made by such corporation under Article 9 of Chapter 2 or Section 141 of the Federal Revenue Act of 1928 or the Federal Revenue Act of 1932 or the Federal Revenue Act of 1934 or the Federal Revenue Act of 1936, or, in the case of a corporation subject to the tax imposed by Chapter 3, or the Federal Revenue Act of 1938, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under Article 9 of Chapter 2 or Section 141 of the Federal Revenue Act of 1928 or the Federal Revenue Act of 1932 or the Federal Revenue Act of 1934 or the Federal Revenue Act of 1936, or in the case of a corporation subject to the tax imposed by Chapter 3, or the Federal Revenue Act of 1938, applicable to such period.

SEC. 364. Section 24962 of said code is amended to read:

24962. (a) If the property was acquired, after February 28, 1913, in any year beginning before January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by Section 113(a) (6), (7), or (9) of such act (47 Stat. 199), then for purposes of this part the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(b) If the property was acquired, after February 28, 1913, in any year beginning before January 1, 1937, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by Section 113(a) (6), (7), or (8) of such act (48 Stat. 706), then for purposes of this part the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(c) If the property was acquired after February 28, 1913, in a transaction to which the Bank and Corporation Tax Law

of 1954 applied, and the basis thereof, for purposes of the Bank and Corporation Tax Law of 1954, was prescribed by Section 25071(d), 25071(e), or 25071(f) of such law, then for purposes of this part the basis shall be the same as the basis therein prescribed in the Bank and Corporation Tax Law of 1954

(d) Stock rights acquired after February 28, 1913, and before January 1, 1955, shall have the basis assigned to such property under Section 25071m of the Bank and Corporation Tax Law of 1954.

SEC. 365 Section 24971 of said code is amended to read:

24971 If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by the commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Sections 24943 to 24947, inclusive. For purposes of such sections as made applicable by the provisions of this section, stock of a corporation operating a radio broadcasting station, whether or not representing control of such corporation, shall be treated as property similar or related in service or use to the property so converted, The part of the gain, if any, on such sale or exchange to which Sections 24943 to 24947, inclusive, is not applied shall nevertheless not be recognized, if the taxpayer so elects, to the extent that it is applied to reduce the basis for determining gain or loss on sale or exchange of property, of a character subject to the allowance for depreciation under Section 24349, remaining in the hands of the taxpayer immediately after the sale or exchange, or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Franchise Tax Board. Any election made by the taxpayer under this section shall be made by a statement to that effect in its return for the taxable year in which the sale or exchange takes place, and such election shall be binding for the taxable year and all subsequent taxable years.

SEC 366 Section 25001 of said code is amended to read:

25001. On the recovery in the taxable year of any money or property in respect of property considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, as destroyed or seized, the amount of such recovery shall be included in gross income to the extent provided in Section 25002, unless Sections 25004 to 25006, inclusive, apply to the taxable year pursuant to an election made by the taxpayer under Section 25009.

SEC 367. Section 25003 of said code is amended to read:

25003 (a) To the extent that the amount of the recovery plus the aggregate of the amounts of previous such recoveries do not exceed that part of the aggregate of the allowable

deductions in prior taxable years on account of the destruction or seizure of property described in Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 which did not result in a reduction of any tax of the taxpayer under this part, such amount shall not be includable in gross income and shall not be deemed gain on the involuntary conversion of property as a result of its destruction or seizure.

(b) To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed that part of the aggregate of such deductions, which did not result in a reduction of any tax of the taxpayer under this part and do not exceed that part of the aggregate of such deductions which did result in a reduction of any tax of the taxpayer under this part, such amount shall be included in gross income but shall not be deemed a gain on the involuntary conversion of property as a result of its destruction or seizure.

(c) To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, such amount shall be considered a gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in Sections 24943 to 24947, inclusive (relating to involuntary conversions)

(d) If for any previous taxable year the taxpayer chose under Article 3 Chapter 6 of the Bank and Corporation Tax Law of 1954 to treat any obligations and liabilities as discharged or satisfied out of the property or interest described in Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, and if such obligations and liabilities were not so discharged or satisfied, the amount of such obligations and liabilities treated as discharged or satisfied under such Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 shall be considered for purposes of this part as a deduction by reason of such Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 which did not result in a reduction of any tax of the taxpayer under this part.

(e) For purposes of this section, an allowable deduction for any taxable year on account of the destruction or seizure of property described in Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 shall, to the extent not allowed in computing the tax of a taxpayer for such a taxable year, be considered an allowable deduction which did not result in a reduction of any tax of the taxpayer under this part.

SEC. 368 Section 25004 of said code is amended to read:

25004 If this section applies to the taxable year pursuant to an election made by the taxpayer under Section 25009 or Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, the amount of the recovery in the year of any money or property in respect of property considered under Article 3

of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized, shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery. For purposes of this section and Sections 25005 and 25006, in the case of the recovery of the same property or interest considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized, the fair market value of such property or interest shall, at the option of the taxpayer, be considered an amount equal to the adjusted basis (for determining loss) of such property or interest in the hands of the taxpayer on the date such property or interest was considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized. The amount of the recovery determined under this section shall be reduced for purposes of Sections 25005 and 25006 by the amount of the obligations or liabilities with respect to the property considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized in respect of which the recovery was received, if the taxpayer for any previous year chose under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 to treat such obligations or liabilities as discharged or satisfied out of such property, and such obligations or liabilities were not so discharged or satisfied before the date of the recovery.

SEC. 369. Section 25005 of said code is amended to read.

25005. That part of the amount of the recovery, in respect of any property considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized, which is not in excess of the allowable deductions in prior years on account of such destruction or seizure of the property (the amount of such allowable deductions being first reduced by the aggregate amount of any prior recoveries in respect of the same property) shall be excluded from gross income for the year of the recovery for purposes of computing the tax under this part; but there shall be added to, and assessed and collected as a part of, the tax under this part for the year of the recovery the total increase in the tax under this part for all years which would result by decreasing, in an amount equal to such part of the recovery so excluded, such deductions allowable in the prior years with respect to the destruction or seizure of the property. Such increase in the tax for each such year so resulting shall be computed in accordance with regulations prescribed by the Franchise Tax Board Such regulations shall give effect to previous recoveries of any kind (including recoveries described in Section 24310, relating to recovery of bad debts, etc) with respect to any prior year, and shall provide for the case where there was no tax for the prior year.

SEC. 370. Section 25006 of said code is amended to read·

25006 The amount of any recovery or part thereof, in respect of property considered under such Article 3 of Chap-

ter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized which is not excluded from gross income under Section 25005, shall be considered for a year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in Sections 24943 to 24947, inclusive.

SEC. 371. Section 25009 of said code is amended to read.

25009. If the taxpayer elects to have Sections 25004 to 25006, inclusive, apply to a taxable year in which it recovered any money or property in respect of property considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, as destroyed or seized, Sections 25004 to 25006, inclusive, shall apply to all annual accounting periods of the taxpayer beginning after December 31, 1941, and such election, once made, shall be irrevocable. The election shall be made in such manner and at such time as the Franchise Tax Board may by regulations prescribe, except that no election under this section may be made unless the taxpayer recovers money or property (in respect of property considered under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized) during a year for which the election is made If pursuant to such election Sections 25004 to 25006, inclusive, apply to any taxable year—

(a) The period of limitations provided in Section 25663 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall not, with respect to—

(1) The amount to be added to the tax for such a taxable year under Sections 25004 to 25006, inclusive; and

(2) Any deficiency for such a taxable year or for any other taxable year, to the extent attributable to the basis of the recovered property being determined under Section 25010(b), expire before the expiration of two years following the date of the making of such election, and such amount and such deficiency may be assessed at any time before the expiration of such period notwithstanding any law or rule of law which would otherwise prevent such assessment and collection; and

(b) In case refund or credit of any overpayment resulting from the application of Sections 25004 to 25006, inclusive, to such taxable year is prevented on the date of the making of such election, or within one year from such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.

In the case of any annual accounting period ending before the date of the making by the taxpayer of an election under this section, no interest shall be paid on any overpayment resulting from the application of Sections 25004 to 25006, inclusive, to such accounting period, and no interest shall be assessed or collected with respect to any amount or any deficiency specified in subsection (a) for any period before the

expiration of six months following the date of the making of such election by the taxpayer.

SEC. 372 Section 25010 of said code is amended to read:

25010. (a) The unadjusted basis of property recovered in respect of property considered as destroyed or seized under Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 shall be determined under this section Such basis shall be an amount equal to the fair market value of such property, determined as of the date of the recovery, reduced by an amount equal to the excess of the aggregate of such fair market value and the amounts of previous recoveries of money or property in respect of property considered under such Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized over the aggregate of the allowable deductions in prior years on account of the destruction or seizure of property described in such Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954, and increased by that portion of the amount of the recovery which, under Sections 25002 and 25003, is treated as a recognized gain from the involuntary conversion of property On application of the taxpayer, the aggregate of the basis (determined under the preceding sentence) of any properties recovered in respect of properties considered under such Article 3 of Chapter 6 of the Bank and Corporation Tax Law of 1954 as destroyed or seized may be allocated among the properties so recovered in such manner as the Franchise Tax Board may determine under regulations prescribed by the Franchise Tax Board, and the amounts so allocated to any such property so recovered shall be the unadjusted basis of such property in lieu of the unadjusted basis of such property determined under the preceding sentence.

(b) In the case of a taxpayer who has made an election under Section 25009, the basis of property recovered shall be an amount equal to the value at which such property is included in the amount of the recovery under Section 25004 (determined without regard to the last sentence thereof), reduced by such part of the gain under Section 25006 which is not recognized as provided in Sections 24943 to 24947, inclusive.

SEC. 373. Section 25101 of the said code is amended to read:

25101 When the income of a taxpayer subject to the tax imposed under this part is derived from or attributable to sources both within and without the state, the tax shall be measured by the net income derived from or attributable to sources within this state.

Nonbusiness income shall be allocated as provided in Sections 25108 and 25109

Business income derived from or attributable to sources within this state shall be determined by an allocation formula consisting of the factors of sales, payroll, and property as defined in this chapter or by reference to any of these

or other factors or by such other method of allocation as is fairly calculated to determine the net income derived from or attributable to sources within this state; provided, however, that any such factors or other method of allocation shall take into account as income derived from or attributable to sources without the state, income derived from or attributable to transportation by sea or air without the state, whether or not such transportation is located in or subject to the jurisdiction of any other state, the United States or any foreign country. Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business shall be allocated to the state in which the taxpayer has its commercial domicile

If the Franchise Tax Board reallocates net income upon its examination of any return, it shall, upon the written request of the taxpayer, disclose the basis upon which its reallocation has been made

SEC. 374. Section 25101 1 of said code is amended to read:

25101 1. The amendments made at the 1957 Regular Session of the Legislature to Section 25101 of the Revenue and Taxation Code shall be applicable only with respect to annual accounting periods beginning after December 31, 1956. The determination as to whether income derived from or attributable to transportation by sea or air is allocable to or taxable by California for any annual accounting period beginning before January 1, 1957, shall be made as if Section 25101 had not been amended at the 1957 Regular Session of the Legislature and without inferences drawn from the fact that such amendments were not expressly made applicable with respect to annual accounting periods beginning before January 1, 1957.

SEC. 375. Section 25106 is added to said code, to read:

25106 As used in this chapter:

(a) "Business income" means income arising from transactions and activity in the regular course of a trade or business of the taxpayer and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes an integral part of a trade or business of the taxpayer. It also includes income from the disposition of property used in a trade or business of the taxpayer.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid or payable to employees for personal services.

(d) "Nonbusiness income" means all income other than business income.

(e) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(f) "Sales" means all gross receipts of the taxpayer derived from the conduct of business, except receipts from the sale or other disposition of property not held for sale in the regular course of a trade or business of the taxpayer and receipts of the type referred to in Sections 25108 and 25109 to the extent not constituting business income

SEC. 376 Section 25107 is added to said code, to read:

25107. For purposes of this chapter, a taxpayer is taxable in another state if (a) any portion of its business income is derived from or attributable to sources within that state, and (b) such other state has jurisdiction to tax such income under the Constitution and laws of the United States *or would have such jurisdiction if the Constitution and laws of the United States were applicable thereto*.

SEC 377. Section 25108 is added to said code, to read:

25108. Income from real property or tangible personal property, including rents and royalties and gains and losses from the sale or other disposition of such property, to the extent not constituting business income shall be allocated to the state where the property is located; provided, however, that if such personal property is not permanently located in any state, such income shall be allocated to the state of the taxpayer's commercial domicile.

SEC 378 Section 25109 is added to said code, to read:

25109. (a) Income from stocks, including dividends and gains and losses from the sale or other disposition of stocks *to the extent not constituting business income*, shall be allocated to the state of the taxpayer's commercial ~~domicile, unless the taxpayer is engaged in a trade or business of selling such property, in which case the income therefrom is business income~~ *domicile.*

(b) Income from notes, bonds, accounts receivable, patents or copyrights, or other intangibles including interest, royalties and gains and losses from the sale or other disposition of such intangibles, to the extent not constituting business income, shall be allocated to the state of the taxpayer's commercial domicile.

SEC 379 Section 25110 is added to said code, to read.

25110 When formula allocation is used to determine the net income of a trade or business derived from or attributable to sources within this state, the allocation formula shall be applied as follows: The average of the factors utilized shall be ascertained, and that average then shall be applied to the total net business income of the taxpayer from that trade or business

SEC. 380. Section 25111 is added to said code, to read:

25111. The numerator of the property factor is the average value of the taxpayer's real and tangible personal property used in this state in producing business income during the taxable year, whether owned or rented

SEC 381. Section 25112 is added to said code, to read:

25112. The denominator of the property factor is the average value of all the taxpayer's real and tangible personal property used in producing business income during the taxable year, whether owned or rented.

SEC. 382. Section 25113 is added to said code, to read:

25113. When property is used both within and without the state during the taxable year, the extent of the use within the state shall be determined in such reasonable manner as the Franchise Tax Board may provide When property is used only in part for producing business income during the taxable year, the extent of the use for producing business income shall likewise be determined in such reasonable manner as the Franchise Tax Board may provide.

SEC. 383. Section 25114 is added to said code, to read:

25114. Property owned by the taxpayer shall be valued at an amount equal to its basis for determining gain from its sale or other disposition. Property rented by the taxpayer shall be valued at eight times the rent payable or accruable during the taxable year, provided the rent payable or accruable fairly reflects the fair rental value of the property as of the date of the rental agreement. If rent is not payable for all or any portion of the year, or if for any reason the rent does not fairly reflect the fair rental value of the property at the date of the rental agreement, the property shall be valued at eight times the fair rental value of the property as of the date of the rental agreement.

SEC. 384. Section 25115 is added to said code, to read:

25115 The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the Franchise Tax Board may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

SEC. 385. Section 25116 is added to said code, to read:

25116. Compensation for services related to business income shall be considered paid or payable in this state and included in the numerator of the payroll factor if:

(a) The employee's service is performed entirely within this state; or

(b) The employee's service is performed both within and without this state, but the service performed without this state is incidental to the employee's service within this state; or

(c) Some of the employee's service is performed in this state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

SEC. 386. Section 25117 is added to said code, to read:

25117. The denominator of the payroll factor shall include all compensation paid or payable to employees for services related to business income. When services are related only in part to business income during the taxable year, to the extent of the compensation for services related to business income shall be determined in such reasonable manner as the Franchise Tax Board may provide.

SEC. 387. Section 25118 is added to said code, to read:

25118. Sales of tangible personal property shall be considered made in this state and included in the numerator of the sales factor if:

(a) The property is delivered or shipped to a purchaser, other than the U.S. government, or to the designee of the purchaser within this state regardless of the f.o b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the U S. government, or (2) the taxpayer is not taxable in the state to which the property is delivered or shipped.

SEC. 388. Section 25119 is added to said code, to read:

25119. The denominator of the sales factor shall include sales as defined in subdivision (f) of Section 25106.

SEC. 389. Section 25120 is added to said code, to read.

25120. The extent to which sales other than sales of tangible personal property are attributable to this state shall be determined in such reasonable manner as the Franchise Tax Board may provide.

SEC. 390. Section 25201 of said code is amended to read:

25201. In the case of a contract with the United States or any agency thereof, or any subcontract thereunder, which is made by the taxpayer, if a renegotiation is made in respect of such contract or subcontract and an amount of excessive profits received or accrued under such contract or subcontract for an annual accounting period (hereinafter referred to as "prior year") is eliminated and, in an annual accounting period ending after December 31, 1941, the taxpayer is required to pay or repay to the United States or any agency thereof the amount of profits eliminated or the amount of profits eliminated is applied as an offset against other amounts due the taxpayer, then the profits so eliminated shall be excluded from gross income for the prior year if they were included in gross income for the prior year. For the purposes of this article—

(a) The term "renegotiation" includes any transaction which is a renegotiation within the meaning of the federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder

(b) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning as-

signed to such term by the applicable federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(c) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable federal renegotiation act.

(d) The term "federal renegotiation act" includes Section 403 of the Sixth Supplemental National Defense Appropriation Act (Public Law 528, 77th Congress, Second Session), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented.

SEC 391. Section 25202 of said code is amended to read:

25202. In the case of a cost-plus-a-fixed-fee contract between the United States or any agency thereof and the taxpayer, if an item for which the taxpayer has been reimbursed by the United States or any agency thereof is disallowed as an item of cost chargeable to such contract, and, in an annual accounting period ending after December 31, 1941, the taxpayer is required to repay the United States or any agency thereof the amount disallowed, or the amount disallowed is applied as an offset against other amounts due the taxpayer, for the purposes of this part the amount so disallowed or so applied as an offset shall be allowed as a deduction in the taxable year in which the reimbursement for such item was received or was accrued to the extent that the taxpayer's taxable net income for the year in which the cost was incurred would have been reduced had no such reimbursement been received or accrued.

SEC. 392 Section 25204 of said code is amended to read:

25204. The foregoing provisions of this article shall not apply in respect of any contract if the taxpayer shows to the satisfaction of the Franchise Tax Board that a different method of accounting for the amount of the payment, repayments, or disallowance clearly reflects income, and in such case the payment, repayment, or disallowance shall be accounted for with respect to the taxable year provided for under such method.

SEC 393. Section 25206 of said code is amended to read:

25206. If prior to the payment of the tax for the taxable year the taxpayer becomes entitled to the exclusions or deductions provided in this article for its taxable year, the taxpayer may, under regulations prescribed by the Franchise Tax Board, file a claim in abatement of any unpaid tax or portion thereof, but not in excess of the reduction in tax resulting from the application of this article.

SEC 394 Section 25208 of said code is amended to read:

25208. (a) If, pursuant to a price redetermination provision in a subcontract to which this section applies, a repayment with respect to an amount paid under the subcontract is made by one party to the subcontract (hereinafter referred to as the "payor") to another party to the subcontract (hereinafter referred to as the "payee"), then—

(1) The tax of the payor for prior years shall be recomputed as if the amount received or accrued by it with respect to which the repayment is made did not include an amount equal to the amount of the repayment, and

(2) The tax of the payee for prior years shall be recomputed as if the amount paid or incurred by it with respect to which the repayment is made did not include an amount equal to the amount of the repayment.

(b) Subsection (a) shall apply only to a subcontract which is subject to renegotiation under the applicable federal renegotiation act

(c) Subsection (a) shall not apply to any repayment to the extent that Sections 25201 through 25207 apply to the amount repaid

(d) The amount of any repayment to which subsection (a) applies shall not be taken into account by the payor or payee for the year in which the repayment is made, but any overpayment or underpayment of tax resulting from the application of subsection (a) shall be treated as if it were an overpayment or underpayment for the year in which the repayment is made.

(e) This section shall apply only with respect to subcontracts entered into after December 31, 1960, and only to repayments for annual accounting periods beginning after December 31, 1960

SEC 395 Section 25401 of said code is amended to read:

25401 (a) Every taxpayer subject to the tax imposed by this part shall, within 2 months and 15 days after the close of its taxable year, or within 2 months and 15 days after the effective date of dissolution or withdrawal provided in Section 23331, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the taxable year, all such facts as it may by rule, or otherwise, require in order to carry out the provisions of this part A tax return, disclosing net income for any taxable year, filed pursuant to Chapter 2 or Chapter 3 of this part shall be deemed filed pursuant to the proper chapter of this part for the same period, if the chapter under which filed is determined erroneous.

(b) Except in the case of dissolution or withdrawal as provided in subdivision (a), returns of cooperative associations described in Section 24404 shall be filed on or before the 15th day of the 9th month following the close of the taxable year

SEC 396 Section 25401b of said code is amended to read:

25401b. (1) For purposes of this part the amount deducted and withheld under Section 26131 during any calendar year

shall be allowed to the bank or corporation from which such amount was deducted and withheld as a credit against the tax imposed by this part.

(2) The amount so withheld during any calendar year shall be allowed as a credit for the taxable year of the bank or corporation with respect to which such amount was withheld

(3) For purposes of Section 26073, any tax actually deducted and withheld during any calendar year under Section 26131 shall, in respect of the bank or corporation from which such amount was deducted and withheld, be deemed to have been paid by it on the 15th day of the third month following the close of the taxable year with respect to which such tax was deducted and withheld

SEC. 397. Section 25441 of said code is amended to read:

25441. Every taxpayer subject to the tax imposed by this part shall, within 5 months and 15 days after the beginning of its taxable year, transmit to the Franchise Tax Board a declaration of estimated tax containing such pertinent information as the Franchise Tax Board may by forms or regulations prescribe, the estimated tax to be computed on the basis of the estimated net income of the taxable year

SEC. 398. Section 25442 of said code is amended to read:

25442. A taxpayer may make amendments of a declaration filed during the taxable year under regulations prescribed by the Franchise Tax Board

SEC. 399 Section 25443 of said code is amended to read:

25443. A taxpayer with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Franchise Tax Board

SEC 400. Section 25552b of said code is amended to read:

25552b The sum of the first and second installments, provided for in Sections 25552 and 25552a, shall not exceed 10 percent of the net income of each such taxpayer subject to the tax imposed by Article 3 of Chapter 2.

SEC 400.5. Section 25553 of said code is amended to read:

25553 Beginning with the calendar year 1965 and fiscal years beginning in 1965, in the case of taxpayers subject to the tax imposed by Article 3 of Chapter 2, there shall be due and payable on or before the 15th day of the 3rd month following the close of the preceding year from each such taxpayer a percentage of its net income as disclosed by its return which is equal to the rate applicable to corporations subject to the tax imposed by Article 2 of Chapter 2 plus the difference between such rate and the rate determined by the Franchise Tax Board in December of the preceding year pursuant to Section 23186a, *23186.5 or 23186.7, whichever is applicable,* less the credit allowable by Section 23184. The payment by financial corporations, other than credit unions whose gross income is twenty thousand dollars ($20,000) or less, shall not be less than the minimum tax of one hundred dollars ($100). The payment by credit unions whose gross income is twenty

thousand dollars ($20,000) or less shall not be less than twenty-five dollars ($25)

SEC 400 7 Section 25553 5 of said code is amended to read:

25553 5 The amount of tax payable by taxpayers subject to the tax imposed by Article 3 of Chapter 2 as set forth in a notice mailed to such taxpayers pursuant to Section 23186a, *23186 5 or 23186 7, whichever is applicable,* shall be due and payable or or before the 15th day following the mailing of the notice by the Franchise Tax Board

~~SEC 401 Section 25553 7 is added to said code, to read:~~

~~25553 7 Notwithstanding the provisions of Section 25553 and Section 25553 5 the tax for banks and financial corporations for the calendar year 1965 and fiscal years beginning in 1965, at the rate provided in Section 25181 2, shall be due and payable on or before the 15th day of the 3rd month following the close of the taxable year; but in no event shall the tax of a financial corporation be less than one hundred dollars ($100), except that in the case of a credit union the tax shall not be less than twenty-five dollars ($25). In computing its tax a financial corporation shall not be allowed the offset provided by Section 23181~~

SEC 401 5 Section 25562 of said code is amended to read:

25562 For purposes of this article, in the case of banks and financial corporations, the term "estimated tax" means the amount which the bank or financial corporation estimates as the amount of the tax imposed by this part at the rate determined by the Franchise Tax Board for the preceding year pursuant to Section 23186a, *23186 5 or 23186 7, whichever is applicable,* less the credit allowable by Section 23184, but in no event shall the estimated tax of a financial corporation be less than one hundred dollars ($100), except that in a case of a corporation described in subsection (a) of Section 23153 the estimated tax shall not be less than twenty-five dollars ($25).

SEC 402 Section 25563 of said code is amended to read:

25563 If the amount of estimated tax with respect to which a declaration is required under Article 2 5 of this chapter does not exceed one hundred dollars ($100), or twenty-five dollars ($25) in the case of a corporation described in Section 23153, the entire amount of the estimated tax shall be due and payable within 5 months and 15 days after the beginning of the taxable year. If the amount of estimated tax exceeds one hundred dollars ($100), or twenty-five dollars ($25) in the case of a corporation described in Section 23153, the amount payable within 5 months and 15 days after the beginning of the taxable year shall be—

(a) For the calendar year 1965 or taxable years beginning in that calendar year, one hundred dollars ($100) or 20 percent of the amount of the estimated tax (or twenty-five dollars ($25) or 20 percent of the estimated tax in the case of a corporation described in Section 23153), whichever is greater,

(b) For the calendar year 1966 or taxable years beginning in that calendar year, one hundred dollars ($100) or 35 percent of the amount of the estimated tax (or twenty-five dollars ($25) or 35 percent of the estimated tax in the case of a corporation described in Section 23153), whichever is greater;

(c) For taxable years beginning on or after January 1, 1967, one hundred dollars ($100) or 50 percent of the amount of the estimated tax (or twenty-five dollars ($25) or 50 percent of the estimated tax in the case of a corporation described in Section 23153), whichever is greater.

SEC 403 Section 25564 of said code is amended to read:

25564 The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board

SEC 404 Section 25761 of said code is amended to read·

25761 If the Franchise Tax Board finds that the assessment or collection of a tax or deficiency for any year, current or past, will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, or its transferee or transferees, liable for the tax imposed under this part, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including interest and penalties and additions thereto.

In the case of a tax for a current period, the Franchise Tax Board may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its findings and declaration to the taxpayer, together with a demand for a return and immediate payment of the tax based on the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includable or deductible in respect of such period, and such tax shall be immediately due and payable whether or not the time otherwise allowed by law for filing the return and paying the tax has expired

SEC. 405 Section 25952 of said code is amended to read:

25952 For the purposes of Section 25951 the amount of the underpayment shall be the excess of—

(a) The amount which would be required to be paid if the estimated tax were equal to 70 percent of the tax shown on the return for the taxable year, or in the case of the tax imposed by Article 3 of Chapter 2 the amount of the tax shown on the return for the taxable year plus or minus the amount of tax payable or refundable, respectively, as shown on the notice of determination mailed by the Franchise Tax Board pursuant to Section 23186a for the taxable year, or, if no return was filed, 70 percent of the tax for such year, over

(b) The amount, if any, paid on or before the last date prescribed for payment.

SEC. 406. Section 25953 of said code is amended to read:

25953. The period of the underpayment shall run from the date the payment was required to be made to whichever of the following dates is the earlier—

(a) The 15th day of the third month following the close of the taxable year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid.

SEC. 407. Section 25954 of said code is amended to read:

25954. Notwithstanding the provisions of the preceding sections of this article, the addition to the tax with respect to any underpayment shall not be imposed if the amount of estimated tax paid on or before the last date prescribed for the payment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(a) The tax shown on the return of the taxpayer for the preceding annual accounting period if a return showing a liability for tax was filed by the taxpayer for the preceding year and such preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 of Chapter 2, means the amount of tax shown on the return for the annual accounting period plus or minus the amount of tax payable or refundable, respectively, as shown on the notice of determination mailed by the Franchise Tax Board pursuant to Section 23186a for the taxable year.

(b) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

(c)(1) An amount equal to 70 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the first three months or for the first five months of the taxable year.

(2) For purposes of this subsection, the taxable income shall be placed on an annualized basis by—

(A) Multiplying by 12 the taxable income referred to in paragraph (1), and

(B) Dividing the resulting amount by the number of months in the annual accounting period referred to in paragraph (1).

"Taxable income" as used in this section means, in the case of the tax imposed by Chapter 2, income includable in the measure of the tax.

SEC. 408 Section 25956 of said code is amended to read:

25956. The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board.

SEC. 408.5 Section 26312 is added to said code, to read:

26312 (a) The Franchise Tax Board is authorized to provide with respect to any amount required to be shown on a form, return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by one dollar ($1).

(b) Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Franchise Tax Board, to make such return, statement, or other document without regard to subdivision (a)

(c) The provisions of subdivisions (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

SEC 408 7. Section 26313 is added to said code, to read:

26313 The Franchise Tax Board may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this part, a fractional part of a dollar shall be disregarded, unless it amounts to 50 cents or more, in which case it shall be increased to one dollar ($1)

~~SEC. 409. The heading of Part 13 (commencing with Section 30001) of Division 2 of said code is amended to read:~~

~~PART 13. CIGARETTE AND TOBACCO TAX~~

~~SEC. 410. Section 30001 of said code is amended to read:~~

~~30001. This part is known and may be cited as the "Cigarette and Tobacco Tax Law."~~

~~SEC. 411. Section 30001 is added to said code, to read:~~

~~30001. "Tobacco product" means any article or product, other than a cigarette, made in whole or in part of tobacco, prepared or processed for consumption by smoking, chewing, or as snuff.~~

~~SEC. 412. Section 30005 of said code is amended to read:~~

~~30005. "Untaxed cigarette" or "untaxed tobacco product" means any cigarette or tobacco product which has not yet been distributed in such manner as to result in a tax liability under this part.~~

~~SEC. 413. Section 30007 is added to said code, to read:~~

~~30007. "Wholesale price" means the price at which a distributor purchases a tobacco product before the allowance of any discount, rebate or any other deduction. If the distributor is also the manufacturer of the tobacco product, it means the price at which the manufacturer sells a tobacco product before the allowance of any discount, rebate or any other deduction.~~

~~Sec. 414.~~ *SEC 409.* Section 30008 of said code is amended to read:

30008. "Distribution" includes:

(a) The sale of untaxed cigarettes ~~or untaxed tobacco products~~ in this state,

(b) The use or consumption of untaxed cigarettes ~~or untaxed tobacco products~~ in this state;

(c) The placing in this state of untaxed cigarettes in a vending machine or in retail stock for the purpose of selling the cigarettes to consumers,

~~(d). The receiving, handling or holding in this state, except by the manufacturer, of untaxed tobacco products for sale.~~

~~Sec. 415. Section 30009 of said code is amended to read:~~

~~30009. "Use or consumption" includes the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof, other than the sale of the cigarettes or tobacco products or the receiving, handling or holding thereof for the purpose of sale.~~

~~Sec. 416. Section 30011 of said code is amended to read:~~

~~30011. "Distributor" includes:~~

~~(a) Every person who, after 4 o'clock a.m. on July 1, 1950, and within the meaning of the term "distribution" as defined in this chapter, distributes cigarettes.~~

~~(b) Every person who, after 12:01 o'clock a.m. on July 1, 1965, and within the meaning of the term "distribution" as defined in this chapter, distributes tobacco products.~~

~~(c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state.~~

~~Sec. 417. Section 30012 of said code is amended to read:~~

~~30012. "Dealer" includes every person, other than one holding a distributor's license, who engages in this state in the sale of cigarettes or tobacco products.~~

~~Sec. 418. Section 30014 of said code is amended to read:~~

~~30014. "Transporter" means any person transporting in this state, cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions, or any person transporting in this state tobacco products obtained from a source located outside this state, or obtained within this state from any person neither licensed as a distributor under this part nor holding a permit issued pursuant to Article 2 of Chapter 2 of the Sales and Use Tax Law; provided however, transporter shall not include:~~

~~(a) a licensed distributor,~~

~~(b) a common carrier, or~~

~~(c) a person transporting cigarettes or tobacco products under Federal Internal Revenue bond or customs control that are nontax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.~~

~~Sec. 419.~~

SEC. 410. Section 30016 of said code is repealed.

~~Sec. 420.~~

SEC. 411 Section 30101 of said code is amended to read:

30101 Every distributor shall pay a tax upon his distributions ~~of cigarettes and tobacco products at the following rates:~~

~~(a) At the rate of one and one-half mills ($0.0015) for the distribution of each cigarette until 12:01 o'clock a.m. on July 1, 1965, and at the rate of four mills ($0.004) for the distribution of each cigarette on and after 12:01 o'clock a.m. on July 1, 1965.~~

~~(b) At the rate of twenty percent (20%) of the wholesale price for the distribution of tobacco products on and after 12:01 o'clock a.m. on July 1, 1965.~~

tions of cigarettes at the rate of one and one-half mills ($0.0015) for the distribution of each cigarette after 4 o'clock a.m on July 1, 1959, to and including 12:01 o'clock a.m. on July 1, 1965, and at the rate of four mills ($0.004) thereafter.

~~Sec. 421. Section 30101.5 is added to said code, to read:~~

~~30101.5. When tobacco products that would otherwise be "untaxed tobacco products" except for the operation of subdivision (d) of Section 30008 are sold, used or consumed by a distributor in a manner that would be exempt from the taxes imposed by this part if they were "untaxed tobacco products," they shall be deemed to be "untaxed tobacco products" for the purpose of the sale, use or consumption and the distributor shall be allowed a tax credit equal to the tax liability imposed upon him for the distribution of the tobacco products arising from the operation of subdivision (d) of Section 30008.~~

~~Sec. 422. Section 30102 of said code is amended to read:~~

~~30102. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products to:~~

~~(a) U.S. Army, Air Force, Navy, Marine Corps or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores, or~~

~~(b) The U.S. Veterans Administration.~~

~~Sec. 423.~~

SEC. 412. Section 30102.5 of said code is amended to read:

30102.5. The taxes imposed by this part shall not apply to the distribution of cigarettes or tobacco products that are non-tax paid under the provisions of the Internal Revenue Act of 1954 as amended, and the cigarette or tobacco products are under Internal Revenue bond or customs control.

~~Sec. 424 Section 30103 of said code is amended to read:~~

~~30103. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the manufacturer to a licensed distributor.~~

~~Sec. 425 Section 30104 of said code is amended to read:~~

~~30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of such carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers~~

~~engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Section 30101 shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making such sales in California at the same rate as set forth in Section 30101. Such common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.~~

~~SEC. 426. Section 30105.5 of said code is amended to read:~~

~~30105.5. The taxes imposed by this part shall not apply to the sale or gift of federally tax-free cigarettes or tobacco products when the cigarettes or tobacco products are delivered directly from the manufacturer under Internal Revenue bond to a veterans' home of the State of California or a hospital or domiciliary facility of the U.S. Veterans Administration for gratuitous issue to veterans receiving hospitalization of domiciliary care. The tax shall not be imposed with respect to the use or consumption of such cigarettes or tobacco products by the institution or by the veteran patients or domiciliaries.~~

~~SEC. 427. Section 30106 of said code is amended to read:~~

~~30106. The taxes imposed by this part shall not apply to the use or consumption of untaxed cigarettes transported to this state in a single lot or shipment of not more than 200 cigarettes, or of not more than 200 untaxed cigarettes obtained at one time from any of the instrumentalities listed in Section 30102.~~

~~SEC. 428. Section 30107 of said code is repealed.~~

~~SEC. 429. Section 30107 is added to said code, to read:~~

~~30107. The taxes resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 shall be paid by the user or consumer.~~

~~SEC. 430. Section 30108 of said code is amended to read:~~

~~30108. Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Section 30101 is mappleable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.~~

~~"Distributor engaged in business in the state" means and includes any of the following:~~

~~(a) Any distributor maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place~~

of distribution, sales or sample room or place, warehouse or storage place or other place of business.

(b) Any distributor having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

SEC. 431. Section 30109 of said code is amended to read:

30109. Unless the contrary is established, it shall be presumed that all cigarettes or tobacco products acquired by a distributor are untaxed, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed.

SEC. 432. Section 30111 of said code is amended to read:

30111. The taxes imposed by this part are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes and tobacco products.

This section does not prohibit the application of Part 1 (commencing at Section 6001) or Part 1.5 (commencing at Section 7200) of Division 2 of this code to the sale, storage, use or other consumption of cigarettes and tobacco products.

SEC. 433.

SEC. 113. Article 2 (commencing at Section 30115) of Chapter 2 of Part 13 of Division 2 of said code is repealed

SEC. 434.

SEC. 414. Article 3 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of said code is repealed.

SEC. 435.

SEC. 415. Article 3 (commencing with Section 30126) is added to Chapter 2 of Part 13 of Division 2 of said code, to read:

Article 3. Floor Stocks and Indicia Adjustment Taxes

30126. For the privilege of holding or storing cigarettes or tobacco products for sale, use or consumption, a floor tax is hereby imposed upon every dealer at the rate of two and one-half mills ($0.0025) for each cigarette and in the amount of twenty percent (20%) of the dealer's purchase price for all tobacco products, in the possession of the dealer or under his control in this state at 12:01 o'clock a.m. on July 1, 1965.

30127. Every dealer shall take an inventory as of 12:01 o'clock a.m. on July 1, 1965, of all cigarettes and tobacco products in his possession or under his control. He shall file a report with the board on or before July 28, 1965, in such form as the board may prescribe, showing the number of cigarettes and the tobacco products with his purchase price of such tobacco products, in his possession or under his control at 12:01 o'clock a.m. on July 1, 1965. The amount of tax required to be paid on the cigarettes and tobacco products shall be computed and shown on the dealer's return.

30128. For the privilege of distributing cigarettes as a licensed distributor and for holding or storing cigarettes for sale, use or consumption a floor tax and cigarette indicia adjustment tax is hereby imposed upon every licensed distributor as follows:

(a) In the amount of five cents ($0 05) for each California cigarette tax stamp or meter impression bearing the designation "20" and in the amount of two and one-half cents ($0 025) for each California cigarette tax stamp bearing the designation "10," which is affixed to any package of cigarettes in the possession of the licensed distributor or under his control at 12 01 o'clock a m on July 1, 1965

(b) In the amount of five cents ($0 05) for each unaffixed California cigarette tax stamp bearing the designation "20" and two and one-half cents ($0 025) for each unaffixed California cigarette tax stamp bearing the designation "10" and fifty cents ($0 50) for each unused meter register unit, in the possession of the licensed distributor or under his control at 12 01 o'clock a.m. on July 1, 1965. The amounts levied under this subdivision shall be reduced by a discount of two percent (2%).

30129. Every licensed distributor shall take an inventory as of 12:01 o'clock a m. on July 1, 1965, of all packages of cigarettes to which are affixed California cigarette tax stamps or meter impressions and all unaffixed California cigarette tax stamps and unused meter register units in his possession or under his control. Every licensed distributor shall file a report with the board on or before July 28, 1965, in such form as the board may prescribe, showing:

(a) The number of California cigarette tax stamps and meter impressions, with the designations thereof, which were affixed to packages of cigarettes in his possession or under his control at 12 01 o'clock a m on July 1, 1965

(b) The number of unaffixed California cigarette tax stamps, with the designations thereof, and unused meter register units which were in his possession or under his control at 12 01 o'clock a m on July 1, 1965

The amount of tax required to be paid with respect to the stamp, meter impressions and meter register units shall be computed and shown on the distributor's return

30130 The taxes required to be paid by this article are due and payable on or before July 28, 1965. Payments shall be made by remittances payable to the board and the payments shall accompany the reports required to be filed by this article Any amount required to be paid by this article which is not timely paid shall bear interest at the rate of one-half of one percent per month or fraction thereof from July 28, 1965, until paid, and shall be subject to determination, and redetermination, and any penalties provided with respect to determinations and redeterminations.

30131. The provisions of this article shall not apply with respect to cigarettes ~~and tobacco products~~ which are non-tax

paid under the provisions of Chapter 52 of the Internal Revenue Act of 1954, as amended, and are in internal revenue bond or customs control.

~~30132. Tobacco products taxed under this article shall not be otherwise subject to the taxes imposed by this part, and a dealer shall not be required to obtain a distributor's license for the handling, holding for sale or the selling of such tobacco products.~~

~~SEC. 436. Section 30140 of said code is amended to read:~~

~~30140. Every person desiring to engage in the sale of cigarettes or tobacco products as a distributor, (including a common carrier or authorized person mentioned in Section 30104) except a person who desires merely to sell or accept orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state, shall file with the board an application, in such form as the board may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he engages in the business of distributing cigarettes or tobacco products.~~

~~SEC. 437.~~

SEC. 416 Section 30142 of said code is amended to read:

30142 The board shall fix the amount of the bond or bonds required of any distributor and may increase or reduce the amount at any time A minimum bond or bonds in the amount of one thousand dollars ($1,000) shall be furnished by every distributor required to be licensed. If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 of Chapter 3 5 of this part, the board shall require a bond or bonds equal to the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred

~~SEC. 438.~~

SEC. 417 Section 30167 of said code is amended to read:

30167. A licensed distributor may apply to the board to fix the maximum amount of deferred-payment purchases of stamps and meter register settings which the distributor may ~~make in any~~ *have unpaid at any time* ~~calendar month~~. Upon receipt of the application and the bond or bonds required pursuant to Section 30142, the board shall fix such amount. The board at any time may designate the sales locations where the distributor may make deferred-payment purchases of stamps and meter register settings and fix the amount of such purchases which the distributor may ~~make within each monthly period~~ *have unpaid at any time with respect to purchases made* at the designated sales locations.

~~SEC. 439.~~

SEC 418. Section 30168 of said code is amended to read:

30168 Amounts owing for stamps and meter register settings purchased on the deferred-payment basis in any calendar month beginning with July 1965 shall be due and payable on

or before the ~~20th~~ *28th* day of the following calendar month. Payment shall be made by a remittance payable to the board.

Amounts owing for purchases made from June 16, 1965, to and including June 30, 1965, shall be due and payable on or before July 28, 1965.

SEC. 419. Section 30170 of said code is amended to read:

30170. The board may suspend without prior notice a distributor's privilege to purchase stamps or meter register settings on the deferred-payment basis or may reduce the amount of permissible ~~monthly~~ *unpaid* purchases fixed for the distributor, if the distributor fails to promptly pay for stamps or meter register settings when payment is due, if the bond or bonds of the distributor are canceled, become void, impaired, or unenforceable for any reason, or if in the opinion of the board, collection of any amounts unpaid or due from the distributor under this part are jeopardized.

SEC. 420. Section 30179 of said code is amended to read:

30179. Interest shall be computed, allowed and paid upon any overpayment for the purchase of stamps or meter register settings at the rate of one-half of 1 percent per month from the due date for payment of the purchase for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited The interest shall be paid:

(a) In the case of a refund, to the ~~15th~~ *20th* day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

~~SEC. 440.~~

SEC. 421. Section 30181 of said code is amended to read:

30181. When any tax imposed under Article 1 of Chapter 2 of this part is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 20th day of the month following the calendar month in which a distribution of cigarettes ~~or tobacco products occurs, or in the case of a sale of cigarettes or tobacco products on the facilities of a common carrier for which the tax~~ *occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax* is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 20th day of the month following the calendar month in which a sale of cigarettes ~~or tobacco products~~ on the facilities of the carrier occurs

~~SEC. 441.~~

SEC. 423. Section 30182 of said code is amended to read:

30182 On or before the 20th day of each month, every distributor shall file on forms prescribed by the board a report respecting his distributions of cigarettes ~~and tobacco~~

~~products~~ and purchases of stamps and meter register units during the preceding month and such other information as the board may require to carry out the purposes of this part.

~~SEC. 412.~~

SEC. 423. Section 30183 of said code is amended to read:

30183. On or before the 20th day of each month every distributor required under Section 30108 to collect any tax during the preceding month shall file a report with the board on forms prescribed by the board showing the number of cigarettes ~~and the tobacco products~~ with respect to which he was required to collect the tax and such other information as the board may require to carry out the purposes of this part.

~~SEC. 443.~~

SEC. 424 Section 30186 of said code is amended to read.

30186 On or before the 20th day of each month the common carriers and authorized persons specified in Section 30104 shall file with the board a report of the sales of cigarettes ~~and tobacco products~~ made by them on the facilities of the carriers in California in the preceding calendar month in such detail and form as the board may prescribe, submitting with the report the amount of the tax due under Section 30104

~~SEC. 444.~~

SEC. 425. Section 30187 of said code is amended to read:

30187. Every consumer or user subject to the tax resulting from a distribution of cigarettes ~~or tobacco products~~ within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall on or before the 20th day of the month following receipt of cigarettes ~~or tobacco products~~ file with the board a report of the amount of cigarettes ~~and a description and the purchase price of tobacco products~~ received by him in the preceding calendar month in such detail and form as the board may prescribe, submitting with the report the amount of tax due

~~SEC. 445~~

SEC 426. Section 30202 of said code is amended to read:

30202. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of 1 percent per month, or fraction thereof, from the date the amount of the tax, or any portion thereof, should have been reported until the date of payment

~~SEC. 446. Section 30221 of said code is amended to read:~~

~~30221. If any person fails to make a report, the board shall make an estimate of the number of cigarettes and the quantities and prices of tobacco products distributed by him. The estimate shall be made for the month or months in respect to which the person failed to make a report and shall be based upon any information available to the board. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made for one or more than one month.~~

~~SEC. 447.~~

SEC. 427. Section 30223 of said code is amended to read:

30223. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of 1 percent per month, or fraction thereof, from the date the amount, or any portion thereof, should have been reported until the date of payment.

~~SEC. 448.~~

SEC. 427.1. Section 30244 is added to said code, to read:

30244. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of deficiency determination.

~~SEC. 449. Section 30366 of said code is amended to read:~~

SEC. 428. Section 30362 of said code is amended to read:

30362. No refund shall be allowed or approved after three years from the ~~fifteenth~~ *20th* day after the close of the monthly period for which the overpayment was made, or, with respect to a determination made under Chapter 4 of this part, after six months from the date the determination becomes final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within such period. No credit shall be approved or allowed after the expiration of such period unless a claim for credit is filed with the board within such period.

SEC. 429. Section 30366 of said code is amended to read:

30366. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the rate of one-half of 1 percent per month from the 20th day of the calendar month following the monthly period for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid:

(a) In the case of a refund, to the 20th day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

~~SEC. 450. Article 1.5 (commencing with Section 30371) is added to Chapter 6 of Part 13 of Division 2 of said code, to read:~~

~~Article 1.5. Unsalable Tobacco Products~~

~~30371. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the amount of tax paid on tobacco products, which have prior to sale become unfit for use, unsalable or have been destroyed, or which after sale have been returned for credit or have been replaced, and the~~

board has proof of the tobacco products not being consumed in this state.

SEC. 451. Section 30131 of said code is amended to read:

30131. Any transporter desiring to possess or acquire for transportation or transport upon the highways, roads or streets of this state more than 200 cigarettes which are not contained in packages to which are affixed California cigarette tax stamps or meter impressions or tobacco products of more than five dollars ($5) in retail value, shall obtain a permit from the board authorizing such transporter to possess or acquire for transportation or transport the cigarettes or tobacco products, and he shall have the permit in the transporting vehicle during the period of transportation of the cigarettes or tobacco products. The application for the permit shall be in such form and shall contain such information as may be prescribed by the board. The board may issue a permit for a single load or shipment or for a number of loads or shipments to be transported under specified conditions.

SEC. 452. Section 30132 of said code is amended to read:

30132. Each transporter who shall transport or possess or acquire for the purpose of transporting upon the highways, roads or streets of this state more than 200 cigarettes which are not contained in packages to which are affixed California cigarette tax stamps or meter impressions or tobacco products of more than five dollars ($5) in retail value, is required to have in the transporting vehicle during the period of transportation invoices, bills of lading or delivery tickets covering the cigarettes or tobacco products being transported which shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity and brands of the cigarettes and tobacco products transported.

SEC. 453. Section 30133 of said code is repealed.

SEC. 454. Chapter 7.5 (commencing with Section 30136) is added to Part 13 of Division 2 of said code to read:

CHAPTER 7.5. SEIZURE AND FORFEITURE

30136. The following property, upon seizure by the board, is hereby forfeited to the State of California:

(a) Cigarettes and tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30131 or Section 30132.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes without payment of the taxes imposed by this part.

(c) Untaxed tobacco products offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell them without a license in violation of this part.

~~(d) Any cigarette vending machine, together with the cigarettes, money or other contents thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed.~~

~~30437. Notice of the seizure and forfeiture of the property shall be given by the board by personal service or by registered or certified mail to all persons known by the board to have any right, title or interest in the property seized. Unknown persons, or any known person who cannot be found, having any right, title or interest in the property shall be served by one publication of the notice of seizure and forfeiture in a newspaper of general circulation in the county where the seizure was made. The notice shall include a description of the property, the reason for the seizure, and the time and place of the seizure.~~

~~30438. Any person owning or claiming any interest in the property may file a verified petition with the board stating his interest in the property and requesting the release or recovery of the property on the ground that the property was erroneously or illegally seized. Any person served personally or by mail under Section 30437 shall file the petition within 20 days from the date of the personal service upon him or the date of the mailing of the notice to him. Any person not served personally or by mail under that section shall file the petition within 20 days from the date of publication of the notice. The failure of any such person to file a timely verified petition shall constitute a bar to his right to any interest in the property, except insofar as the rights of any such person may be established in an action filed by the board under this chapter.~~

~~30439. If the board determines that the property was seized erroneously or illegally, it shall order the release of the property. If the board denies the petition for the release or recovery of the property, notice of the denial shall be mailed within five days to the petitioner.~~

~~30440. Within 20 days from the date of the mailing of the board's notice of denial of the petition, the petitioner may file an action against the board in the Superior Court of the County of Sacramento for the release or recovery of the property on the ground that the property was erroneously or illegally seized. The failure of the petitioner to file a timely action shall constitute a bar to his right to any interest in the property, except insofar as the rights of the petitioner may be established in an action filed by the board under this chapter. The court shall determine whether the seizure of the property was in accordance with law and shall enter an appropriate order for the disposition of the property.~~

~~30441. Within 20 days after the seizure of property under this chapter, any person owning or claiming an interest in the property may offer to deposit with the board an amount of money equal to the fair market value of the property as determined by the board. If the board is satisfied that the property~~

~~will not be used, transported or sold in violation of any provision of this part, the board shall accept the deposit and release the property. The money so deposited shall be held by the board in lieu of the seized property and shall be treated in all respects in the same manner as that property.~~

~~30412. Notwithstanding any other provisions of this chapter, upon making a seizure of property under Section 30436, the board may at any time prior to the sale or other disposition of the property commence an action to determine the rights of the state to the property. The action shall be commenced in the superior court of the county in which the seizure was made by petitioning the court for a judgment confirming the seizure and forfeiture of the property. The petition shall describe the property, the grounds for seizure and the time and place of the seizure.~~

~~30413. Copies of the petition shall be served personally or by registered or certified mail on all persons known by the board to have any right, title or interest in the property seized. Unknown persons, or any known person who cannot be found, having any right, title or interest in the property shall be served by one publication of the petition in the manner prescribed for publication of the notice of seizure and forfeiture under Section 30437.~~

~~30414. Any person claiming any right, title or interest in the property may within 20 days after service of the petition upon him file an answer to the petition. The answer shall allege facts to show the interest of the claimant in the property and to establish that the seizure and forfeiture was erroneous or illegal. A copy of the answer shall be served on the board at its office in Sacramento.~~

~~30415. If at the expiration of 20 days after the petition has been personally served, mailed or published there is no answer on file, the court shall within 30 days thereafter receive evidence in support of the seizure and forfeiture and shall, upon being satisfied of the validity thereof, enter judgment confirming the seizure and forfeiture.~~

~~30416. If a timely answer has been filed, the proceeding shall be set for hearing on a day within 30 days after the expiration of the period for filing of an answer. Notice of the hearing shall be given by the clerk of the court to each person filing an answer.~~

~~30417. At the time set for the hearing any person having a timely answer on file may offer evidence to establish that the seizure and forfeiture of the property was erroneous or illegal.~~

~~30418. The court shall determine whether the seizure of the property was in accordance with law and enter an appropriate order for the disposition of the property.~~

~~30419. Any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.~~

~~SEC. 455. Section 30453 of said code is amended to read:~~

~~30453. Every distributor and every person dealing in, transporting, or storing cigarettes or tobacco products in this state shall keep such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the board may require.~~

~~SEC. 456. Section 30454 of said code is amended to read:~~

~~30454. The board or its authorized representative may make such examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and such other investigations as it may deem necessary in carrying out the provisions of this part.~~

~~In addition to any other reports required under this part, the board may, by rule and otherwise, require additional other, or supplemental reports from distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports.~~

~~SEC. 457. Section 30455 of said code is amended to read:~~

~~30455. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person.~~

~~Nothing in this section shall prevent the board from exchanging with officials of other states information concerning interstate shipments of cigarettes and tobacco products.~~

~~Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.~~

~~SEC. 458. Section 30461 of said code is amended to read:~~

~~30461. All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Cigarette and Tobacco Tax Fund, which fund is hereby created. All amounts remaining in the Cigarette Tax Fund at the time this act becomes operative shall be transferred to the Cigarette and Tobacco Tax Fund.~~

SEC. 459. Section 30462 of said code is amended to read:

30462. All money deposited in the Cigarette and Tobacco Tax Fund under this part shall, upon order of the State Controller, be drawn therefrom for refunds under this part or be transferred to the General Fund of this state.

SEC. 460. Section 30475 of said code is repealed.

SEC. 461. Section 30475 is added to said code, to read:

30475. Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

SEC. 462. Section 30476 is added to said code, to read:

30476. Any person in possession or control of, or having access to, a cigarette vending machine who knowingly or willfully places for sale in the vending machine, any cigarettes not contained in packages to which are affixed California tax stamps or meter impressions, is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment at the discretion of the court.

SEC. 463. Section 30476 of said code is amended and renumbered to read:

30477. Any violation of the provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

SEC. 464. Part 16 (commencing with Section 36001) is added to Division 2 of said code, to read:

PART 16. GAS, ELECTRICITY, TELEPHONE AND TELEGRAPH SALES AND USE TAXES

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

36001. This part is known and may be cited as the "Gas, Electricity, Telephone and Telegraph Sales and Use Tax Law."

36002. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

36003. "Sales tax" means the tax imposed by Chapter 2 of this part.

36004. "Use tax" means the tax imposed by Chapter 3 of this part.

~~36005. "Person" includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.~~

~~36006. "Sale" means and includes any transfer of title, exchange, barter, or furnishing in any manner or by any means whatsoever of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services for a consideration.~~

~~36007. A "retail sale" or "sale at retail" means a sale of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services for any purpose other than resale in the regular course of business in the same form as purchased.~~

~~36008. "Purchase" means and includes any transfer of title, exchange, barter or receipt in any manner or by any means whatsoever of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services for a consideration.~~

~~36009. "Sales price" means the total amount for which gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services are sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:~~

~~(a) The cost of the property or services sold.~~

~~(b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.~~

~~The total amount for which gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services are sold includes all of the following:~~

~~(a) Any services that are a part of the sale.~~

~~(b) Any amount for which credit is given to the purchaser by the seller.~~

~~"Sales price" does not include any of the following:~~

~~(a) The amount of any tax (not including, however, any manufacturer's or importer's excise tax) imposed by the United States upon or with respect to retail sales of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services whether imposed upon the retailer or the consumer.~~

~~(b) The amount of any tax imposed by any city, county or city and county within the State of California upon or with respect to retail sales of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.~~

~~(c) The amount of any tax imposed by any city, county or city and county within the State of California with respect to~~

~~the use or other consumption in such city, county or city and county of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.~~

~~36010. "Gross receipts" mean the total amount of the sale price of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:~~

~~(a) The cost of the property or services sold.~~

~~(b) The cost of materials used, labor or service cost, interest paid, losses, or any other expenses.~~

~~The total amount of the sale price includes all of the following:~~

~~(a) Any services that are a part of the sale.~~

~~(b) All receipts, cash, credits and property of any kind.~~

~~(c) Any amount for which credit is allowed by the seller to the purchaser.~~

~~"Gross receipts" do not include any of the following:~~

~~(a) The amount of any tax (not including, however, any manufacturer's or importer's excise tax) imposed by the United States upon or with respect to retail sales of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services whether imposed upon the retailer or the consumer.~~

~~(b) The amount of any tax imposed by any city, county or city and county within the State of California upon or with respect to retail sales of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.~~

~~(c) The amount of any tax imposed by any city, county or city and county within the State of California with respect to the use or other consumption in such city, county or city and county of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.~~

~~(d) The amount of coins deposited in any coin operated telephone provided that "gross receipts" shall include any agreed minimum service charge for such telephone.~~

~~36011. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.~~

~~36012. "Seller" includes every person engaged in the business of selling gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services.~~

~~36013. "Retailer" includes any seller who makes any retail sale or sales of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services.~~

~~36014. "In this state" or "in the state" means within the exterior limits of the State of California and includes all ter-~~

~~ritory within these limits owned by or ceded to the United States of America.~~

~~36015. "Gas" means any natural or manufactured gas for light, heat or power.~~

~~CHAPTER 2. THE SALES TAX~~

~~Article 1. Imposition of Tax~~

~~36051. For the privilege of selling gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services at retail a tax is hereby imposed upon all retailers at the rate of 2 percent of the gross receipts of any retailer from the sale of all gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services sold at retail in this state on or after July 1, 1965.~~

~~36052. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.~~

~~36053. The board may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be separately stated.~~

~~36054. A retailer is relieved from liability for sales tax due under this part which became due and payable subsequent to July 1, 1965, insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the retailer has previously paid the tax, he may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter, in whole or in part, collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the tax paid with the return.~~

~~Article 2. Registration~~

~~36066. Every person desiring to engage in or conduct business as a seller within this state shall register with the board. Every application for registration shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority. No fee shall be charged for registration.~~

~~36067. A person who engages in business as a seller in this state without registering with the board, or after his registration has been suspended, and each officer of any corporation which so engages in business, is guilty of a misdemeanor,~~

~~Article 3. Presumptions and Resale Certificates~~

~~36091. For the purpose of the proper administration of this part, and to prevent evasion of the sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale is not a sale at retail is upon the seller unless he takes from the purchaser a certificate to the effect that the gas, electricity, telephony or telegraphy or the gas, electrical, telephone or telegraph service is purchased for resale.~~

~~36092. The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services and who is registered with the board as provided in Article 2 of this chapter and who, at the time of the purchaser, intends to sell the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services in the regular course of business or is unable to ascertain at the time of the purchase the extent to which the gas, electricity, telephone or telegraph services will be sold or used for some other purpose.~~

~~36093. The certificate shall be signed by and bear the name and address of the purchaser and shall be substantially in such form as the board may prescribe.~~

~~36094. If a purchaser who gives a certificate makes any use of the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services other than holding the same for sale in the regular course of business, the use shall be taxable to the purchaser pursuant to Chapter 3 of this part as of the time of the first use by him.~~

~~36095. Any person who gives a resale certificate for purchases of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph service which he knows at the time of purchase is not to be resold by him in the regular course of business for the purpose of evading payment to the seller of the amount of tax applicable to the transaction, is guilty of a misdemeanor.~~

~~CHAPTER 3. THE USE TAX~~

~~Article 1. Imposition of Tax~~

~~36201. An excise tax is hereby imposed on the use or other consumption in this state of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services purchased from any retailer on or after July 1, 1965, for use or other consumption in this state at the rate of 2 percent of the sales price of the gas, electricity, telephony or telegraphy or of the gas, electrical, telephone or telegraph services.~~

~~36202. Every person using or consuming in this state gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services purchased from a retailer is liable for the~~

~~tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer engaged in business in this state and given to the purchaser pursuant to Section 36203, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.~~

~~36203. Every retailer engaged in business in this state and making sales of gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services for use or other consumption in this state not exempted under Chapter 4 of this part shall, at the time of making the sales or, if the use or other consumption of the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services is not then taxable hereunder, at the time the use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.~~

~~"Retailer engaged in business in this state" as used in this and the preceding section means and includes any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, or storage place or other place of business in this state.~~

~~36204. A retailer is relieved from liability to collect use tax which became due and payable subsequent to July 1, 1965, insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the retailer has previously paid the amount of the tax, he may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off for income tax purposes. If any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.~~

~~36205. The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.~~

~~36206. The tax required to be collected by the retailer from the purchaser shall be separately stated.~~

~~Article 2. Registration~~

~~36226. Every retailer selling gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services for use or other consumption in this state shall register with the board and give the name under which it is engaged in business in this state and the address of any office, place of distribution or storage place or other place of business in this state, and such other information as the board may require.~~

Article 3. Presumptions and Resale Certificates

36241. For the purpose of the proper administration of this part and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that all purchases of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services sold by any person for delivery in this state are sold for use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the seller unless he takes from the purchaser a certificate to the effect that the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services is purchased for resale.

36242. The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services and who is registered with the board as provided for by Article 2, Chapter 2, of this part and who, at the time of purchase, intends to sell the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services in the regular course of business or is unable to ascertain at the time of the purchase the extent to which the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services will be sold or used for some other purpose.

36243. The certificate shall be signed by and bear the name and address of the purchaser and shall be substantially in such form as the board may prescribe.

36244. If a purchaser who gives a certificate makes any use of the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services other than holding the same for sale in the regular course of business, the use shall be taxable as of the time of the first use.

CHAPTER 4. EXEMPTIONS

Article 1. General Exemptions

36351. "Exempted from the taxes imposed by this part," as used in this article, means, in case of the sales tax imposed by Chapter 2 of this part, exempted from the computation of the amount of tax imposed.

36352. There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the use or other consumption in this state of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, the gross receipts from the sale of which, or the use or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

~~36353. There are exempted from the taxes imposed by this part, the gross receipts from the sale, furnishing or service of, and the use or other consumption of gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services subject to the taxes imposed by Part 1 of this division.~~

~~Article 2. Exemptions from Sales Tax~~

~~36381. There are exempted from the computation of the amount of the sales tax imposed by Chapter 2 of this part, the gross receipts from the sale of gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services to:~~

~~(a) The United States, its unincorporated agencies and instrumentalities;~~

~~(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.~~

~~Article 3. Exemptions from Use Tax~~

~~36401. The use or other consumption in this state of gas, electricity, telephony or telegraphy or of gas, electrical, telephone or telegraph services, the gross receipts from the sale of which are required to be included in the measure of the sales tax imposed under Chapter 2 of this part, is exempted from the use tax imposed under Chapter 3 of this part.~~

~~Article 4. Exemption Certificates~~

~~36421. If a purchaser certifies in writing to a seller that the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this chapter from the computation of the amount of the sales tax imposed by this part and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of any sales tax imposed by this part as if he were a retailer making a retail sale of the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services at the time of such use, and the cost of the gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services to him shall be deemed the gross receipts from such retail sale.~~

~~CHAPTER 5. ADMINISTRATION~~

~~36451. The following portions of Part 1 of this division, insofar as not inconsistent with the express provisions of this~~

part, are adopted, made applicable to and shall govern the administration of this part.

(a) Chapter 5 of Part 1 of this division relating to determinations, excepting therefrom Sections 6454.5 (relating to liability of purchasers of motor vehicles), 6457 (relating to rentals and leases), and 6458 (relating to tax stamps).

(b) Chapter 6 of Part 1 of this division relating to collection of tax, excepting therefrom Section 6701 (relating to security).

(c) Chapter 7 of Part 1 of this division relating to overpayments and refunds.

(d) Chapter 8 of Part 1 of this division relating to administration, excepting therefrom Section 7057 (relating to registration of employers).

For the purpose of the proper administration of this part, "tangible personal property" or "property" as used in Part 1 of this division means and includes gas, electricity, telephony or telegraphy or gas, electrical, telephone or telegraph services, except where the context requires otherwise.

CHAPTER 6. DISPOSITION OF PROCEEDS

37101. All fees, taxes, interest, and penalties, imposed and all amounts of tax required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the State Treasurer to be deposited in the State Treasury to the credit of the Gas, Electrical, Telephone and Telegraph Services Tax Fund.

37102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part or be transferred to the General Fund of the state.

CHAPTER 7. VIOLATIONS

37151. Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine of not exceeding five hundred dollars ($500) for each offense.

37152. Any person required to make, render, sign, or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor. He shall for each offense be fined not less than three hundred dollars ($300) and not more than five thousand dollars ($5,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both the fine and imprisonment in the discretion of the court.

~~37153. Any violation of this part, except as otherwise provided, is a misdemeanor.~~

~~37154. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense.~~

~~CHAPTER 8. RES JUDICATA~~

~~37176. In the determination of any case arising under this part the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.~~

~~SEC. 465. Division 3 (commencing with Section 38001) is added to said code, to read:~~

DIVISION 3. LOCAL TAXES

PART 1. COUNTY REAL PROPERTY TRANSFER TAX

CHAPTER 1. AUTHORIZATION AND DEFINITIONS

38001. The board of supervisors of any county or any city and county may by ordinance impose a tax in accordance with this part upon transfers of lands and other realty situated within the county or city and county.

38002. "Transfer" shall include any conveyance, grant, assignment or quitclaim of the ownership, of or title to lands or other realty, or any interest therein, for a consideration, and any contract for such conveyance, grant, assignment, or quitclaim, or any lease or other contract under which possession is given to the purchaser, or any other person by his direction, while title is retained by the vendor as security for the payment of the purchase price.

38003. "Transfer" shall not include a conveyance by gift, devise or inheritance, a conveyance of a leasehold interest other than of a type described in Section 38002, or a mortgage deed of trust or other conveyance of an interest in real property merely to secure a debt.

38004. "Value" shall mean the total consideration, valued in money, paid or delivered or contracted to be paid or delivered in return for the transfer of lands or other realty, or any interest therein, and shall include the amount of any encumbrance arising or resulting from a special assessment levied or imposed by any public district or agency, a mortgage, deed of trust or other contract indebtedness, either given to secure the purchase price or remaining unpaid at the time of transfer.

38005. "County" shall include a city and county.

CHAPTER 2. RATE OF TAX, PAYMENT AND EXEMPTIONS

Article 1. Computation and Payment of Tax

38011. The tax authorized by this part shall be computed at the rate of one percent (1%) of the value of the real property transferred up to twenty-five thousand dollars ($25,000), and at the rate of one and one-half percent (1½%) of the value in excess of twenty-five thousand dollars ($25,000). The vendor and the purchaser of the property transferred shall be jointly and severally liable for payment of the tax.

38012. The tax authorized by this part shall be paid through the use of stamps purchased from the county and affixed to the instrument of transfer. No instrument of transfer shall be accepted by the county recorder for filing or recording unless (a) it is accompanied by a completed statement as required by Section ~~36021~~ *38021* and (b) the tax shall have been paid and evidenced by stamps affixed to the instrument for the amount of the taxable value as shown by the statement, or exemption from the tax is claimed in the statement

Article 2. Exemptions

38016. There shall be exempted from the tax authorized by this part:

(a) A transfer to the United States, this state, a municipal corporation, or any political subdivision of this state

(b) A transfer to any college, church or private school of less than collegiate grade.

(c) A transfer between husband and wife or parents and children.

(d) A transfer of improved real property up to the first fifteen thousand dollars ($15,000) of value

(e) Any person or entity that the county is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

CHAPTER 3 INFORMATION REQUIRED, ADMINISTRATION AND PENALTIES

Article 1. Statement of Value

38021 Every instrument of transfer of any lands or other realty when presented to the county recorder for filing or recording shall be accompanied by a statement, in triplicate, on forms to be furnished by the county, executed by the vendor or purchaser under penalty of perjury, setting forth the full names and addresses of the vendor and purchaser, a description of the property transferred, the true, full and complete value thereof, the date of transfer, and such other information as may be required by the board of supervisors or the State Board of Equalization. If the transfer is not subject

to the tax authorized by this part, the statement shall specify the reasons for the exemption.

38022. The county recorder shall retain one copy of the statement and shall transmit two copies to the county assessor. The assessor shall insert the most recent assessed value for each parcel of the transferred real property on both copies of the statement and shall transmit one copy to the State Board of Equalization.

Article 2. Administration and Enforcement

38026 The board of supervisors shall administer and enforce the tax authorized by this part. It may by ordinance provide all procedures and penalties necessary for that purpose, including but not limited to procedures for assessing tax deficiencies and refunding erroneous or excessive payments, and may adopt and enforce rules and regulations relating thereto. The officers and employees of the county shall assist in the administration and enforcement of the tax, as required by this part and as directed by the board of supervisors.

Article 3. Penalties

38031. Any person who falsely or fraudulently makes, forges, alters, reuses or counterfeits any stamp issued by a county, as provided for or authorized under this part, or causes or procures to be falsely or fraudulent made, forged, altered, reused or counterfeited any such stamp, or knowingly and willfully utters, publishes, passes or tenders as genuine any such false, forged, altered, reused or counterfeited stamp for the purpose of evading the tax imposed by the county under authority of this part, is guilty of a felony and subject to imprisonment for not less than 1 year and not more than 10 years, or to a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000), or to both fine and imprisonment.

CHAPTER 4. STATE BOARD OF EQUALIZATION

38036. A county imposing the tax authorized by this part shall furnish to the State Board of Equalization such statistical data with respect to the tax as it may require.

38037. The State Board of Equalization shall prescribe by regulation, and any county imposing the tax authorized by this part shall reproduce and furnish upon request, a standard form for making the statement required by Section 38021.

38038. The State Board of Equalization upon request may assist any county in the administration and enforcement of the tax authorized by this part, and may adopt rules and regulations necessary to carry out the provisions of this chapter.

SEC. 466. Section 18711 of the Business and Professions Code is amended to read:

18711. Except as provided in Section 18713, every club licensed under this chapter shall, within 72 hours after the determination of every contest, match, or exhibition for which an admission fee is charged and received, furnish to the commission a written report duly verified by one of its officers, showing the number of tickets issued or sold for such contest, match, or exhibition, the amount of the gross receipts or value thereof, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of such contest, match, or exhibition, and without any deductions whatsoever for commissions, brokerage, distribution fees, advertising, or any other expenses, charges, and recoupments in respect thereto and such other matters as the commission may prescribe. Such club shall also, within the same time, pay to the commission a tax, exclusive of any federal taxes paid thereon, of one cent ($0.01) for each twenty cents ($0.20), or fraction thereof, of the amount paid for admission to such contest, match, or exhibition, and of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall such tax be less than twenty-five dollars ($25). Said tax shall apply uniformly at the same rate to all clubs subject to the tax. The tax on admissions applies to the amount actually paid for admission, and not to the regular established price No tax is due in the case of a person admitted free of charge.

SEC. 467. Section 4204 of the Government Code is amended to read:

4204. To be approved, the contractor's bond shall provide that if the person or his subcontractors, fail to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for all amounts required to be deducted, withheld and paid over to the Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work or labor, that the surety or sureties will pay for the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The contractor may require of his subcontractors a bond to indemnify the contractor for any loss sustained by the contractor because of any default by the subcontractors under this section.

SEC. 468. Section 15607 of said code is amended to read:

15607. The board shall summon assessors to meet with it or its duly authorized representatives at least once annually, at places within the state it designates, to study or discuss prob-

lems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the state. The expenses, including any registration fees for institutes or conferences, of any assessor attending these sessions is a charge against his county or city, to be paid in the same manner as other county or city charges The governing body of the county or city may provide for the payment of such expenses for members of the assessor's staff attending such conferences.

SEC. 469. Section 20532 of said code is amended to read:

20532. The governing body of a contracting agency having taxing power, or of a school district included under Chapter 4 5 of this part, shall, if necessary, include in its budget the amount estimated by the governing body to be required to provide sufficient revenue to meet the obligations of the agency or district for contributions to this system under and after termination of the contract. Such contracting agency, other than a school district, may levy a tax at a rate to produce the amount so estimated, in addition to the annual rate of taxation otherwise allowed by law to be levied in such agency. Any member of, or recipient of a benefit from, this system by reason of such a contract may maintain any appropriate action or proceeding to require performance of the duty herein and by Section 20564 imposed on a governing body

SEC. 469.5. Section 43002 of said code is amended to read:

43002 Tax liens attach on the first ~~Monday in March~~ *day of January* of each year

SEC. 470. Section 43007 of said code is amended to read:

43007. Notwithstanding any other contrary provisions of law, the city legislative body may by ordinance provide that every person of the city who at 12 01 a m of the first day of January of any year was the owner of, or had in his possession, or under his control, any taxable improvement, which improvement was thereafter destroyed without his fault by fire or by any other means prior to July 31 of that year and cannot be thereafter rebuilt because of a zoning prohibition, may on or before a date to be specified in such ordinance make application for the reassessment of such improvement and deliver to the assessing official of the city a written statement under oath, accompanied by a certificate of a disinterested competent person or authority showing the condition and value, if any, of the improvement immediately after the destruction, and that the assessor shall, on or before October 31 of that year, assess the improvement, or reassess it if it has already been assessed, according to the condition and value immediately after the destruction and upon such notice as it may find to be proper the board of equalization for the city may, until November 30 of that year, equalize any such assessment or reassessment It may also be provided in such ordinance that the tax rate fixed for property on the roll on which the improvement so assessed appears or the improvement so reassessed appeared at the time of its original assessment shall be applied to the amount of equalized as-

sessment or reassessment determined in accordance with this section. In the event that the resulting figure is less than the tax theretofore computed, the ordinance may provide that the taxpayer shall be liable for tax only for the lesser amount and that the difference shall be canceled. If the taxpayer has already paid the tax previously computed, the ordinance may provide that such difference shall be refunded to the taxpayer. This section shall be applicable to all cities to which the Constitution does not prevent it from being applied.

SEC 471. Section 51501 of said code is amended to read:

51501. By ordinance, a city legislative body may transfer the duties of the city treasurer to the treasurer of the county in which the city is situated, and shall, by January 1, 1967 transfer the assessment and tax collection duties performed by the city assessor and tax collector to the assessor and tax collector of the county in which the city is situated, and no city shall establish the offices of city assessor and tax collector after that date.

SEC 472. Section 51505 of said code is amended to read:

51505. The ordinance transferring the duties of the treasurer is effective until repealed. Certified copies of the ordinance repealing the transfer of the treasurer's duties shall be served upon the county auditor, tax collector, and treasurer

SEC. 473 Section 51515 of said code is amended to read:

51515 When the duties of the city treasurer have been transferred to the county treasurer, one-fourth of 1 percent shall be deducted from the money collected by the county tax collector as compensation for the services of the county treasurer and paid into the county salary fund.

SEC. 474 Section 54902 of said code is amended to read:

54902. On or before December 1st of the year prior to the year in which the assessments or taxes are to be levied, the statement and map or plat shall be filed with each assessor whose roll is used for the levy and with the State Board of Equalization.

SEC. 475. Article 7 (commencing with Section 1791) of Chapter 1, Division 5 of the Education Code is repealed.

SEC 476 Article 3 (commencing with Section 20801) of Chapter 3, Division 16 of said code is repealed.

SEC. 476.5. Article 3 (commencing with Section 20803) is added to Chapter 3, Division 16 of said code, to read:

Article 3. Provisions for Increase and Decrease of Maximum Tax Rates of School Districts

20803. Any maximum rate of tax for any district may be increased and, having been increased, may be decreased by an amount equal to or less than the amount of such increase, by a majority vote of the qualified electors of the school district at an election which may be ordered by the governing board of the school district of its own motion and shall be ordered within 90 days after the filing with the governing board of a

petition signed by not less than 10 percent of the registered voters of the district, requesting that an election be ordered, unless the petitioners request that the election be consolidated with the annual election for members of the governing board, or that the election be consolidated with the general election.

Any decrease in an increased maximum tax rate pursuant to this section shall not be in an amount which will reduce the tax rate for the district below the maximum specified in Section 20751. The governing board shall determine whether the increase or decrease shall remain in effect for a specified or unspecified period of time, unless the petition filed by the electors provides for a specified or unspecified period of time. If a specified period is provided for in the petition or determined upon by the governing board, such period shall be stated on the ballot.

Pursuant to the order of the governing board, the election shall be called, held, and conducted by the county superintendent of schools, as nearly as is practicable in accordance with the provisions of Chapter 6 of Division 4 of this code. The statement of the purposes of the election in the card notice of election shall contain only the following:

(a) The amount of the proposed decrease or increase in the maximum tax rate. If the proposed increase is a continuation of a previously authorized tax rate that fact shall be so stated.

(b) A brief summary of the issues involved.

The specification of the election order shall contain the text of the statement of the purposes of the election in the form in which it is to appear on the card notice of election. The same information shall be furnished the county superintendent of schools by the governing board of the district for all maximum tax increase or decrease elections ordered by it.

The costs incurred by the county clerk or registrar of voters and the county superintendent of schools in connection with this section shall be paid out of the funds of the district.

Except as otherwise herein provided, the ballot used in the election shall contain substantially the words "Shall the proposed (increase decrease) in the maximum tax rates from _____ to _____, (such rate to be in effect in the _____ school district for the school year (or years) 19___ to 19___,) be authorized?" Opposite such words, in separate lines, the words "Yes" and "No" shall be printed, with a voting square opposite each such word. If, at any prior election held in the district, the maximum tax rate of the district was increased for a specified period of time, and if the election is called for the purpose of continuing in effect the previously authorized increase in the maximum tax rate of the district, the words to appear on the ballot shall be "Continuation of existing maximum tax rate of _____ for the school years 19___ to 19___, yes" and "Continuation of existing maximum tax rate of _____ for the school years 19___ to 19___, no" or words of similar import. Each voter shall stamp or print a cross in the voting square after the answer he desires to give.

If a proposal is submitted to the electors under this section for an increase or decrease in the maximum tax rate, the ballot shall show the maximum tax rate of the district which will be in effect if the proposal is defeated. If a proposal is submitted to the electors under this section for the continuation of a prior increase authorized for a specified time, the ballot shall show the maximum tax rate which will be in effect in the district at the end of such specified time if the proposal is defeated. If a proposal is submitted to the electors under this section for an additional increase while a prior authorized increase is still in effect, the ballot shall show the maximum rate which will be in effect in the district if the proposal is defeated, and, if the prior authorized increase is for a specified time, the ballot shall also show the maximum tax rate which will be in effect in the district at the end of such specified time if the proposal is defeated.

If an election for a decrease in an increased maximum tax rate of a district is held in any year prior to or concurrently with the district election for governing board members, any decrease adopted at such election shall become effective on July 1st following the election If an election for a decrease in an increased tax rate of a district is held in any year after the date of the district election for governing board members, any decrease adopted at such election shall not become effective until July 1st of the next succeeding year.

20804. Any such increase in tax rates shall remain in effect only for the period specified on the ballot, if such period was specified by the governing board.

20804.1. When either a separate high school district, the boundaries of which are not coterminous with a junior college district, or a unified school district, operates a junior college and has, pursuant to the provisions of Section 20803, increased the maximum tax rate otherwise applicable to the district, and thereafter, while such increased tax rate continues in effect, ceases to operate the junior college, the maximum tax rate as so increased shall, beginning with the school year in which the district ceases to operate the junior college, be reduced by thirty-five cents ($0.35) on each one hundred dollars ($100) of assessed valuation

20804 3 Notwithstanding any provision of law to the contrary, no election for the purpose of increasing or decreasing any maximum tax rate for any school district shall be held within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as such statewide election, subject to the provisions of Chapter 4 (commencing with Section 23300) of Part 2 of Division 12 of the Elections Code.

20805. Any election called pursuant to Sections 20801 to 20804, inclusive, may be consolidated with any other election pursuant to the provisions of Chapter 4 (commencing with Section 23300) of Part 2 of Division 12 of the Elections Code.

SEC 477. Section 1828 of said code is amended to read:

1828 When a portion of a school district is taken from the district and annexed to, transferred to, or included in, any other district, with or without affirmative action taken by the residents within such portion and real property or fixtures of the district from which the portion is taken are situated in such portion, or when a high school district or unified district ceases to maintain a junior college by virtue of its inclusion in a new or reorganized junior college district, the district in which the portion is annexed, transferred or included, or the new junior college district, as the case may be, if it receives the property of the other district pursuant to this division and if it does not assume the bonded indebtedness incurred by the other district on account of the acquisition or improvement of the property, shall pay the other school district for the use of such property as provided in this section.

Within 60 days after the annexation, transfer, or inclusion has been effected, the board of supervisors of the county which has jurisdiction over the district from which the property is taken shall, by order entered upon its minutes, determine what proportion of the then outstanding bonded indebtedness of the school district from which the property was taken was incurred for the acquisition or improvement of the real property and all fixtures therein or thereon. Commencing one year after the date of the determination, the school district receiving the property of the other district shall pay annually to the other school district for the use of such property an amount equal to the annual amount required for the payment of interest and redemption of the portion of the bonded indebtedness determined by the board of supervisors.

~~SEC 478 Section 3255 of said code is repealed~~

SEC. 479 Section 3256 of said code is repealed.

SEC. 480. Section 3347 of said code is amended to read:

3347. Any unified or otherwise reorganized district which includes at the time of unification or other reorganization under this chapter any district having outstanding bonded indebtedness shall pay, in accord with proposals made under Sections 3258 and 3260, for the use of the school property of the included district acquired or constructed from the proceeds of its own bonds, an annual charge to the account of such included district, to be administered as a trust fund by or under the direction of the county superintendent of schools. The annual charge shall be equal to the annual amount required for the interest and redemption of the bonds.

The county superintendent of schools may apply the annual charge to the interest and bond redemption of the included district or use it for any other lawful purpose for the use and benefit of the area comprising the included district.

The governing board of any unified school district shall include in its annual budget an amount equal to the annual charge. If it fails to do so, the county superintendent of schools

shall add the amount to the budget submitted by the governing board.

The county board of supervisors shall include in the annual tax to be levied upon the assessed valuation of the unified district a tax sufficient to provide for the annual charge While the annual charge is in effect, the board of supervisors need not levy a tax on the assessed valuation of the included district for its interest and bond redemption if the amount of the annual charge upon the unified district is sufficient for and is actually used for the interest and bond redemption.

The annual charge shall continue for the entire period during which any bonded indebtedness is outstanding against any included district. Upon the retirement of the entire bonded indebtedness of the included district the charge shall cease to accrue, and the school property of the included district shall become the property of the unified district.

SEC 481. Section 3353 of said code is repealed.

SEC. 482. Section 5605 5 of said code is amended to read:

5605.5. The governing board of a high school district which maintains a junior high school shall prior to July 1 of each fiscal year compute on the basis of current estimates of cost and average daily attendance the amount by which costs during the succeeding fiscal year of educating pupils in grades seven and eight exceeds the total of federal and state apportionments and the tuition payments to be received by the district during the succeeding fiscal year for such pupils. The governing board shall also divide the amount so computed by the number of units of such average daily attendance to ascertain the amount of such cost which is attributable to each such unit of average daily attendance.

If an elementary district within the high school district has 10 percent or less of the pupils in grades 7 and 8 residing in the district attending a junior high school of the high school district, the high school district shall certify to the elementary district prior to July 1 of each fiscal year the amount computed under this section that is attributable to each unit of average daily attendance of pupils who reside in such elementary district and attend the junior high school of the high school district. The amount certified by the high school district shall be paid to such district by the elementary district as tuition for such pupils. The governing board of the elementary district shall include the amount so certified in its budget The remainder of the amount computed under this section may be raised by a tax levied upon the assessed valuation of the high school district excluding the assessed valuation of the elementary district affected by this subdivision.

SEC. 483 Section 5605 6 of said code is amended to read:

5605.6. For the purposes of Section 5605, the assessed valuation of the district shall be that as shown by the current equalized assessment roll of the district plus a sum determined by adding to such assessed valuation an amount which would, if the current tax rate, as defined in Section 17604 as it read

on January 1, 1963, of such district were levied on such added amount, produce or will produce 75 percent of the equivalent of all miscellaneous funds as miscellaneous funds are defined in Section 17606 as it read on January 1, 1963, received or to be received by such district for the fiscal year for which such added amount was determined.

SEC. 484. Section 5661 of said code is amended to read:

5661. If the elementary school district is located entirely within one county, the board of supervisors shall, at the time and in the manner prescribed by Sections 20701 and following, levy a tax on all taxable property in the elementary school district sufficient to raise the amount set forth in the certificate If the elementary school district is located in more than one county, such tax shall be levied in the manner prescribed by Sections 20701 and following

SEC. 485. Section 6352 of said code is amended to read:

6352. For the purpose of crediting attendance for apportionments from the State School Fund during the 1954–1955 fiscal year and thereafter, "adult" means any person who has attained his 21st birthday on or before September 1st or February 1st of the semester for which he has enrolled, and who has enrolled in *less than* 10 periods of not less than 40 minutes each per week for high school districts.

SEC 486. Section 6741 of said code is amended to read:

6741. A student shall be deemed to be a resident of the high school district in which he lived at the time of his admission to the program and the excess cost for a school year of educating such student shall be paid by the high school district of which he is a resident to the county superintendent who is providing education for the students. The excess cost shall be determined by dividing the total current expense of education as defined in Section 17503 and also excluding expense of boarding and lodging during such school year by the total number of units of average daily attendance in such school or classes during such school year, less state and federal apportionments on account of such average daily attendance.

Average daily attendance of students shall be computed, for purposes of this article, by dividing the number of days such student attended the schools or classes by the number of days that the schools or classes were taught, except that with respect to a student attending such schools or classes for more than 175 days in a school year, the average daily attendance shall be computed by using the divisor of 175.

For purposes of computing average daily attendance 180 minutes of class attendance shall be deemed to constitute a schoolday, and no more than 15 hours of class time per week shall be considered.

Not later than July 15th of each year, the superintendent of schools of the county providing education for students shall forward his claim for the excess expense reimbursement to the high school district of residence of each student during the pre-

ceding school year, and the governing board of such high school district shall upon receipt thereof pay such claims

The governing board of the high school district to which the claim is presented may include in its budget the amount necessary to pay the claim, and, if the amount is included in the budget, the board of supervisors shall levy a school district tax to raise the amount

SEC 487. Section 6854 of said code is amended to read:

6854. The governing board of the district to whom the claim prescribed by Section 6853 is presented may include in its budget the amount necessary to pay the claim

SEC 488. Section 6855 of said code is amended to read:

6855 The governing board of any school district maintaining a school or classes at a tuberculosis or polio ward, hospital or sanatorium, may include in its budget the amount necessary to maintain such school or classes

SEC. 489 Section 6913 1 of said code is amended to read:

6913 1 The governing board of any school district which maintains or has entered into an agreement with another district for educational services or facilities, including the rental of property or purchase of equipment, for mentally retarded minors who come within the provisions of Sections 6902 and 6903 shall include in its budget the amount necessary to maintain such services or facilities or to meet its obligations under said agreement No amounts shall be included in its budget pursuant to this section for the purchase or improvement of school sites or the construction of school buildings

SEC. 490. Section 8955 of said code is amended to read:

8955. The county superintendent of schools shall, with the approval of the county board of education, certify to the county auditor and the county board of supervisors, on or before July 15th of each year, the amount of money required to be raised by a tax for the education of mentally retarded minors who come within the provisions of Section 6902 and for the rental of property and the purchase of equipment by the county superintendent of schools for special training schools and classes for such minors The amount shall be determined by subtracting from the total cost of the education of such minors, including transportation, to the county superintendent of schools (1) the total of any balances remaining to be expended for this purpose, and (2) the total amount to be apportioned by the Superintendent of Public Instruction to the county school service fund for the education of mentally retarded minors who come within the provisions of Section 6902 and by adding to the result the amount required for rental of property and purchase of equipment.

The county auditor and the county board of supervisors shall determine the tax necessary to produce the amount certified when levied upon the taxable property of all the districts under the jurisdiction of the county superintendent of schools which during the preceding fiscal year had less than 901 units of average daily attendance in the elementary schools of the

district. The board of supervisors shall at the time of levying other county taxes add the tax so determined to the other taxes levied for each school district which had during the preceding fiscal year less than 901 units of average daily attendance in the elementary schools of the district, except that the tax added shall not exceed ten cents ($0.10) for each one hundred dollars ($100) of assessed valuation.

The county superintendent of schools shall adjust the budget of the district to reflect the amount to be received from the tax and the transfer of the same amount to the county school service fund. The amount received from the tax shall be transferred to the county school service fund by the county auditor upon the order of the county superintendent of schools.

In the event the amount received from the tax levied is less than the amount certified by the county superintendent of schools the difference shall, with the approval of the Superintendent of Public Instruction, be paid the county superintendent of schools from funds withheld pursuant to Section 18352.2.

SEC. 491. Section 11451 of said code is amended to read:

11451. The units of average daily attendance of pupils resident of a junior college district enrolled in 13th- and 14th-grade courses shall be computed in the following manner:

(a) For the first semester by dividing by 30 the sum of the total number of whole and partial class hours of regularly enrolled pupils' attendance as recorded for the fourth week of five consecutive schooldays of the semester and for the first week of five consecutive schooldays in December.

(b) For the second semester by dividing by 30 the sum of the total number of whole and partial class hours of regularly enrolled pupils' attendance as recorded for the fourth week, or for the first week, thereafter, containing five consecutive schooldays of the semester and for the last week of five consecutive schooldays next preceding April 15th.

(c) By computing the mean average of the quotients derived under (a) and (b).

SEC. 492. Section 11451.01 of said code is repealed.

SEC. 493. Section 11451.02 of said code is amended to read:

11451.02. The attendance of all pupils not residents of a junior college district, enrolled in regular 13th- and 14th-grade courses of the junior college shall be kept separately from all other attendance and the units of average daily attendance for such pupils shall be computed on an individual basis in the manner prescribed in Section 11451.

SEC. 494. Section 11706 of said code is repealed

~~SEC. 495. Section 14214 of said code is amended to read:~~

~~14214. The governing board of any school district shall include in its budget an amount for the purpose of providing funds not to exceed the amount which may be necessary to make the contributions to the Permanent Fund and the Retirement Annuity Fund required by any school district under this article (commencing with Section 14201).~~

~~SEC. 496. Section 14657 of said code is amended to read:~~

~~14657. The governing board of any school district shall include in its budget an amount for the purpose of providing funds which may be necessary to make the payments required by any district retirement plan. For the purposes of this section any local retirement system shall be deemed to be a district retirement plan.~~

~~SEC. 497. Section 14758 of said code is amended to read:~~

~~14758. The governing board of any school district shall include in its budget an amount for the purpose of providing funds which may be necessary to make the payments required by any joint district retirement plan.~~

SEC. 498. Section 16633 of said code is amended to read:

16633. Pursuant to Sections 20501 to 21001, inclusive, the governing board of any school district maintaining a child care center may include in its budget the amount necessary to carry out its child care center program pursuant to this chapter (commencing at Section 16601) and the board of supervisors shall levy a school district tax necessary to raise such amount.

SEC. 499. Section 16635 of said code is amended to read:

16635. In any county or school district in which local conditions demand or make desirable the furnishing of additional services or facilities, a school district or a county may provide, either jointly or severally, for such additional services or facilities of the child care centers established and maintained in such school district or county. Any additional services or facilities furnished pursuant to this section shall meet all of the requirements of this chapter. Any county desiring to provide such additional services or facilities may levy a tax to provide funds for such purpose Pursuant to Sections 20501 to 21001, inclusive, the governing board of any school district desiring to provide such additional services or facilities may include in its budget the amount necessary therefor and the board of supervisors shall levy a school district tax necessary to raise such amount

SEC. 500. Section 16645 12 of said code is amended to read:

16645.12. Pursuant to Sections 20501 to 21001 inclusive, the governing board of any school district maintaining a child care center may include in its budget the amount necessary to carry out its program pursuant to this article (commencing at Section 16645.1) and the board of supervisors shall levy a school district tax necessary to raise such amount.

SEC. 501. Section 16645.16 of said code is amended to read:

16645.16. In any county or school district in which local conditions demand or make desirable the furnishing of additional services or facilities, a school district or a county may provide, either jointly or severally, for such additional services or facilities of the child care centers established and maintained in such school district or county. Any additional services or facilities furnished pursuant to this section shall meet all of the requirements of this article (commencing at Section

16645.1). Any county desiring to provide such additional services or facilities may levy a tax to provide funds for such purpose. Pursuant to Sections 20501 to 21001, inclusive, the governing board of any school district desiring to provide such additional services or facilities may include in its budget the amount necessary therefor and the board of supervisors shall levy a school district tax necessary to raise such amount

SEC. 502. Section 17200 of said code is amended to read:

17200. Beginning July 1, 1966, the accounting system used to record the financial affairs of any school district shall be designed to provide separate recording and clear distinction between expenditures for salaries of classroom teachers employed by the district and expenditures for other purposes of the district.

As used in this section "salaries of classroom teachers" means:

(a) The salary paid to each teacher employed by the district whose duties require that the full time for which the teacher is employed be devoted to the teaching of pupils of the district.

(b) The portion of the salary of each teacher whose duties require that a part, but not all, of the full time for which the teacher is employed be devoted to the teaching of pupils of the district, which is equal to the portion of such full time actually devoted by the teacher to teaching pupils of the district.

As used in this section a "teacher" means a full-time equivalent classroom teacher as used and defined in Section 17507.

SEC. 503. Section 17263.1 of said code is amended to read:

17263.1. Whenever it appears that a district's state equalization aid will be less than they would be if no modification of the district's assessed valuation were required under Section 17262, the governing board of the district shall estimate the amount of the difference and shall certify the amount to the county superintendent of schools The estimate shall be made by averaging the factors certified for the two immediately preceding years under Section 17261 and a factor for the current year derived by dividing the ratio for the county published pursuant to Section 1819 of the Revenue and Taxation Code into the statewide average ratio for the current year. The county superintendent of schools shall certify to the county auditor of the county in which the districts are included the amounts required to offset such decrease of equalization aid in all the districts under his jurisdiction The county auditor shall certify such amounts to the county board of supervisors who shall, at the time other taxes are levied, levy a tax upon all the assessed valuation of the county sufficient to provide the total of the amounts certified Upon the collection of such taxes the county auditor shall pay to each school district the amount certified as required to offset the decrease in equalization aid.

SEC. 504. Section 17301 of said code is amended to read:

17301. (a) The State Controller shall during each fiscal year transfer from the General Fund of the state to the State School Fund such sums, in addition to the sums accruing to the State School Fund from other sources, as shall provide in the State School Fund for apportionment during the fiscal year a total amount per pupil in average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school and junior college schools in the state and to the county school tuition funds, as certified by the Superintendent of Public Instruction, one hundred eighty dollars ($180).

(b) The Controller shall also transfer, as needed during each fiscal year, such additional amounts from the General Fund to the State School Fund as are certified from time to time by the Superintendent of Public Instruction to be necessary to meet actual computed apportionments from the State School Fund for the purposes set forth in Section 17303.5; provided that the total of such additional amounts transferred in a fiscal year shall not exceed, except pursuant to subdivision (c) of this section, forty dollars and eighty-eight cents ($40.88) for the fiscal year 1964–65, fifty-five dollars and sixty-four cents ($55.64) for the fiscal year 1965–1966 and ~~one hundred seventy-one dollars and nine cents ($171.09)~~ *one hundred sixty-eight dollars and fifty-three cents ($168.53)* for the fiscal year 1966–1967 and fiscal years thereafter, for pupil in average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school and junior college schools in the state and to the county school tuition funds, as certified by the Superintendent of Public Instruction, less the amount, if any, by which one dollar and sixty cents ($1.60) multiplied by the number of units of average daily attendance credited during the preceding fiscal year to all kindergarten, elementary, high school and junior college schools in the state and to the county school tuition funds exceeds twenty-one dollars and fifty cents ($21.50) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and to unified districts which during the preceding school year had less than 1,501 units of average daily attendance.

(c) In addition to the amounts authorized to be transferred to the State School Fund from the General Fund under subdivisions (a) and (b) of this section, the Controller shall transfer from the General Fund to the State School Fund during the fiscal year, upon certification of the Superintendent of Public Instruction, if necessary to meet actual computed apportionments for the fiscal year for the purposes set forth in Sections 17303 and 17303.5, an amount not to exceed the lesser of: (1) 1 percent of the total apportionment from the

State School Fund in the preceding fiscal year for the purposes set forth in Sections 17303 or 17303.5, or (2) the net amount, if any, by which the total amounts authorized to be transferred from the General Fund to the State School Fund under subdivisions (a) and (b) of this section in prior fiscal years have exceeded the total amounts actually apportioned in prior fiscal years for the purposes set forth in Sections 17303 and 17303.5.

(d) He shall also transfer to the State School Fund any additional amounts appropriated thereto by the Legislature in augmentation of any of the amounts prescribed for any of the purposes set forth in Sections 17303 and 17303.5 and such additional amounts shall be allowed and apportioned by the Superintendent of Public Instruction and warrants therefor drawn by the Controller in the manner provided in Articles 1 and 2 (Sections 17301 to 17354, inclusive) of this chapter and in Sections 11256, and 17251, and Sections 17401 to 17417, inclusive, and Sections 17601 to 18460, inclusive.

SEC. 505. Section 17303.5 of said code is amended to read:

17303.5. The amount transferred pursuant to subdivision (b) of Section 17301 shall be expended in accordance with the following schedule:

(a) Twenty-one dollars and fifty cents ($21.50) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and to unified districts which during the preceding school year had less than 1,501 units of average daily attendance, but not to exceed an amount equal to one dollar and sixty cents ($1.60) multiplied by the average daily attendance credited during the preceding fiscal year to all kindergarten, elementary, high school and junior college schools in the state and to county school tuition funds, for allowance to county school service funds pursuant to subdivision (a) of Section 18352.

(b) Four dollars ($4) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, and junior college schools in the state and to county school tuition funds during the preceding school year for the purposes of Article 10 (commencing with Section 18051) of Chapter 3 of this division.

(c) Nine dollars and sixty-three cents ($9.63), multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, and junior college schools in the state and to county school tuition funds during the preceding school year, for the purposes of Sections 18060 and 18062, and Articles 11, 12 and 13 (commencing with Sections 18102, 18152, and 18202, respectively) of Chapter 3 of this division

(d) Three dollars and six cents ($3 06) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, and junior college schools in the state and to county school tuition funds during the preceding school year for allowances to county school service funds pursuant to subdivision (b) of Section 18352.

(e) Eighty cents ($0.80) multiplied by the average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, and junior college schools in the state and to county school tuition funds for allowances to school districts for the purposes of Section 6426.

(f) Twenty-one dollars and seventy-nine cents ($21.79) during the fiscal year 1964–1965, thirty-six dollars and fifty-five cents ($36 55) for the fiscal year 1965–1966 and ~~one hundred fifty-two dollars ($152)~~ *one hundred forty-nine dollars and forty-four cents ($149.44)* for the fiscal year 1966–1967 and fiscal years thereafter, multiplied by the average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, and junior college schools in the state and to county school tuition funds during the preceding school year for basic aid, equalization aid, supplemental support, allowances for adults, and allowances to the county school tuition funds to be apportioned on account of average daily attendance

SEC. 506 Section 17602 of said code is amended to read:

17602 Whenever in this chapter any computation is required to be made which is based in whole or in part on the assessed valuation of a school district as shown by the equalized assessment roll of the district for the fiscal year, there shall be substituted for such assessed valuation, as to such computation, a sum determined by adding to such assessed valuation an amount which would, if the current tax rate, as defined in Section 17604, of such district were levied on such added amount, produce or will produce 75 percent of the equivalent of all miscellaneous funds as miscellaneous funds are defined in Section 17606, received or to be received by such district for the fiscal year for which such added amount was determined.

SEC 507. Section 17602 5 of said code is amended to read:

17602 5. For purposes of computing transportation allowances under Article 10 (commencing with Section 18051) of this chapter for any school district coming within the provisions of Section 17702.2, there shall be substituted for the assessed valuation of the school district shown by the equalized assessment roll of the district for the fiscal year, as to such computation, a sum determined by adding to such assessed valuation an amount which would, if the current tax rate, as defined in Section 17604, of such district were levied on such added amount, produce or will produce 75 percent of the equivalent of all miscellaneous funds as miscellaneous funds are defined in Section 17606, received or to be received by such

district for the fiscal year for which such added amount was determined

SEC 508. Section 17603 of said code is amended to read:

17603 The amount computed to be allowable as equalization aid to those elementary school districts and high school districts which come under the provisions of Section 17702.2, shall be reduced by amounts determined as follows:

(a) Determine the sum of 75 percent of the miscellaneous funds as miscellaneous funds are defined in Section 17606, including all miscellaneous funds so defined which have been received or are to be received by such district for the fiscal year

(b) Divide the sum as determined in subdivision (a) by the current tax rate of the district as defined in Section 17604.

(c) The amount of reduction of elementary district equalization aid shall be determined by multiplying the amount in subdivision (b) for the district by 0 0060

(c) The amount of reduction of elementary district equalization aid shall be determined by multiplying the amount in subdivision (b) for the district by 0 0050

SEC 509. Section 17603.5 is added to said code, to read:

17603.5. In each fiscal year, the amounts computed as allowable to any school district for state equalization aid shall be reduced by fifty percent (50%) of federal funds as defined by Section 17605 In no event shall the reduction exceed the total amount allowable as equalization aid to the school district for the fiscal year For such purposes, federal funds, as defined in Section 17605, received by a unified school district, shall be allocated to the kindergarten and elementary, high school and junior college grades, respectively, on the basis of the proportion of the districts total average daily attendance in each such grade level, and the provisions of Section 17601 shall be applicable

Should the amount of federal funds as defined in Section 17605 actually received by a school district for any fiscal year be more or less than that reported for such district by the U S. Commissioner of Education to the Superintendent of Public Instruction, the Superintendent of Public Instruction shall during the fiscal year next succeeding that in which the district has received all of the federal funds actually paid the district for the first mentioned fiscal year withhold from or add to the apportionment made to the district from the State School Fund the amount of the excess or deficiency produced by the operation of this section or Section 17603, as the case may be, in the apportionment of state equalization aid and supplemental support from the State School Fund for the preceding year, if the amount of the excess or deficiency in such apportionment was one hundred dollars ($100) or more

SEC 510 Section 17653 of said code is repealed

SEC. 511 Section 17654 5 of said code is amended to read:

17654 5. For each elementary school district which maintains only one school with an average daily attendance of less

than 101, he shall make one of the following computations, whichever provides the lesser amount:

(1) For each small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the district five thousand nine hundred seventy-five dollars ($5,975) for the fiscal year 1965–66, and nine thousand seven hundred fifty dollars ($9,750) for the fiscal year 1966–67 and fiscal years thereafter

(2) For each small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district eleven thousand nine hundred fifty dollars ($11,950) for the fiscal year 1965–1966, and nineteen thousand five hundred dollars ($19,500) for the fiscal year 1966–67 and fiscal years thereafter.

(3) For each small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district seventeen thousand nine hundred twenty-five dollars ($17,925) for the fiscal year 1965–1966, and twenty-nine thousand two hundred fifty dollars ($29,250) for the fiscal year 1966–1967 and fiscal years thereafter.

(4) For each small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district twenty-three thousand nine hundred dollars ($23,900) for the fiscal year 1965–1966, and thirty-nine thousand dollars ($39,000) for the fiscal year 1966–1967 and fiscal years thereafter

SEC 512. Section 17655 5 of said code is amended to read:

17655.5. (a) For each district on account of each necessary small school (giving regard to the number of teachers actually employed or average daily attendance), he shall make one of the following computations, whichever provides the lesser amount:

(1) For each necessary small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the district five thousand nine hundred seventy-five dollars ($5,975) for the fiscal year 1965–66, and nine thousand seven hundred fifty dollars

($9,750) for the fiscal year 1966–1967 and fiscal years thereafter.

(2) For each necessary small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district eleven thousand nine hundred fifty dollars ($11,950) for the fiscal year 1965–1966, and nineteen thousand five hundred dollars ($19,500) for the fiscal year 1966–1967 and fiscal years thereafter.

(3) For each necessary small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district seventeen thousand nine hundred twenty-five dollars ($17,925) for the fiscal year 1965–1966, and twenty-nine thousand two hundred fifty dollars ($29,250) for the fiscal year 1966–1967 and fiscal years thereafter.

(4) For each necessary small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district twenty-three thousand nine hundred dollars ($23,900) for the fiscal year 1965–1966, and thirty-nine thousand dollars ($39,000) for the fiscal year 1966–1967 and fiscal years thereafter.

(b) For each district on account of each small school not determined to be a necessary small school under Section 17655 he shall make one of the following computations, whichever applies:

(1) If the total of the units of average daily attendance of the district during the fiscal year, exclusive of pupils attending the seventh and eighth grades of a junior high school, is less than 901, he shall multiply the units of average daily attendance in the school by two hundred thirty-nine dollars ($239) for the fiscal year 1965–1966, and three hundred ninety dollars ($390) for the fiscal year 1966–1967 and fiscal years thereafter.

(2) If the total of the units of average daily attendance in the district during the fiscal year, exclusive of pupils attending the seventh and eighth grades of a junior high school, is 901 or more, he shall multiply the units of average daily attendance by two hundred forty-nine dollars ($249) for the fiscal year 1965–1966, and four hundred dollars ($400) for the fiscal year 1966–1967 and fiscal years thereafter.

SEC. 513. Section 17656 of said code is amended to read:

17656. For each elementary school district which, exclusive of pupils attending the seventh and eighth grades of a junior high school, has an average daily attendance of 101 or more but less than 901 during the fiscal year, he shall compute an amount determined by multiplying the total average daily attendance, exclusive of pupils attending the seventh and eighth grades of a junior high school and pupils for whom a foundation program is computed under Section 17655 5, by two hundred thirty-nine dollars ($239) for the fiscal year 1965–1966, and three hundred ninety dollars ($390) for the fiscal year 1966–1967 and fiscal years thereafter.

For each elementary school district which, exclusive of pupils attending the seventh and eighth grades of a junior high school, has an average daily attendance of 901 or more during the preceding fiscal year, he shall compute an amount determined by multiplying the total average daily attendance, exclusive of pupils attending the seventh and eighth grades of a junior high school, and pupils for whom a foundation program is computed under Section 17655.5 by two hundred forty-nine dollars ($249) for the fiscal year 1965–1966, and four hundred dollars ($400) for the fiscal year 1966–1967 and fiscal years thereafter.

SEC 514 Section 17660 of said code is amended to read:

17660 For each elementary school district with an average daily attendance, exclusive of pupils attending the seventh and eighth grades of a junior high school, of less than 901 during the fiscal year, on account of the attendance during the fiscal year of pupils in the seventh and eighth grades of a junior high school which attendance is credited to the elementary school district pursuant to Sections 11404 and 5612, he shall multiply the average daily attendance in such grades by two hundred thirty-nine dollars ($239) for the fiscal year 1965–1966, and three hundred ninety dollars ($390) for the fiscal year 1966–1967 and fiscal years thereafter

For each elementary school district with an average daily attendance, exclusive of pupils attending the seventh and eighth grades of a junior high school, of 901 or more during the fiscal year, on account of the attendance during the fiscal year of pupils in the seventh and eighth grades of a junior high school which attendance is credited to the elementary school district pursuant to Sections 11404 and 5612, he shall multiply the average daily attendance in such grades by two hundred forty-nine dollars ($249) for the fiscal year 1965–1966, and four hundred dollars ($400) for the fiscal year 1966–1967 and fiscal years thereafter

SEC. 515. Section 17664 of said code is amended to read:

17664 (a) For each district on account of each necessary small high school the Superintendent of Public Instruction shall make one of the following computations selected with regard only to the number of certificated employees employed

or average daily attendance, whichever provides the lesser amount:

(1) For one which has an average daily attendance during the fiscal year of less than 21 and for which at least three certificated employees were employed full time, he shall compute thirty-three thousand three hundred dollars ($33,300) for the fiscal year 1965–1966, and thirty-six thousand three hundred twenty dollars ($36,320) for the fiscal year 1966–1967 and fiscal years thereafter.

(2) For one which has an average daily attendance during the fiscal year of 21 or more and less than 41 and for which at least four certificated employees were employed full time, he shall compute thirty-eight thousand seven hundred fifty dollars ($38,750) for the fiscal year 1965–1966, and forty-five thousand two hundred ninety-three dollars ($45,293) for the fiscal year 1966–1967 and fiscal years thereafter.

(3) For one which has an average daily attendance during the fiscal year of 41 or more and less than 61 and for which at least five certificated employees were employed full time, he shall compute forty-four thousand two hundred dollars ($44,200) for the fiscal year 1965–1966, and fifty-four thousand two hundred sixty-six dollars ($54,266) for the fiscal year 1966–1967 and fiscal years thereafter.

(4) For one which has an average daily attendance during the fiscal year of 61 or more and less than 76 and for which at least six certificated employees were employed full time, he shall compute forty-nine thousand six hundred fifty dollars ($49,650) for the fiscal year 1965–1966, and sixty-three thousand two hundred forty dollars ($63,240) for the fiscal year 1966–1967 and fiscal years thereafter

(5) For one which has an average daily attendance during the fiscal year of 76 or more and less than 91 and for which at least seven certificated employees were employed full time, he shall compute fifty-five thousand one hundred dollars ($55,100) for the fiscal year 1965–1966 and seventy-two thousand two hundred thirteen dollars ($72,213) for the fiscal year 1966–1967 and fiscal years thereafter.

(6) For one which has an average daily attendance during the fiscal year of 91 or more and less than 106 and for which at least eight certificated employees were employed full time, he shall compute sixty thousand five hundred fifty dollars ($60,550) for the fiscal year 1965–1966, and eighty-one thousand one hundred eighty-six dollars ($81,186) for the fiscal year 1966–1967 and fiscal years thereafter

(7) For one which has an average daily attendance during the fiscal year of 106 or more and less than 121 and for which at least nine certificated employees were employed full time, he shall compute sixty-six thousand dollars ($66,000) for the fiscal year 1965–1966, and ninety thousand one hundred sixty dollars ($90,160) for the fiscal year 1966–1967 and fiscal years thereafter.

(8) For one which has an average daily attendance during the fiscal year of 121 or more and less than 136 and for which at least 10 certificated employees were employed full time, he shall compute seventy-one thousand four hundred fifty dollars ($71,450) for the fiscal year 1965–1966, and ninety-nine thousand one hundred thirty-three dollars ($99,133) for the fiscal year 1966–1967 and fiscal years thereafter.

(9) For one which has an average daily attendance during the fiscal year of 136 or more and less than 151 and for which at least 11 certificated employees were employed full time, he shall compute seventy-six thousand nine hundred dollars ($76,900) for the fiscal year 1965–1966, and one hundred eight thousand one hundred six dollars ($108,106) for the fiscal year 1966–1967 and fiscal years thereafter.

(10) For one which has an average daily attendance during the fiscal year of 151 or more and less than 181 and for which at least 12 certificated employees were employed full time, he shall compute eighty-two thousand three hundred fifty dollars ($82,350) for the fiscal year 1965–1966, and one hundred seventeen thousand eighty dollars ($117,080) for the fiscal year 1966–1967 and fiscal years thereafter.

(11) For one which has an average daily attendance during the fiscal year of 181 or more and less than 221 and for which at least 13 certificated employees were employed full time, he shall compute eighty-seven thousand eight hundred dollars ($87,800) for the fiscal year 1965–1966, and one hundred twenty-six thousand fifty-three dollars ($126,053) for the fiscal year 1966–1967 and fiscal years thereafter

(12) For one which has an average daily attendance during the fiscal year of 221 or more and less than 261 and for which at least 14 certificated employees were employed full time, he shall compute ninety-three thousand two hundred fifty dollars ($93,250) for the fiscal year 1965–1966, and one hundred thirty-five thousand twenty-six dollars ($135,026) for the fiscal year 1966–1967 and fiscal years thereafter

(13) For one which has an average daily attendance during the fiscal year of 261 or more and less than 301 and for which at least 15 certificated employees were employed full time, he shall compute ninety-eight thousand seven hundred dollars ($98,700) for the fiscal year 1965–1966, and one hundred forty-four thousand dollars ($144,000) for the fiscal year 1966–1967 and fiscal years thereafter.

(14) For one which has an average daily attendance of less than 21 and for which fewer than three certificated employees were employed, he shall compute five thousand four hundred fifty dollars ($5,450) for each of the teachers employed in the school for the fiscal year 1965–1966, and eight thousand nine hundred seventy-three dollars ($8,973) for each such teacher for the fiscal year 1966–1967 and fiscal years thereafter.

(b) For each district on account of each small high school not determined to be a necessary small high school under Sec-

tions 17663, 17663 5, and 17663 7, he shall make one of the following computations, whichever applies:

(1) If the total of the units of average daily attendance in the district during the fiscal year is less than 301, he shall multiply the units of average daily attendance during the fiscal year in the school by three hundred twenty-nine dollars ($329) for the fiscal year 1965–1966, and four hundred eighty dollars ($480) for the fiscal year 1966–1967 and fiscal years thereafter.

(2) If the total of the units of average daily attendance in the district during the fiscal year is more than 300, he shall multiply the units of average daily attendance during the fiscal year in the school by three hundred thirty-nine dollars ($339) for the fiscal year 1965–1966, and four hundred ninety dollars ($490) for the fiscal year 1966–1967 and fiscal years thereafter.

For the purposes of this section a "certificated employee" is an equivalent full-time position of an individual holding a credential authorizing service, and performing service in grades 9 through 12 in any secondary school. Any fraction of an equivalent full-time position shall be deemed to be a full-time position.

The foundation program established by this section for high schools with an average daily attendance of less than 301 shall not apply to any high school established after July 1, 1961 unless the establishment of such schools has been approved by the Superintendent of Public Instruction.

SEC. 516 Section 17665 of said code is amended to read:

17665 For each high school district which has an average daily attendance of 301 or more during the fiscal year, he shall multiply the average daily attendance by three hundred thirty-nine dollars ($339) for the fiscal year 1965–1966, and four hundred ninety dollars ($490) for the fiscal year 1966–1967 and fiscal years thereafter.

SEC. 517. Section 17665.5 of said code is amended to read:

17665.5. For a high school district which has an attendance credited pursuant to Section 10815, he shall multiply the average daily attendance by three hundred thirty-nine dollars ($339) for the fiscal year 1965–1966, and four hundred ninety dollars ($490) for the fiscal year 1966–1967 and fiscal years thereafter.

SEC 518 Section 17666 2 of said code is amended to read:

17666 2. For each junior college district, he shall multiply the number of units of average daily attendance, during the fiscal year, in grades 13 and 14 computed for the district under Sections 11451 and 11501, subject to the provisions of Section 17611, by six hundred dollars ($600).

For purposes of this section, and Sections 17851 and 17905.2, the average daily attendance of a junior college district shall, subject to the provisions of Section 17611, be computed in the manner prescribed by Sections 11451 and 11501 except that

there shall be excluded from the computation the attendance of all students who resided in territory which was not a part of any district maintaining a junior college, the attendance of all students deemed nonresidents as provided in Sections 25505 and 25505.5, and there shall be included in the computation the attendance of all students residing in the district who were in attendance at a junior college in another district under an interdistrict attendance agreement entered into pursuant to Section 10801. Notwithstanding the above provisions of this section, the attendance of students deemed nonresidents as provided in Sections 25505 and 25505.5 shall not be excluded from the average daily attendance of junior college districts for the purposes of Section 17851.

The Superintendent of Public Instruction shall exclude from the computation provided by this section the average daily attendance during the fiscal year of inmates of any state institution for adults or of any city, county, or city and county jail, road camp or farm for adults.

SEC. 519. Section 17667 of said code is amended to read:

17667. Each computation required by this article (commencing at Section 17651) for high school districts shall be made after excluding from the average daily attendance for the fiscal year the average daily attendance of adults, as adults are defined in Section 6352, and the average daily attendance in classes for inmates of any state institution for adults or of any city, county, or city and county jail, road camp or farm for adults during the fiscal year.

SEC. 520. Section 17671 of said code is amended to read:

17671. For school districts which are eligible, commencing with the 1965–1966 fiscal year, under the standards prescribed by this article, the Superintendent of Public Instruction shall, for the fiscal year 1965–1966 and fiscal years thereafter, compute increases in the applicable foundation program or programs as follows:

(a) He shall increase the foundation program computed for a district under Sections 17655.5, 17656, and 17660 by fifteen dollars ($15) per pupil in average daily attendance for the fiscal year 1965–1966, and for the fiscal year 1966–1967 and fiscal years thereafter by twenty-five dollars ($25) per pupil in average daily attendance.

(b) He shall increase the foundation program computed for a district under Sections 17664, 17665 and 17665.5 by fifteen dollars ($15) for the fiscal year 1965–1966, and twenty-five dollars ($25) for the fiscal year 1966–1967 and fiscal years thereafter, per pupil in average daily attendance, excluding the average daily attendance of adults, as adults are defined in Section 6352, and the average daily attendance in classes for inmates of any state institution for adults or of any city, county, or city and county jail, road camp or farm for adults during the fiscal year.

SEC 521 Section 17676 of said code is amended to read:

17676. The foundation program computed under Article 2 (commencing with Section 17651) of this chapter for any school district which is not otherwise eligible for the increase in foundation program prescribed by Section 17671 shall, nevertheless, be increased in the next fiscal year by fifteen dollars ($15) for the fiscal year 1965–1966, and twenty-five dollars ($25) for the fiscal year 1966–1967 and fiscal years thereafter, for each unit of average daily attendance of the district exclusive of the average daily attendance of adults, as adults are defined in Section 6352, and the average daily attendance in classes for inmates of any state institution for adults or of any city, county, or city and county jail, road camp, or farm for adults, for the fiscal year if the Superintendent of Public Instruction determines that:

(a) The district was included within territory proposed for reorganization by a master plan or plans and recommendations developed under Chapter 9 or Chapter 10 of Division 5, which master plan or plans and recommendations complied with the standards prescribed by Section 17672 or Section 17673.

(b) The master plan or plans and recommendations were defeated at an election held within the territory involved after the effective date of this section.

(c) A majority of the votes cast in the district at the most recent such election were cast in favor of the reorganization proposed

SEC 522 Section 17702 of said code is amended to read:

17702 The Superintendent of Public Instruction shall compute for each district described herein, which does not come within the provisions of Section 17702.2, the amount, to be known as district aid, which a tax levied on each one hundred dollars ($100) of 100 percent of the assessed valuation in such district as shown by the equalized assessment roll of the district for the current year would produce if levied, if such tax was.

(a) Ninety cents ($0.90) in an elementary school district.

(b) Seventy-five cents ($0.75) in a high school district.

(c) Twenty-five cents ($0.25) in a junior college district

SEC. 522.1. Section 17702.2 of said code is amended to read:

17702.2 Commencing on the first day of July following an unsuccessful election for unification held after the effective date of the enactment of this section at the 1964 First Extraordinary Session of the Legislature, or commencing with the fiscal year 1966–1967, whichever first occurs, the Superintendent of Public Instruction shall compute the areawide aid to be utilized in determining state apportionments to be made for the support of elementary school districts and high school districts with respect to which an areawide foundation program is computed under Article 2.5 (commencing with Section 17680) of this chapter. Areawide aid shall be the amount which a tax levied on each one hundred dollars ($100) of 100 percent

of the assessed valuation for the current fiscal year, modified where necessary pursuant to Section 17262, of the area comprising all of such elementary school districts and all of such high school districts would produce, if levied, if such tax were:

(a) ~~Sixty cents ($0.60)~~ *Ninety cents ($0.90)* in the case of the elementary school districts

(b) ~~Fifty cents ($0.50)~~ *Seventy-five cents ($0.75)* in the case of the high school districts.

SEC. 523. Section 17702.3 of said code is amended to read.

17702.3. For purposes of making the computations prescribed by Section 17702.2, the Superintendent of Public Instruction shall, where necessary, adjust the assessed valuation of the territory involved, in the same manner and on the same basis as is required for individual districts pursuant to Chapter 1.5 (commencing with Section 17261) of this division and Sections 17703, 17704, and 17705. Losses in state equalization aid arising from the operation of Chapter 1.5 (commencing with Section 17261) of this division, shall be provided for in the manner prescribed in Section 17263.1.

SEC. 524. Section 17906.2 of said code is amended to read:

17906.2. No state equalization aid shall be allowed unless there shall have been levied pursuant to this code, for a district during the fiscal year, a tax, exclusive of taxes levied under Sections 3356, 16633, 19443, 19619, 20801, and 22101, as follows:

For purposes of allowances for the fiscal year 1963–1964 and for the fiscal years following, not less than ninety cents ($0.90) if any elementary district, seventy-five cents ($0.75) if a high school district, and twenty-five cents ($0.25) if a junior college district.

SEC. 525. Article 7.1 (commencing with Section 17920) of Chapter 3 of Division 14 of said code is repealed.

~~SEC. ——~~

SEC. 525.5. Section 17951 of said code is amended to read:

17951. Beginning with the fiscal year 1964–1965 and for each fiscal year thereafter, the allowance for each unit of average daily attendance during the fiscal year for adults, as adults are defined in Section 6352, shall be as follows:

(a) For high school districts the allowance shall be ~~five hundred dollars ($500)~~ *three hundred twenty dollars ($320)* less the product of ~~seventy-five cents ($.75)~~ *fifty cents ($0.50)* multiplied by each one hundred dollars ($100) of the assessed valuation of the district per unit of average daily attendance exclusive of adults.

(b) The allowance provided by this section for each unit of average daily attendance of an adult, as an adult is defined in Section 6352, not residing in the district shall be limited to one hundred twenty-five dollars ($125) as basic state aid and no allowance shall be made based on state equalization aid. The total of basic and equalization aid allowed each district shall not be less than one hundred twenty-five dollars ($125) or exceed two hundred thirty dollars ($230) for each unit of

average daily attendance during the fiscal year for resident adults, exclusive of average daily attendance in classes for inmates of any state institution for adults and for inmates of any city, county, or city and county jail, road camp or farm for adults

If any computation made under any of the preceding paragraphs of this section produces an allowable amount not in excess of one hundred twenty-five dollars ($125) per unit of average daily attendance, such allowable amount computed shall be adjusted if, and to the extent necessary, so that the actual allowance shall not exceed one hundred twenty-five dollars ($125) per unit of average daily attendance of the adults in high schools during the preceding fiscal year.

SEC. 525 6. Section 20751 of said code is amended to read:

20751 ~~(1)~~ Except as otherwise provided in this code, the maximum rate of school district tax which may be levied for all school purposes, exclusive of bond interest and redemption, for any school district in any school year on each one hundred dollars ($100) of assessed valuation within the district shall be as follows.

(a) ~~Except as provided in subdivision (b) of this section, in~~ *In* any separate elementary school district the boundaries of which are not coterminous with those of a high school district, eighty cents ($0 80) for elementary school purposes, or ninety cents ($0.90) for combined kindergarten and elementary school purposes.

~~(b) In any separate elementary school district the boundaries of which are not coterminous with those of a high school district and whose current expenses of education for the 1963-64 fiscal year were less than twice the amount of the foundation program applicable to the district, one dollar and twenty-five cents ($1 25) for elementary school purposes, or one dollar and thirty-five cents ($1 35) for combined kindergarten and elementary school purposes.~~

~~(c) Except as provided in subdivision (d) of this section, in~~ *(b) In* any separate high school district, the boundaries of which are not coterminous with those of an elementary school district or with those of a junior college district, seventy-five cents ($0 75) for high school purposes, or one dollar and twenty cents ($1.20) for combined high school and junior college purposes.

~~(d) In any separate high school district, the boundaries of which are not coterminous with those of an elementary school district or with those of a junior college district, and whose current expenses of education for the high school purposes for the 1963-64 fiscal year were less than twice the amount of the foundation program computed for high school purposes, eighty-five cents ($0 85) for high school purposes, or one dollar and twenty cents ($1.20) for combined high school and junior college purposes.~~

(c) ~~(e)~~ In any separate junior college district, the boundaries of which are not coterminous with those of a high school

district, thirty-five cents ($0 35) for junior college purposes.

(d) ~~(f)~~ In any unified school district one dollar and fifty-five cents ($1 55) for combined elementary school and high school purposes; or one dollar and sixty-five cents ($1.65) for combined kindergarten, elementary school, and high school purposes; or one dollar and ninety cents ($1.90) for combined elementary school, high school, and junior college purposes; or two dollars ($2), for combined kindergarten, elementary school, high school, and junior college purposes.

~~(g) Any unified school district whose current expenses of education per unit of average daily attendance for the 1963-64 fiscal year were less than six hundred dollars ($600), two dollars and ten cents ($2.10) for combined elementary school and high school purposes, two dollars and twenty cents ($2.20) for combined kindergarten, elementary school, and high school purposes, or two dollars and fifty-five cents ($2.55) for combined kindergarten, elementary school, high school, and junior college purposes.~~

(e) ~~(h)~~ In any high school and junior college district the boundaries of which are coterminous and which are governed by the same governing board, one dollar and twenty cents ($1 20) for combined high school and junior college purposes

~~(2) If the maximum tax rate of a school district in effect on the effective date of the amendment to this section adopted at the 1961 First Extraordinary Session of the Legislature is, because of an increase adopted by the district electors pursuant to Section 20803, more than the applicable rate prescribed in subdivision (1) of this section, the maximum tax rate of such district shall continue to be the maximum rate prescribed by this section prior to such 1961 amendment plus the amount of the increase over such rate adopted by the district electors pursuant to Section 20803 prior to the 1964 amendment to this section, for the period for which such increase was adopted by the voters. If any such voted increase in effect on such effective date results in a maximum rate which is less than that prescribed in subdivision (1) of this section as so amended in 1961, the maximum rate of such district shall be that prescribed in subdivision (1) of this section as so amended. Nothing in this section shall be construed to prevent a change in the maximum tax rate of a school district subject to and in the manner prescribed by Section 20803.~~

~~SEC. 526. Section 20751.2 is added to said code, to read:~~

~~20751.2. (a) For the fiscal year 1966-1967, the maximum rate of school district tax which may be levied for all school purposes, exclusive of bond interest and redemption and state building loan repayment, shall be a rate which is sufficient to produce for a school district an amount which when added to the total amount of income received by the district for the fiscal year 1966-1967, is equal to, but not greater than, 105 percent of all revenues received by the district from all sources in the fiscal year 1965-1966.~~

~~(b) As used in this section "total amount of income received by the district" means all income received by a district, including amounts received as state apportionments or federal allocations except all of the following:~~

~~(1) Amounts received from district taxes.~~

~~(2) Amounts received from the sale of district bonds.~~

~~(3) Amounts received under the State School Building Aid Law of 1952 (Chapter 10, commencing with Section 19551, Division 14).~~

~~(4) Amounts received under Article 2.1 (commencing with Section 17671) of Chapter 3 of Division 14.~~

~~(5) Amounts received pursuant to Section 17263.1.~~

~~(6) Amounts received under any federal act enacted at the 89th Session of Congress, which is directed to the strengthening and improvement of educational quality and educational opportunities in the nation's elementary and secondary schools.~~

SEC 526 Section 20751.2 is added to said code, to read:

20751.2 Except as provided in Section 20751.3,

(a) For the fiscal year 1966–67, the maximum rate of school district tax which may be levied for all school purposes, exclusive of bond interest and redemption, state building loan repayment, employee retirement, and capital construction, shall be a rate which is sufficient to produce for a school district an amount which when added to the total amount of income credited to the district for the fiscal year 1966–67, is equal to 100 percent of all General Fund revenues per unit of average daily attendance in 1965–66 multiplied by the estimated number of units of average daily attendance in 1966–67, plus an amount equal to ten dollars ($10) per unit of estimated average daily attendance in 1966–67

(b) As used in this section "total amount of income received by the district" means all income received by a district, including amounts received as state apportionments or federal allocations except all of the following:

(1) Amounts received from district taxes.

(2) Amounts received from the sale of district bonds

(3) Amounts received under the State School Building Aid Law of 1952 (Chapter 10, commencing with Section 19551, Division 14)

(4) Amounts received under Article 2.1 (commencing with Section 17671) of Chapter 3 of Division 14

(5) Amounts received pursuant to Section 17263.1

(6) Amounts received under any federal act enacted at the 89th Session of Congress, which is directed to the strengthening and improvement of educational quality and educational opportunities in the nation's elementary and secondary schools.

SEC. 527. Section 20751.3 is added to said code, to read:

20751.3 Beginning with the fiscal year 1966–1967, and for fiscal years thereafter, the maximum rate of school district taxes which may be levied for all school purposes, exclusive of

bond interest and redemption and state building loan repayment, shall be the greater of the following:

(a) The maximum rate specified in Section 20751.

(b) The maximum rate computed pursuant to Section 20751.2.

(c) The rate established by a vote of the people after the effective date of this section pursuant to Section 2080.3 of this code

Any rate of tax for any district which was otherwise increased by a majority vote of the qualified electors of a school district at an election held for that purpose prior to the effective date of this section shall be of no force and effect

SEC. 527.5. Section 20751.4 is added to said code, to read:

20751.4. The maximum rate of school district tax which may be levied for all school purposes, exclusive of bond interest and redemption, for any elementary, high school, unified or junior college district, may be increased by such amount, not to exceed twenty-five cents ($0.25) for one hundred dollars ($100) of assessed value for elementary, high school and junior college districts or fifty cents ($0.50) per one hundred dollars ($100) of assessed value for a unified district, as will produce the sum required to acquire any school sites or school facilities, or to construct any school buildings or other educational facilities to be used in the regular instructional program conducted by the district.

SEC. 528. Section 20752 of said code is repealed.

SEC. 529 Section 20753 of said code is repealed.

SEC. 530. Section 20930 of said code is amended to read:

20930. The maximum rate of school district tax otherwise authorized by law to be assessed for any school district for elementary school and high school purposes shall be reduced by:

The applicable rates provided for in Section 20912, except that when the amount of tax moneys allocated under Article 2 of this chapter to a district is less than the amount that such a rate would raise if levied for the district, the maximum rate shall be reduced by the amount of the tax rate that would raise the amount of the allocation ~~less~~ *plus* the increase, if any, in state equalization aid.

For purposes of this section, the phrase "maximum rate of school district tax otherwise authorized by law to be assessed" shall mean the maximum rates prescribed by Section 20751 for elementary school or high school purposes.

SEC 531. Section 25445 of said code is repealed.

~~SEC. 532. Section 25541.5 of said code is repealed.~~

SEC. 533. Section 25542 of said code is repealed.

SEC 534. Section 681.1 is added to the Harbors and Navigation Code, to read:

681.1. (a) When the ownership of an undocumented vessel required to be numbered under this code has changed and application is made for issuance, transfer or reassignment of a certificate of number for the vessel, the applicant shall fur-

nish the Division of Small Craft Harbors with or as part of the application, a signed statement of the applicant showing:

(1) The date of the sale or other transfer of ownership of the vessel.

(2) The name and address of the seller or transferor.

(3) The name and address of the buyer or transferee

(4) The total consideration (valued in money) given for the sale or other transfer of the vessel, including any motor or other component part of the vessel included in the sale or other transfer.

(b) The Division of Small Craft Harbors shall withhold the ~~issuance, transfer or reassignment of a certificate of number and the~~ issuance or transfer of a certificate of ownership of any undocumented vessel numbered or required to be numbered under this code until the applicant furnishes the information required by subdivision (a) of this section

(c) When the Division of Small Craft Harbors acquires knowledge that the ownership of a vessel required to be numbered under this code has changed, it shall forward to the State Board of Equalization information from its records identifying the vessel together with information showing the data required by subdivision (a). The information shall be transmitted as promptly as feasible and in such form and manner as shall be agreed between the division and the board.

SEC 535 Section 4997 of the Public Resources Code is amended to read:

4997. A trainee shall be deemed to be a resident of the high school district in which he lived at the time of his admission to the program and the excess cost for a school year of educating such trainee shall be paid by the high school district of which he is a resident to the county superintendent who is providing education for the trainees The excess cost shall be determined by dividing the total current expense of education during such school year (for the maintenance of a high school level school or classes for trainees), by the total number of units of average daily attendance in such school or classes during such school year, less state and federal apportionments on account of such average daily attendance.

Average daily attendance of trainees shall be computed, for purposes of this chapter, by dividing the number of days such trainee attended the schools or classes by the number of days that the schools or classes were taught, except that with respect to a trainee attending such schools or classes for more than 175 days in a school year, the average daily attendance shall be computed by using the divisor of 175.

For purposes of computing average daily attendance 180 minutes of class attendance shall be deemed to constitute a school day, and no more than 15 hours of class time per week shall be considered.

Not later than July 15 of each year, the superintendent of schools of the county providing education for trainees shall forward his claim for the excess expense reimbursement to the

high school district of residence of each trainee during the preceding school year, and the governing board of such high school district shall upon receipt thereof pay such claims.

The governing board of the high school district to which the claim is presented may include in its budget the amount necessary to pay the claim, and, if the amount is included in the budget, the board of supervisors shall levy a school district tax to raise the amount.

SEC. 536. Section 1652 of the Streets and Highways Code is amended to read:

1652. The assessor shall then ascertain from his records the assessed value of such incorporated or annexed property on the first day of the preceding January at 12:01 a.m. and shall certify to the county auditor such value thus ascertained.

SEC. 537. Section 1653 of said code is amended to read:

1653. The auditor shall then calculate the proportion that the assessed value, on the first day in the preceding January at 12:01 a.m., of the property annexed or incorporated bears to the total assessed value, as of that day and hour, of all the property in the district from which the annexation or incorporation was made He shall prepare a claim in favor of the city, to be allowed by the board of supervisors and paid by warrant on the treasurer, for that part of the unencumbered funds of the district which bears the same proportion to the whole of such unencumbered funds as the assessed value of the property annexed or incorporated bears to the total assessed value of all the property in the district from which the annexation or incorporation was made

SEC. 538. Section 4000 of the Vehicle Code is amended to read:

4000 (a) No person shall drive, move, or leave standing any motor vehicle, trailer, semitrailer, pole or pike dolly, logging dolly, or auxiliary dolly upon a highway unless it is registered and the appropriate fees have been paid under this code.

No person shall drive, move, or leave standing any motor vehicle upon a highway which has been registered in violation of Chapter 3 (commencing at Section 24378) of Division 20 of the Health and Safety Code.

(b) The provisions of this section shall not apply, following payment of fees due for registration, during such time that registration and transfer is being withheld by the Department of Motor Vehicles pending the investigation of any use tax due under the provisions of the Revenue and Taxation Code.

SEC. 539. Section 4300.5 of said code is amended to read:

4300.5. An application for registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code of a motor vehicle previously registered outside of this state must be accompanied by payment of the amount required to be paid under Part 1 (commencing with Section 6001), Division 2 of the Revenue and Taxation Code with respect to the use of the motor vehicle by the applicant

SEC. 540. Section 4451 of said code is amended to read:

4451. The certificate of ownership shall contain:

(a) Not less than the information required upon the face of the registration card.

(b) Provision for notice to the department of a transfer of the title or interest of the owner or legal owner.

(c) Provision for application for transfer of registration by the transferee.

(d) Certificates of ownership issued by the department for the year 1958 and subsequent years shall contain provision for a statement by the transferor, other than the legal owner, to the effect that the proposed transfer of title or other interest in the motor vehicle is not in violation of the provisions of Article 5 (commencing with Section 16100), Chapter 1, Division 7 of this code.

SEC. 542. Section 4750.5 of said code is amended to read:

4750.5. (a) The department shall withhold the registration or the transfer of registration of any motor vehicle sold at retail to any applicant by any person other than a vehicle manufacturer or dealer holding a license and certificate issued pursuant to Chapter 4, Division 5 of the Vehicle Code, or an automobile dismantler holding a license and certificate issued pursuant to Chapter 3, Division 5 of the Vehicle Code, until the applicant pays to the department the use tax measured by the sales price of the motor vehicle as required by the Sales and Use Tax Law, together with penalty, if any, unless the State Board of Equalization finds that no use tax is due If the applicant so desires, he may pay the use tax and penalty, if any, to the department so as to secure immediate action upon his application for registration or transfer of registration, and thereafter he may apply through the Department of Motor Vehicles to the State Board of Equalization under the provisions of the Sales and Use Tax Law for a refund of the amount so paid.

(b) The department shall transmit to the State Board of Equalization all collections of use tax and penalty made under this section. This transmittal shall be made at least monthly, accompanied by a schedule in such form as the department and board may prescribe.

(c) The State Board of Equalization shall reimburse the department for its costs incurred in carrying out the provisions of this section. Such reimbursement shall be effected under agreement between the agencies, approved by the Department of Finance.

(d) In computing any use tax or penalty thereon under the provisions of this section dollar fractions shall be disregarded in the manner specified in Section 9559 of this code. Payment of tax and penalty on this basis shall be deemed full compliance with the requirements of the Sales and Use Tax Law insofar as they are applicable to the use of motor vehicles to which this section relates.

SEC. 543. Section 5600 of said code is amended to read:

5600. No transfer of the title or any interest in or to a vehicle registered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(a) The Transferor has made proper endorsement and delivery of the certificate of ownership and delivery of the registration card to the transferee as provided in this code and the transferee has delivered to the department or has placed the certificate and card in the United States mail addressed to the department when and as required under this code with the proper transfer fee, together with the amount required to be paid under Part 1 (commencing with Section 6001), Division 2 of the Revenue and Taxation Code with respect to the use by the transferee of the vehicle, if a motor vehicle, and thereby makes application for a transfer of registration except as otherwise provided in Sections 5905, 5906, 5907, and 5908.

(b) The transferor has delivered to the department or has placed in the United States mail addressed to the department the appropriate documents for the registration or transfer of registration of the vehicle pursuant to the sale or transfer except as provided in Section 5602.

SEC. 544. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect, but shall become operative on July 1, 1965, except as otherwise provided herein.

SEC. 545. Notwithstanding the provisions of Section 544, Sections 6051, 6051.5, 6052.5, 6201, 6201.5, 7102, 7103, 7202, and 7203 of the Revenue and Taxation Code, as affected by this act, shall become operative on April 1, 1966. Sections 17181.5 and 18405 5 of said code shall be applicable only to taxable years beginning on or after January 1, 1966, and Section ~~19521~~ *19601* shall be applicable for the taxable year 1965 and for fiscal years beginning during the calendar year 1965. All other sections of said code relating to the Personal Income Tax Law, as affected by this act, *and Section 4204 of the Government Code* shall become operative on January 1, 1966.

SEC. 546. (a) Notwithstanding the provisions of Section 544, the provisions of Article 3 of Chapter 19 of the Bank and Corporation Tax Law in effect on December 31, 1964, shall be applicable to the payment of taxes in the case of income years ending prior to the effective date of this section.

(b) Except for provisions of the Bank and Corporation Tax Law in this act relating to a change in the tax rates, the provisions of such law, except as may otherwise be specifically provided, shall become operative on January 1, 1965, with respect to the computation of taxes on or measured by the net income of the calendar year 1965 or on the first day of the fiscal year with respect to the computation of taxes on or measured by the net income of fiscal years beginning after January 1, 1965.

(c) The provisions of this act affecting changes in the rate of tax under the Bank and Corporation Tax Law shall be applied in the computation of taxes for all income years (as defined by Section 23042, prior to the enactment of this section) ending after December 31, 1964 and all taxable years as defined in the Bank and Corporation Tax Law contained in this act beginning on or after January 1, 1965 ~~Provided, however, that in the case of banks and financial corporations the maximum rate provided for by Sections 23181.2 and 23183.2, for the calendar year 1965 and fiscal years beginning in 1965 shall not exceed 6 percent.~~ Banks and corporations whose income year (as defined by Section 23042, prior to the enactment of this section), began prior to January 1, 1965, and ends on or before November 30, 1965, shall compute their tax by applying the rate in effect as of December 31, 1964, and the rate provided for by the Bank and Corporation Tax Law contained in this act on and after such date, to their net income for the entire year in accordance with the method prescribed by Section 24251.

Any tax, for a taxable year specified in the Bank and Corporation Tax Law contained in this act, in addition to that disclosed by the return, made necessary solely by such provisions affecting changes in the rate of tax shall accrue on January 1, 1965, and shall be due and payable within 10 days from the date of notice and demand from the Franchise Tax Board, or on or before the 15th day of the third month following: (1) the close of the income year, or (2) the effective date of this section, whichever is later. If not so paid, interest shall be added thereto in the manner provided by Section 25901. Any additional tax shall not be considered a deficiency assessment within the meaning of Article 1 of Chapter 20 (commencing with Section 25661).

SEC. 547. Notwithstanding the provisions of Section 544, the provisions of the Education Code in this act shall become operative and applicable with respect to the fiscal year 1966–1967, except where any such provision expressly provides otherwise.

SEC 548 Notwithstanding the provisions of Section 544, Sections 17101 through 17108, inclusive, of the Revenue and Taxation Code, as amended by this act, and Sections 17109 through 17112, inclusive, of said code, as added by this act, shall be applied in the computation of taxes on annuities with payments commencing on or after January 1, 1966, and Sections 17101 through 17108, inclusive, of said code, as were in effect immediately prior to the amendments made by this act, shall continue to be applied in the computation of taxes on annuities with payments commencing prior to January 1, 1966.

SEC ~~548~~ *549*. If any part, sentence, subdivision or clause of this act is for any reason held invalid or to be unconstitutional such decision shall not affect the validity of the remaining portions of this act and if this act is held invalid or unconstitutional as applied in the computation of tax for the year

1965 then taxes shall be determined under this part as if this act had never been enacted.

SEC. 549.1. In view of pending litigation concerning the proper tax treatment of intercompany dividends, it is not intended by enactment of this act that any inference be drawn from it in such litigation. Subdivision (a) of Section 25109 of the Revenue and Taxation Code as added by this act is to be construed as a codification of existing law.

SEC. 550. The Legislature finds and declares that local government property taxes have risen to levels which cause them to be regressive and to weaken the ability of local government to meet its responsibilities to the people of California. For these reasons, the Legislature further declares that it is the purpose of the State Legislature to reduce the burden of local property taxes by making available funds to offset certain property tax exemptions.

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Appendix A(2)

INDEX TO AB 2270

PROPERTY TAX

LEASE TAX

SALES TAX

(Occasional Sales)

SALES TAX

INHERITANCE AND GIFT TAX

INCOME TAX

FRANCHISE TAX

Appendix B

IMPACT OF AB 2270 ON LOCAL GOVERNMENT

The following pages show the impact of AB 2270 on county government, on cities and on school districts.

The first section entitled "Impact on County Government" refers to the impact on the county government, not on all government units in the county. The "loss of revenue" column for counties and cities actually reflects the reduction in property tax revenue due to the elimination of household furnishings and inventories from taxation

The school district section has been organized in a slightly different manner. The impact of AB 2270 on school districts is shown in terms of rate reductions and additional new money for schools In other words, schools will receive funds from the state to cover the loss of revenue caused by the exemptions and to provide for the mandatory rate reduction as shown Some schools will get additional funds beyond those required for the rate reduction but this is money which is in excess of the school's present budgetary requirements and should be treated as additional new money. It must be re-emphasized that the figures shown in the right hand column of the school section represent brand new money for schools—over and above replacement money for the property tax reductions.

Data for cities and counties were prepared by Miss Evelyn Love of the Assembly Revenue and Taxation Committee staff. Data for school districts were prepared by Gil Oster of the Assembly Education Committee staff.

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS

Alameda County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$4,224,360	$5,208,568	$984,208
IMPACT ON CITIES			
Alameda	196,620	279,626	83,006
Albany	31,668	46,115	14,447
Berkeley	633,466	921,288	287,322
Emeryville	92,388	154 359	61,971
Fremont	121,190	117,887	(−3,303)
Hayward	173,331	289,821	116,490
Livermore	32 620	47,499	14,879
Newark	62,225	67,952	5,727
Oakland	2,265,864	3,974 326	1,708,462
Piedmont	32,394	53,752	21,358
Pleasanton	6,622	9,754	3,132
San Leandro	307,254	474 043	166,789
Union City	20,958	41,749	14,791

	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
IMPACT ON SCHOOLS					
Elementary					
Pleasanton	2 28	1 04	1 23	54	----------
High school					
Amador Valley	1 35	1 16	19	14	----------
Unified					
Alameda	3 98	2 73	1 25	31	134,520
Albany	4 20	3 11	1 09	26	26,260
Berkeley	3 98	3 42	55	14	175 720
Castro Valley	*4 17	2 28	1 89	45	100,010
Hayward	4 05	2 57	1 47	36	294,450
Oakland	3 53	2 92	61	17	636,560
Piedmont	4 23	3 64	59	16	23 230
San Leandro	3 03	2 65	38	12	116,910
San Lorenzo	4 40	2 92	1 27	40	151,310
Fremont	3 69	2 26	1 43	38	266,910
Livermore	*4 03	2 55	1 48	37	76,900
Junior college					
Peralta	48	44	04	8	----------

* Average rate of districts comprising new unified district

Alpine County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$1,372	$3,503	$2,131

	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
IMPACT ON SCHOOLS					
Unified					
Alpine	$1 38	*1 09	29	21	$690

* Whenever a unified district does not operate a high school but sends its high school students to an adjacent state, the otherwise basic rate of $1 65 does not apply

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Amador County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$37,134	$61,972	$24,838
IMPACT ON CITIES			
Amador	46	71	25
Ione	978	1,409	431
Jackson	1,560	3,300	1,740
Plymouth	246	431	185
Sutter Creek	1,168	1,957	789

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Unified					
Ione	2 75	2 11	64	23	$4 750
Jackson	2 37	2 05	32	14	7,650
Oro Madre	1 91	1 99	(08)	(4)	----------

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

Butte County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$264,155	$504,324	$240,169
IMPACT ON CITIES			
Biggs	1 152	1,752	600
Chico	52,261	83,968	31,707
Gridley	6,224	12,267	6,043
Oroville	56,824	71,570	14,746

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Gridley	1 52	* 90	62	41	$37,830
Oroville	1 81	* 90	71	44	54,109
Thermalito	1 62	* 90	72	45	57,501
High school					
Oroville	1 37	1 26	11	8	----------
Unified					
Chico	3 77	2 70	1 07	29	89,410
Paradise	2 75	1 91	84	30	21,880

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes Base Rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Calaveras County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$30,994	$82,784	$51,790
IMPACT ON CITY			
Angels	1,373	2,619	1,246

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Mark Twain	1 48	* 90	58	39	$20,328
Vallecito	80	† 80	--	--	9,295
High school					
Bret Harte	1 25	79	46	37	----------
Unified					
Calaveras	2 59	2 50	09	4	12,400

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

† Basic rate for a district that does not have a kindergarten

Colusa County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$80,658	$137,993	$57,335
IMPACT ON CITIES			
Colusa	12,156	17,927	5,771
Williams	3,805	5,577	1,772

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Unified					
Colusa	2 60	2 11	49	19	$12,900
Pierce Joint	*1 74	1 88	(14)	(8)	----------
Williams	2 29	2 22	07	3	5,580

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

*Average tax rate in components of newly unified districts

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Contra Costa County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$1,550,334	$2,810,349	$1,260,015
IMPACT ON CITIES			
Antioch	31,254	40,035	8,781
Brentwood	2,168	3,357	1,189
Clayton**			
Concord	37,233	45 023	7,790
El Cerrito	24,926	33,334	8,408
Hercules††		286	286
Martinez	48,106	53,420	5,314
Pinole	3,150	4,318	1,168
Pittsburg	29,829	33,560	3,731
Pleasant Hill††		5,490	5,490
Richmond	667,079	793,971	126,892
San Pablo	13,072	16,062	2,990
Walnut Creek	31,842	47,472	15,630

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Brentwood	1 64	* 90	74	45	$2,506
Byron	1 45	1 43	02	1	
Knightsen	1 81	95	86	47	
Lafayette	2 75	1 69	1 06	39	46,320
Moraga	2 32	1 20	1 12	48	
Oakley	1 85	94	91	49	
Orinda	2 64	1 73	90	34	
Walnut Creek	2 64	1 79	85	32	44,220
High schools—Voted No —Areawide tax doesn't apply.					
Acalanes	1 88	1 59	29	15	
Liberty	1 65	1 53	12	7	
Unified					
Antioch	2 82	2 67	15	5	41,240
John Swett†	2 56	2 63	(07)	(3)	14,520
Martinez	3 73	2 97	76	20	47,110
Mt. Diablo	4 30	2 47	1 83	43	413,490
Pittsburg	2 81	2 72	09	3	47,160
Richmond†	3 29	2 31	98	30	* 412,240
San Ramon†	4 01	2 74	1 28	32	64,760

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes Basic Rate

** City incorporated too late to levy a city tax for fiscal 1964–65

† Recently formed districts Old rate is average of former independent districts

†† City did not levy property tax

Del Norte County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$67,870	$88,473	$20,603
IMPACT ON CITIES			
Crescent City	7,528	16,432	8,904

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Unified					
Del Norte	3 08	*1 65	1 43	46	$79,000

"Net Additional Revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes Basic Rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

El Dorado County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$93,204	$341,258	$248,054
IMPACT ON CITIES			
Placerville	9,513	22,837	13,324

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Buckeye	1 87	1 23	64	34	
Camino	1 64	* 90	74	45	$4,278
Georgetown Div	1 00	1 03	(03)	(3)	
Gold Oak	1 72	* 90	82	48	15,541
Gold Trail	1 71	* 90	81	47	11,187
Mother Lode	2 03	* 90	1 12	55	22,864
Pioneer	1 29	* 90	39	30	2,635
Placerville	2 00	91	1 09	55	
Pollock Pines	2 11	1 15	96	45	
Rescue	1 30	* 90	40	31	6,314
High school (Election doesn't affect)					
El Dorado	1 37	1 22	15	11	
Unified					
Lake Tahoe	2 50	2 42	08	3	21,420

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes Base Rate

Fresno County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$1,256,307	$1,892,101	$635,794
IMPACT ON CITIES			
Clovis	6,234	10,378	4,144
Coalinga	10,319	19,929	9,610
Firebaugh	2,608	6,204	3,596
Fresno	465,611	822,168	358,557
Fowler	3,257	3,023	(—234)
Huron	1,874	2,876	1,002
Kerman	2,677	5,456	2,779
Kingsburg	7,004	12,963	5,959
Mendota	2,607	3,684	1,077
Orange Cove	2,430	4,370	1,940
Parlier	1,009	1,827	818
Reedley	7,169	14,639	7,470
Sanger	16,366	26,105	9,740
San Joaquin	1,716	3,138	1,422
Selma	12,597	25,021	12,424

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Firebaugh	3 50	2 58	92	26	
Kerman-Floyd	1 73	* 90	83	48	$39,760
Kingsburg	1 49	* 90	59	40	23,282
McKinley-Roosevelt	1 53	* 90	63	43	80,195
Mendota	1 72	1 19	53	31	
Selma	1 66	* 90	76	46	31,240
High schools					
Kingsburg	1 61	1 54	07	4	
Washington	1 58	1 18	40	25	
Unified					
Coalinga	1 70	1 83	(13)	(7)	
Clovis	2 81	*1 65	1 16	41	272,743
Fresno	3 09	*1 65	1 44	47	1,042,025
Reedley	†2 87	*1 65	1 22	42	69,482
Sanger	2 88	*1 65	1 23	42	120,801

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes base rate
† Average rate of districts in new unified district

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Glenn County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$79,536	$146,998	$69,462
IMPACT ON CITIES			
Orland	9,708	13,735	4,029
Willows	12,182	18,195	6,013

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Hamilton	1 31	* 90	41	31	$11,206
Orland	1 65	* 90	75	45	63,564
Willows	1 39	* 90	49	35	26,583
High schools					
Glenn	1 06	1 13	(07)	(6)	----------
Orland	1 25	1 00	25	20	----------
Unified					
Princeton	1 86	1 97	(11)	(6)	----------
Stoney Creek	2 11	1 90	21	10	2,000

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* Denotes basic rate

Humboldt County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$390,629	$522,088	$131,459
IMPACT ON CITIES			
Arcata	9,923	16,607	6,684
Blue Lake	824	1,791	967
Eureka	96,838	139,402	42,564
Ferndale	1,536	3,779	2,243
Fortuna	2,598	5,995	3,397

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Arcata	2 02	* 90	1 12	55	$28,512
Cutten	1 41	* 90	51	36	†43,559
Blue Lake	1 37	* 90	47	34	†30,980
Eureka	1 95	* 90	1 05	54	35,184
Ferndale	1 32	* 90	42	32	7,772
Fieldbrook	1 76	* 90	86	49	18,446
Fortuna	1 95	* 90	1 05	54	16,373
Freshwater	2 43	* 90	1 53	63	4,359
Hydesville	1 84	* 90	94	51	7,327
Jacoby Creek	1 38	* 90	48	35	†23,752
Loleta	1 41	* 90	51	36	12,747
McKinleyville	1 87	* 90	97	52	†76,716
Orick	1 38	* 90	48	35	3,601
Pacific	1 32	* 90	42	32	3,075
Peninsula	1 47	02	56	38	----------
Rio Dell	1 12	* 90	22	20	†49,269
Rohnerville	1 42	* 90	52	37	†44,866
Scotia	98	* 90	08	8	22,079
South Bay	1 21	* 90	31	26	10,281
Trinidad	2 17	* 90	1 27	59	15,380
High school—Areawide tax not applicable					
Arcata	1 63	1 29	.34	21	----------
Eureka	1 81	1 63	.18	10	----------
Fortuna	1 50	1 16	.34	22	----------
Unified					
Klamath-Trinity	2 62	*1 65	.97	37	27,126
South Humboldt	3 24	1 85	1.39	43	16,610

* Denotes basic tax rate

† This excess is caused because new foundation program is above both old budget and makeup tax of full 90 cents Indicates a very poor district with only moderate tax rate or less

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Imperial County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$238,808	$432,483	$173,675
IMPACT ON CITIES			
Brawley	27,962	42,405	14,443
Calexico	26,827	50,217	23,390
Calipatria	13,016	18,990	5,974
El Centro	72,597	115,579	42,982
Holtville	7,615	13,646	6,031
Imperial	7,514	16,770	8,256
Westmorland	423	953	531

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Brawley	1 48	* 90	58	39	$316,340
Calexico	1 82	* 90	92	51	120,125
El Centro	2 25	* 90	1 35	60	221,340
Holtville	1 90	* 90	1 00	53	19,690
High school					
Brawley	1 81	1 67	14	8	----------
Calexico	1 21	* 75	46	38	2,209
Central	1 59	1 33	27	17	----------
Unified					
Calipatria	3 02	2 11	90	30	9,020
Imperial	2 46	*1 65	71	30	25,639
San Pascual Valley	2 35	*1 65	70	30	42,110

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes base rate

Inyo County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$36,145	$123,018	$86,873
IMPACT ON CITY			
Bishop	3,710	8,019	4,309

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Bishop	1 75	1 25	50	28	----------
Lo-Inyo	1 73	1 06	67	38	----------
High schools					
Bishop	1 32	1 14	08	7	----------
Lone Pine	1 77	1 53	23	13	----------

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IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Kern County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$942,136	$2,115,832	$1,173,696
IMPACT ON CITIES			
Arvin	484	1,511	1,027
Bakersfield	234,054	391,264	157,210
Delano	13,398	18,723	5,325
Maricopa	564	926	362
McFarland	1,104	2,334	1,230
Shafter	3,732	7,638	3,906
Taft	7,893	15,547	7,654
Tehachapi	4,330	6,950	2 621
Ridgecrest	1,178	3,219	2,041
Wasco	5,247	9,605	4 358

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Arvin	2 20	1 27	93	42	----------
Bakersfield	2 30	* 90	1 40	61	$29,211
Beardsley	2 23	1 09	1 13	51	----------
China Lake†	4 25	3 20	1 05	25	----------
Delano	1 95	* 90	1 05	54	50,910
Dickland	2 45	1 55	89	36	----------
Greenfield	2 02	* 90	1 12	55	96,323
Indian Wells	1 82	* 90	92	50	44,695
Lamont	2 15	* 90	1 25	58	29,199
McFarland	1 90	1 08	82	43	----------
Panama	2 23	1 26	97	43	----------
Richland	2 45	1 55	90	37	----------
Standard	2 43	1 23	1 20	49	----------
Taft	2 91	2 70	21	7	----------
Wasco	2 31	1 23	1 09	47	----------
High schools—Areawide tax not applicable					
Delano	1 64	1 44	20	12	----------
Kern	1 36	1 15	21	15	----------
Taft	82	87	(.05)	(6 3)	----------
Unified					
Mojave	3 02	2 91	11	4	8,070
Murce	3.70	2 19	1.51	41	38,240
South Kern	3 54	2 24	1 30	37	9 860
Tehachapi	3 32	3 04	78	21	15,140

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* Denotes basic rate.

† Includes accurate estimate of P L 874 effect

Kings County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$182,532	$366,436	$183,903
IMPACT ON CITIES			
Corcoran	14 345	20 214	5,869
Hanford	86,089	57,721	21,632
Lemoore	6,982	8,509	1,527

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Central	1 17	* 90	27	23	$150,419
Hanford	1 83	* 90	93	51	94,764
Lemoore	1 39	* 90	49	35	86,490
Lakeside	1 65	* 90	.75	45	22,027
High schools					
Hanford	1 08	83	25	23	----------
Lemoore	1 61	1 70	(.09)	(5)	----------
Unified					
Corcoran	2 64	*1 65	1 19	42	87,362

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* Denotes base rate.

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Lake County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$53,447	$124,988	$71,541
IMPACT ON CITIES			
Lakeport	6,176	7,996	1,820

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Upper Lake	1 19	1 00	19	16	----------
Unified					
Kelseyville	2 91	2 78	13	4 4	$5,810
Konocti	2 26	2 16	10	4 7	6,190
Lakeport	3 22	2 27	95	30	10,960
Middletown	2 35	2 03	32	14	2,950

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Lassen County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$41,233	$64,525	$23,292
IMPACT ON CITIES			
Susanville	6,582	10,625	4,043

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Herlong	1 35	* 90	45	33⅓	$28,438
Susanville	1 48	* 90	58	39	73,585
High school					
Lassen	1 50	1 54	35	18½	----------
Unified					
Big Valley	2 90	2 10	80	28	1,970
Westwood	2 74	*1 65	1 09	40	37,304

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* Denotes same rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Los Angeles County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$27,472,748	$41,298,823	$13,826,075
IMPACT ON CITIES			
Alhambra	94,206	186,957	92,751
Arcadia	50 073	87 684	37,611
Artesia*		2,163	2,163
Avalon	7 124	12,670	5,546
Azusa	72,746	123,110	50,365
Baldwin Park	8 160	13 511	5,351
Bell	13,832	33,272	19,440
Bellflower*		15,796	15,796
Bell Gardens*		4,167	4,167
Beverly Hills	142,398	274,672	132,274
Bradbury	649	977	328
Burbank	506,542	866,524	359,982
Claremont	29 089	51,706	22,617
Commerce*		63,243	63,243
Compton	71,646	139 407	67,761
Covina	55,290	107,012	51,722
Cudahy*		1,822	1,822
Culver City	283,514	475,611	192,097
Dairy Valley*		2,162	2,162
Downey	34,856	87,414	52,559
Duarte		1 856	1,856
El Monte	46,435	102 855	56,420
El Segundo	125,541	243 764	118,123
Gardena	39,900	75,933	36,133
Glendale	227,223	451,037	223,814
Glendora	19,465	35,127	15,662
Hawaiian Gardens†			
Hawthorne	124,099	228,038	103,969
Hermosa Beach	10,820	24,316	13,496
Hidden Hills	257	306	49
Huntington Park	68,825	146,030	77,205
Industry*		14,989	14,989
Inglewood	98,130	210,721	112,591
Irwindale*		8,860	8,860
Lakewood	7,909	40 778	32,869
La Mirada*		5,014	5,014
La Puente*		5,787	5,787
La Verne	10,026	15,136	5,110
Lawndale*		4,179	4,179
Lomita†			
Long Beach	1,719,521	2,242,854	523,083
Los Angeles	8,810,644	16,396,401	7,585,757
Lynwood	25,801	50 710	24,910
Manhattan Beach	26 488	58,012	31,524
Maywood	10,101	19 673	9,572
Monrovia	100,111	187,372	87 261
Montebello	62,340	168,911	76,571
Monterey Park	54,725	100,648	45,923
Norwalk*		14,717	14,717
Palmdale*		2,329	2,329
Palos Verdes Estates	10,072	13,320	3,248
Paramount*		8,650	8,650
Pasadena	915,602	1,153,985	238,383
Pico Rivera*		11 438	11,438
Pomona	202,877	362 651	159,774
Redondo Beach	70,407	133,206	62,799
Rolling Hills	2,716	3,301	585
Rolling Hills Estates*		2,245	2,245
Rosemead*		3,955	3,955
San Dimas	1,204	2,899	1,695
San Fernando	29,033	58,052	29,019
San Gabriel	34 238	71 799	37,561
San Marino	83,040	110,631	27,591
Santa Fe Springs	56,842	104,177	47,335
Santa Monica	216,612	439,510	222 898
Sierra Madre	10,496	25,827	15,331
Signal Hill	26,478	53,146	26,668
South El Monte*		8,225	8,225
South Gate	92,938	189,517	96,579
South Pasadena	39,714	75,545	35,831
Temple City*		3,909	3,909
Torrance	256,193	495,195	239,002
Vernon	112,218	246,917	134,699
Walnut	286	542	256
West Covina	41,388	84,028	42,640
Whittier	78,903	147,357	68,454

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

LOS ANGELES COUNTY—Continued

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Alhambra	1 63	1 17	46	28	----------
Compton	1 37	‡ 90	46	34	$1,435,474
East Whittier	2 49	1 92	1 37	57	----------
El Monte	2 06	98	1 08	52	89,250
Enterprise	2 62	1 20	1 42	54	34 580
Hawthorne	2 03	1 31	72	36	----------
Lancaster	1 57	‡ 90	.67	43	352,219
Little Lake	3 05	1 24	1 81	59	74,900
Manhattan Beach	2 12	1 04	1 08	51	----------
Mountain View	2 14	‡ 90	1 24	58	68,948
Newhall	2 00	1 54	46	23	----------
Redondo	2 04	1 28	76	37	----------
Rosemead	1 37	‡ 90	97	52	15,932
San Gabriel	1 66	1 08	59	35	----------
South Whittier	3 05	‡ 90	2 15	70	47,983
Valle Lindo	2 03	‡ 90	1 13	66	16,951
Whittier	1 91	1 17	74	39	----------
Willowbrook	1 95	‡ 90	1 05	54	359,918
High schools					
Alhambra	1 64	1 38	26	16	----------
Antelope Valley	1 37	1 13	24	18	----------
Centmela Valley	1 77	1 59	18	10	----------
Compton	1 80	1 36	44	25	----------
El Monte	1 54	1 23	31	20	----------
South Bay Union	1 45	1 27	18	12	----------
Whittier	1 95	1 60	.35	18	----------
William S Hart	1 21	1 28	(07)	(6)	----------
Unified					
Arcadia	3 25	2 49	77	24	100,160
Azusa	3 99	2 16	1 83	46	128,800
Baldwin Park	3 88	‡1 65	2 23	58	238,187
Basset	3 84	‡1 65	2 19	57	106,075
Bellflower	3 47	1 79	1 68	48	132,410
Beverly Hills	1 81	1 92	(11)	(6)	----------
Bonita	3 64	2 01	1 63	45	48,050
Burbank	2 67	2 34	33	12	135,150
Charter Oak	3 65	‡1 65	2 00	55	188,994
Covina Valley	4 08	2 42	1 65	40	180,450
Culver City	3 34	2 93	41	12	80,610
Downey	3 34	2 09	1 24	37	212,090
Duarte	3 82	‡1 65	2 17	57	236,039
El Rancho	4 04	2 52	1 52	37	140,390
El Segundo	1 79	1 99	(20)	(11)	----------
Glendale	3 24	1 93	1 31	40	245,490
Glendora	3 87	2 08	1 79	46	88,050
Inglewood	3 51	3 00	51	14	135 000
Long Beach	3 33	2 34	99	30	737,690
Los Angeles	3 17	2 40	81	25	5,060,940
Lynwood	3 33	2 02	1 32	39	67,100
Montebello	2 45	‡1 65	80	33	212,070
Palos Verdes Peninsula	3 40	2 53	87	26	120,570
Paramount	3 51	2 15	1 46	40	96,170
Pasadena	3 55	3 15	40	11	321,970
Pomona	3 52	2 15	1 37	39	185 630
San Marino	2 80	2 36	44	16	36,400
Santa Monica	2 27	2 24	13	6	----------
South Pasadena	3 49	2 73	76	22	33,100
Temple City	3 75	2 43	1 32	35	43,520
Torrance	3 24	1 89	1 35	42	335,320
West Covina	3 81	1 78	2 02	53	139,700
Junior college					
Compton	39	34	05	13	----------
Los Angeles	33	28	05	15	----------

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* City did not levy property tax

† City incorporated too late to levy a city tax for fiscal 1964–65

‡ Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Madera County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$158,281	$248,935	$90,654
IMPACT ON CITIES			
Chowchilla	4,555	7,630	3,075
Madera	17,297	29,460	12,163

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Chowchilla	1 61	* 90	71	44	$34,252
Madera	1 50	* 90	60	40	227,643
High schools					
Chowchilla	1 52	1 37	15	10	----------
Madera	1 42	1 17	25	18	----------

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* Denotes base rate

Marin County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$357,450	$1,040,348	$682,898
IMPACT ON CITIES			
Belvedere	2,852	14,107	4,255
Corte Madera	8,995	14,135	5,250
Fairfax	6,041	9,720	3,679
Larkspur	10,599	14,314	3,715
Mill Valley	17,784	28,970	11,206
Novato	9,959	16,598	7,639
Ross	2,092	3,241	1,149
San Anselmo	14,140	21,890	7,750
San Rafael	41,117	77,799	36,682
Sausalito	14,368	30,819	16,451
Tiburon†	----------	----------	----------

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Dixie	2 58	1 32	1 26	49	----------
Fairfax	1 94	1 04	90	46	$10,940
Kentfield	2 34	1 77	57	24	----------
Larkspur	2 99	2 21	78	26	----------
Mill Valley	2 30	1 55	75	32	33,280
Reed	2 95	2 47	48	16	----------
Ross	2 55	2 00	55	21	----------
San Anselmo	2 24	1 39	85	38	21,260
San Rafael	1 84	1 49	35	19	----------
Sausalito	2 23	2 28	(05)	(2)	9,430
High schools					
San Rafael	1 78	1 68	90	5	----------
Tamalpais	1 93	1 83	10	5	----------
Unified					
Novato	3 51	1 99	1 52	43	53,410

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

† Incorporated too late to levy a city tax for fiscal 1964–65

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Mariposa County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$15,141	$47,171	$32,030

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Unified					
Mariposa County	2 16	2 11	05	2 3	$3,660

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

Mendocino County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$181,842	$260,792	$78,950
IMPACT ON CITIES			
Fort Bragg	10,753	20,506	9,838
Point Arena	572	735	163
Ukiah	8,573	19,305	10,733
Willits	11,529	19,814	8,285

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Arena	1 25	* 90	35	28	$13,415
Unified					
Fort Bragg	3 55	2 20	1 35	38	25,210
Willits	2 75	*1 65	1 10	40	53,010
Ukiah	†3 40	1 86	1 54	45	57,170

* Denotes basic rate

† Average tax rate in components of newly-unified districts

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

Merced County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$328,663	$555,731	$227,068
IMPACT ON CITIES			
Atwater	10,930	17,570	6 640
Dos Palos	3,835	7,314	3,479
Gustine	7,017	10,365	3,348
Livingston	4,231	6,773	2,542
Los Banos	14,478	21 970	7,492
Merced	58,464	87,335	28,871

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Atwater	1 35	* 90	45	33	$346 753
McSwain	1 42	* 90	52	37	6 713
Merced	1 77	* 90	87	49	278,374
Winton	1 66	* 90	76	46	45,192
High School					
Merced	1 70	1 39	31	18	----------
Unified					
Gustine	†2 39	1 94	45	19	12,490
Hilmar	2 25	*1 65	60	27	81,061
Los Banos	2 78	2 31	47	17	32,300

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

† Average tax rate in component parts of new unified district

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Modoc County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$51,664	$57,088	$5,424
IMPACT ON CITY			
Alturas	4,637	8,301	3,664

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Alturas	1 54	* 90	64	42	$46,339
Newell	1 32	1 19	13	10	----------
High school					
Modoc	1 07	86	21	20	----------
Unified					
Surprise Valley	†1 71	*1 65	06	3 5	51,347

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes basic rate
†Composite average of component districts

Mono County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$17,141	$65,688	$48,547

Monterey County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$702,840	$1,165,369	$462,529
IMPACT ON CITIES			
Carmel	17,248	20,827	3,579
Del Rey Oaks	1,067	2 500	633
Gonzales	10,002	8,971	(—1,031)
Greenfield	2,411	2,972	561
King City	13,441	14,351	910
Monterey	89 086	106,018	16,932
Pacific Grove	32,076	39 570	7 494
Salinas	154,707	168,224	13,517
Sand City	794	998	204
Seaside	27,598	36,606	9,008
Soledad	5,152	6,755	1,603

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Alisal	1 72	* 90	82	48	$130,141
Gonzales	1 42	* 90	52	37	35,003
King City	1 59	99	63	40	----------
North County Union	1 50	93	57	38	----------
Salinas	1 64	* 90	74	45	294,700
Santa Rita	1 75	* 90	85	48	39,255
Soledad	1 92	* 90	1 02	53	23,378
High schools					
Gonzales	1 80	1 77	03	2	----------
Salinas	1 32	1 23	09	7	----------
Unified					
Carmel	2 47	2 44	03	1	22,920
Monterey	†2 96	*1 65	1 31	44	729 871
Pacific Grove	3 01	1 95	1 06	35	37 440
Junior college					
Monterey Peninsula J C District	39	25	14	35	----------

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes basic rate
† Average rate of component districts in new unified district

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Napa County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$283,044	$321,520	$38,476
IMPACT ON CITIES			
Calistoga	3,393	4,301	908
Napa	80,661	91,781	11,120
St Helena	9,953	12,491	2,538

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Howell Mountain	1 15	† 90	25	22	$2,100
Unified					
Calistoga	2 63	1 99	64	24	3,950
Napa	*4 06	2 53	1 53	38	136,930
St Helena	2 55	2 21	34	13	12,060

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Average rate for component districts

† Denotes basic rate

Nevada County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$75,049	$127,906	$52,857
IMPACT ON CITIES			
Grass Valley	9,818	17,906	8 088
Nevada City	4,921	8,669	3,748

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Union Hill	1 34	* 90	44	33	$11,685
Ready Spring	1 30	* 90	40	31	14,922
Pleasant Ridge	1 48	92	56	38	----------
Cherokee	1 32	† 80	52	39	1,811
Nevada City	1 50	* 90	60	40	6,994
Grass Valley	1 30	* 90	40	31	101,944
High school					
Nevada	1 35	1 15	20	15	----------

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

† Basic rate for a district that doesn't operate a kindergarten.

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Orange County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$1,708,499	$5,779,416	$4,070,917
IMPACT ON CITIES			
Anaheim	223,773	439,967	216,194
Brea	24,946	39,481	14,535
Buena Park	55,630	106,984	51,354
Costa Mesa	49,529	136,968	87,439
Cypress	7,659	12,653	4,994
Dairyland	4,347	6 724	2,377
Fountain Valley	2,417	3,704	1,287
Fullerton	130,019	269,406	130,387
Garden Grove	48,262	109,761	61,499
Huntington Beach	33,299	48,816	15,517
Laguna Beach	16 574	33,618	17,044
La Habra	30,299	64,015	27,747
Los Alamitos	4,786	8 340	3,554
Newport Beach	114,123	205 726	91 603
Orange	53,100	90,927	37,827
Placentia	4,226	6,945	2,719
San Clemente	14,490	24 139	9,649
San Juan Capistrano	1,166	2,926	1,760
Santa Ana	200,906	385,941	184,946
Seal Beach	8 654	10,344	1,690
Stanton	10,309	21,967	11,658
Tustin	5,565	10 267	4,702
Villa Park	493	598	105
Westminster	17,108	29,755	12,647

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Anaheim	1 60	* 90	70	44	$614,056
Buena Park	2 07	1 04	1 03	50	----------
Fullerton	1 78	* 90	88	49	158,563
La Habra	2 36	1 22	1 14	48	----------
Magnolia	1 55	* 90	65	41	451 344
Tustin	1 79	* 90	89	50	153,228
Westminster	1 63	* 90	73	45	611,743
High schools					
Anaheim	1 84	1 52	32	17	----------
Brea-Olinda	1 14	1 21	(07)	(6)	----------
Fullerton	1 53	1 25	28	18	----------
Huntington Beach	1 38	1 23	15	11	----------
Tustin	1 51	1 29	22	15	----------
Unified					
Garden Grove	†2 83	*1 65	1 18	42	2,366,710
Laguna Beach	1 83	1 89	(06)	(3)	----------
Newport Harbor	†2 88	2 34	54	19	228 330
Orange	3 05	*1 65	1 40	46	277,539
Placentia	3 13	2 34	79	25	61,810
Santa Ana	2 73	*1 65	1 08	40	571,048

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money.

* Denotes base rate

† Old *average* rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Placer County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$123,887	$401,674	$267,787
IMPACT ON CITIES			
Auburn	15,048	20,974	5,926
Colfax	1,554	2,286	732
Lincoln	6,273	10,201	3,928
Rocklin	1,234	1,252	18
Roseville	15,372	25,618	10,246

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Auburn	1 72	* 90	82	48	$18 503
Loomis	1 45	* 90	55	39	65,680
Placer Hills	1 45	* 90	55	38	42 069
Rocklin	1 51	* 90	61	40	32,998
Roseville	1 65	* 90	75	45	145,895
High schools					
Placer	1 34	1 09	25	19	----------
Roseville	1 53	1 25	28	18	----------
Unified					
Lincoln	†2 85	*1 65	1 20	42	39,426
Tahoe-Truckee	1 72	1 78	(06)	(4)	----------
Junior college					
Sierra	57	55	02	3	----------

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* Denotes basic rate

† Average tax rate in components of newly unified districts

Plumas County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$29,151	$64,010	$34,859
IMPACT ON CITY			
Portola	2,056	3,007	951

IMPACT ON SCHOOL	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Unified					
Plumas	2 48	2 56	(07)	(3)	----------

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IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Riverside County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$891,134	$2,276,851	$1,385,717
IMPACT ON CITIES			
Banning	13,700	19,324	5,624
Beaumont	4,568	5,719	1,151
Blythe	10,743	15,127	4,384
Cabazon	364	59	(—305)
Coachella	4,233	6,266	1,973
Corona	62,835	60,894	2,759
Desert Hot Springs	706	375	(—331)
Elsinore	2,951	3,991	1,040
Hemet	14,087	17,599	3,512
Indio	15,134	25,125	9,991
Palm Springs	87,564	107,301	19,737
Perris	2,844	4,031	1,187
Riverside	140,838	177 083	36,245
San Jacinto	2,304	3,775	1,471

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Mecca	1 53	1 46	07	4	----------
Unified					
Alvord	3 25	*1 65	1 60	49	$235,397
Banning	2 67	*1 65	1 02	38	62,510
Beaumont	2 75	*1 65	1 10	40	89,704
Corona	2 56	1 68	88	34	108,040
Indio	2 80	2 35	45	16	44,600
Jurupa	2 75	*1 65	1 11	40	229,510
Moreno Valley	2 18	*1 65	53	24	320,711
Palm Springs	1 85	1 94	(09)	(5)	----------
Palo Verde	3 50	2 03	1 47	42	39,870
Riverside	3 08	1 84	1 24	40	251,030
San Jacinto	3 25	1 95	1 30	40	14 500

* Denotes base rate

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Sacramento County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$2,511,128	$3,173,247	$662,119
IMPACT ON CITIES			
Folsom	8,232	10,194	1,962
Galt	3,129	3,659	530
Isleton	3,203	3 792	589
North Sacramento	50,814	60,520	9,706
Sacramento	1,400,808	1,504,605	103,797

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Arcohe	1 45	1 04	41	28	----------
Bates	1 52	1 44	08	5	----------
Beaver	1 44	1 29	15	10	----------
Center	1 00	* 90	.10	10	$104,582
Del Paso Heights	1 36	* 90	46	34	160,654
Elverta	1 64	* 90	.74	45	27,346
Galt	1 41	* 90	.51	36	61,684
Isleton	89	97	(08)	(9)	----------
Natomas	1 18	1 29	(11)	(10)	----------
North Sacramento	1 49	* 90	59	40	454,846
Rio Linda	1 50	* 90	.60	40	649,932
Robla	1 73	* 90	.83	48	89,689
Walnut Grove	1 61	1 16	.45	28	----------
High schools					
Courtland	1 44	1 48	(04)	(2½)	----------
Galt	1 55	1 45	.10	6	----------
Grant	1 85	1 47	38	21	----------
Unified					
Elk Grove	2 58	*1 65	93	36	220,648
Folsom	2 96	*1 65	1 31	44	127,600
Sacramento	†3 20	2 41	79	25	501,060
San Juan	2 89	*1 65	1 24	43	1,833,180

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes base rate

† Estimated general fund rate less junior college portion

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

San Benito County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$60,611	$122,632	$62,021
IMPACT ON CITIES			
Hollister	21,420	31,049	9,629
San Juan Bautista	1,539	2,219	680

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Hollister	1 64	* 90	74	45	$37,481
North County	1 40	1 01	39	28	----------
San Juan	1 26	* 90	36	29	13,333
High school					
San Benito County	1 04	98	06	5	----------

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the *primary source of the new money*

* Denotes basic rate

San Bernardino County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$883,634	$2,849,111	$1,965,477
IMPACT ON CITIES			
Barstow	12,960	21,054	8,094
Chino	14,229	19,871	5,642
Colton	16,687	27,636	10,949
Fontana	10,519	19,643	9,125
Montclair	7,621	14,787	7,166
Needles	3,878	6,355	2,477
Ontario	74,603	98,928	24,325
Redlands	43,701	69,644	25,943
Rialto	18,491	27,810	9,319
San Bernardino	138,812	238,345	99,533
Upland	24,910	37,145	12,235
Victorville*	----------	3,794	3,794

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Alta Loma	2 03	94	1 14	55	$7,680
Apple Valley	1 77	1 41	36	20	----------
Central	2 46	1 15	1 31	53	----------
Cucamonga	2 03	‡ 68	35	17	----------
Ontario	1 81	† 90	91	50	529,030
Upland	1 97	† 90	1 07	54	43,764
Victor	1 64	† 90	74	45	85,966
High schools					
Chaffey	1 81	1 59	22	12	----------
Victor Valley	1 84	1 96	(12)	(6)	----------
Unified					
Barstow	‡3 35	1 77	1 58	47	92,950
Chino	3 40	2 06	1 34	39	66,600
Colton	‡3 45	1 95	1 50	43	114,130
Fontana	3 82	2 86	96	25	117,250
Needles	‡3 30	3 30	----	--	11,360
Redlands	3 22	1 97	1 25	39	97,700
Rialto	3 90	2 06	1 84	47	102,910
San Bernardino	3 97	2 71	1 26	32	369,820
Trona	1 85	1 91	(06)	(3.5)	----------
Yucaipa	2 02	2.14	77	27	32,190

* City did not levy property tax.
† Denotes basic rate
‡Old *average* rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

San Diego County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$3,398,690	$5,202,567	$1,803,877
IMPACT ON CITIES			
Carlsbad	14,944	17,685	2,741
Chula Vista	151,947	164,209	12,262
Coronado	46,479	52,728	6,249
Del Mar	2,681	1,017	(—1,664)
El Cajon	94,749	111,547	16,807
Escondido	63,389	82,377	18,988
Imperial Beach	15,054	18,730	3,676
La Mesa	90,564	107,461	16,897
National City	83,102	110,170	27,068
Oceanside	75,522	93,874	18,352
San Diego	1 835,493	2,402,105	566,672
San Marcus	1,827	4,584	2,757
Vista	16,596	3,309	(—13,387)

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Alpine	2 03	* 90	1 13	56	$1,637
Bonsall	1 375	1 377	(00)	(0)	----------
Cajon Valley	1 93	* 90	1 03	53	220,116
Cardiff	2 03	* 90	1 13	56	27,663
Carlsbad	1 96	1 46	50	25	----------
Chula Vista	1 81	* 90	91	50	450,543
Del Mar	1 72	1 49	23	13	----------
Encinitas	1 71	* 90	81	47	29,159
Escondido	2 08	99	1 09	52	----------
Fallbrook	1 59	* 90	69	44	67,192
Jamul-Las Flores	2 16	1 20	96	45	----------
Julian	1 73	1 84	(11)	(6)	----------
Lakeside	2 17	* 90	1 27	59	64,246
La Mesa-Spring Valley	2 16	* 90	1 26	58	73,735
Lemon Grove	2 15	93	1 22	57	----------
National	1 48	* 90	58	39	372,853
Oceanside	2 13	* 90	1 23	58	2,404
Orange Glen	1 83	* 90	93	51	23,866
Pauma	1 40	1 39	01	1	----------
Rancho Santa Fe	1 78	1 89	(11)	(6)	----------
Rich Mar	1 98	98	1 00	50	----------
Santee	2 23	* 90	1 33	60	133,425
San Ysidro	1 50	* 90	60	40	71,144
Solana Beach	2 01	1 33	68	34	----------
South Bay	1 62	* 90	72	44	293,108
Vallecitos	1 73	96	77	44	----------
Valley Center	1 47	1 21	26	18	----------
High schools					
Escondido	1 22	91	31	25	----------
Fallbrook	1 05	88	17	16	----------
Grossmont	1 35	92	43	32	----------
Oceanside-Carlsbad	1 26	99	27	21	----------
San Dieguito	1 72	1 58	14	8	----------
Sweetwater	1 40	90	50	35	----------
Unified					
Coronado	2 53	*1 65	88	35	173,471
Poway	3 34	2 14	1 21	36	32,990
Ramona	2 88	*1 65	1 23	43	25,885
San Diego	3 21	1 90	1 31	41	1,793,737
Vista	2 82	*1 65	1 17	42	254,359

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* Denotes basic rate.

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

San Francisco County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON CITY AND COUNTY GOVERNMENT	$17,631,489	$21,946,402	$4,314,913

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Unified					
San Francisco	2 61	2 46	15	5	$992,000

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

San Joaquin County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$1,071,032	$1,363,058	$292026
IMPACT ON CITIES			
Escalon	7,482	13,239	5,757
Lodi	59,692	60,747	1,055
Manteca	25,034	41,138	16,104
Ripon	12,679	20,725	8,146
Stockton	440,189	895,949	455,760
Tracy	39,665	66,121	26,456

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Alpine-Victor	2 10	1 40	71	34	
Banta	1 41	1 42	(00)	(0)	
Bruella	1 32	1 12	20	15	
Chartville	92	* 90	02	2	$19,611
Davis	1 35	* 90	45	34	61,398
Dent	1 84	* 90	94	51	16,462
Elkhorn	1 43	96	47	33	
Glenwood	1 73	* 90	83	48	8,537
Harmony Grove	1 37	* 90	47	34	2,205
Houston	1 52	1 01	51	34	
Jefferson	1 22	* 90	32	26	1,541
Lammersville	1 76	1 50	26	15	
Linden	1 23	95	27	22	
Live Oak	1 56	* 90	76	46	4,923
Lockeford	1 47	1 06	41	28	
Lodi	1 62	1 11	81	42	
Lone Tree	1 48	* 90	59	39	1,163
New Hope	1 43	1 27	15	11	
New Jerusalem	88	91	(03)	(7)	
Oak View	1 57	* 90	67	43	5,248
Tracy	1 94	* 90	1 04	54	50,991
Waterloo	82	* 90	(08)	(10)	16,521
Waverly	1 96	* 90	1 06	54	12,013
Woods	1 51	* 90	61	40	75,172
High schools					
Escalon	1 17	1 15	02	2	
Linden	86	87	(02)	(2)	
Lodi	1 39	1 26	13	10	
Tracy	1 34	1 37	(04)	(3)	
Unified					
Lincoln	3 00	*1 65	1 35	45	160,709
Manteca	2 43(avg)	*1 65	78	32	336,600
Ripon	2 40	1 89	51	21	11,590
Stockton	3 10	*1 65	1 45	47	612,315

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

San Luis Obispo County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$275,829	$513,525	$237,696
IMPACT ON CITIES			
Arroyo Grande	7,006	10,868	3,862
Grover City	1,602	2,941	1,339
Paso Robles	23,977	35,237	11,260
Pismo Beach	2,688	4,427	1,769
San Luis Obispo	47,106	75,480	28,374
Morro Bay†			

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Arroyo Grande	1 51	* 90	61	40	$31,646
Atascadero	2 10	* 90	1 20	57	21,163
Nipomo	1 05	* 90	15	14	86,297
Oceano	1 41	* 90	51	36	45,624
Paso Robles	2 09	1 15	94	45	
Pismo	2 14	1 065	1 075	50	
High schools					
Arroyo Grande	1 31	1 06	.25	19	
Atascadero	1 25	1 11	14	11	
Paso Robles	1 33	1 19	.14	11	
Unified					
San Luis Obispo	‡3 37	3 07	30	9	47,860

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* Denotes basic rate

† Incorporated too late to levy a city tax for fiscal 1964–65

‡ Average rate of component districts in new unified district

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

San Mateo County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$2,034,493	$3,086,647	$1,052,154
IMPACT ON CITIES			
Atherton	11,340	11,506	166
Belmont	15,062	17,831	2,769
Brisbane	4,042	5,532	1,490
Burlingame	143,234	148,564	5,330
Colma*		979	979
Daly City	81,941	88,326	6,385
Half Moon Bay	2,108	2,579	471
Hillsborough	25,298	25,797	499
Menlo Park	71,971	71,578	(—93)
Millbrae	31,798	38,064	6,266
Pacifica	37,985	39,615	1,630
Redwood City	267,003	322,705	55,702
San Bruno	41,662	50,877	9,215
San Carlos	77,696	91,946	14,250
San Mateo	141,703	223,005	81,302
So San Francisco	221,828	275,396	53,568
Woodside	2,314	2,768	454
Portola Valley†			

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Belmont	2 62	1 89	75	29	
Burlingame	1 90	2 05	(15)	(8)	
Hillsborough	2 33	2 35	(02)	(1)	
Jefferson	2 67	1 55	1 12	42	
Laguna Salada	2 69	91	1 78	66	
Menlo Park	2 26	2 37	(11)	(5)	
Millbrae	2 48	2 11	37	15	
Montara	2 20	1 11	1 09	49	
Portola Valley	2 89	2 35	54	18	
Ravenswood	3 37	2 18	1 19	35	
Redwood City	2 19	1 62	57	26	
San Bruno Park	3 23	2 26	97	30	
San Carlos	2 25	1 92	33	14	
San Mateo	2 59	1 98	61	24	
High schools					
Jefferson	2 15	1 89	.25	11	
San Mateo	1 84	1 80	.04	2	
Sequoia	1 74	1 67	07	4	
Unified					
South San Francisco	4 00	3 49	51	13	$115,730

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* City did not levy property tax

† Incorporated too late to levy a city tax for fiscal 1964–65.

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Santa Barbara County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$518,395	$1,445,526	$927,131
IMPACT ON CITIES			
Guadalupe	1,991	3,191	1,200
Lompoc	14,687	26,119	11,432
Santa Barbara	181,065	261,845	80,780
Santa Maria	43,467	54,507	11,040

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Goleta	2 09	1 25	84	40	----------
Hope	1 85	1 40	45	24	----------
Los Olivos	1 82	1 49	33	18	$1,000
Orcutt	2 41	1 23	1 17	48	----------
Santa Barbara	1 86	1 44	42	22	----------
Santa Maria	1 94	1 10	84	43	----------
Solvang	2 06	1 66	40	19	3,700
High schools					
Santa Barbara	1 71	1 74	(03)	(1½)	----------
Santa Maria	1 30	1 24	06	5	----------
Unified					
Carpenteria	2 98	2 83	15	5	13,040
Lompoc	2 62	*1 65	97	37	1,141,831

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* Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Santa Clara County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$3,150,699	$5,327,584	$2,176,885
IMPACT ON CITIES			
Alviso	1,820	3,409	1 589
Campbell	31,245	30,069	7,824
Cupertino	3,371	6,917	3,546
Gilroy	26,312	37,125	10,813
Los Altos	25,303	31,961	9,658
Los Altos Hills	1,791	2,242	451
Los Gatos	26,212	35,904	9,692
Milpitas	50,385	63,937	13,552
Monte Sereno	146	195	49
Morgan Hill	10,696	11,172	476
Mountain View	144,285	173,524	29,239
Palo Alto	316 647	439,189	122,542
San Jose	984,503	1,273,931	289,628
Santa Clara	189,473	258 596	69,123
Saratoga	2,477	3,941	1,464
Sunnyvale	256,635	337,442	80,807

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Alviso	1 51	* 90	61	40	$43,184
Alum Rock	2 48	* 90	1 58	64	190,635
Berryessa	2 25	* 90	1 35	60	16,243
Cambrian	2 28	* 90	1 31	60	55,886
Campbell	2 37	1 29	1 08	45	----------
Cupertino	2 39	1 02	1 37	57	199,320
Evergreen	1 83	* 90	93	51	49,271
Franklin McKinley	2 19	1 09	1 10	50	----------
Jefferson	2 46	1 01	1 45	59	----------
Los Gatos	2 27	1 39	88	39	----------
Milpitas	3 49	1 20	1 29	52	----------
Moreland	2 29	* 90	1 39	61	144,385
Morgan Hill-Burnett	1 99	* 90	1 09	55	13,855
Mountain View	2 27	1 95	32	14	----------
Mt Pleasant	2 45	* 90	1 55	63	29,231
Oak Grove	1 62	* 90	72	44	69,805
Santa Clara	1 99	1 48	51	26	----------
Saratoga	2 09	1 39	70	33	----------
Sunnyvale	2 39	1 57	81	34	----------
Union	2.49	* 90	1 59	64	103,219
Whisman	2 90	1 85	1 05	36	----------
High schools					
Campbell	1 41	1 06	35	25	----------
Eastside	1 49	1 33	26	17	----------
Fremont	1 64	* 75	.88	54	----------
Los Gatos	1 51	1 26	25	17	----------
Mountain View-Los Altos	1 36	1 26	10	7	----------
Santa Clara	1 51	1 20	31	20	----------
Unified					
Gilroy	†3 60	2 37	1 23	34	40,680
Palo Alto	4 64	4 30	14	3	155 900
San Jose	3 11	2 36	75	24	202,350

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

† Average rate of component districts in newly unified district

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Santa Cruz County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$281,858	$620,863	$339,005
IMPACT ON CITIES			
Capitola	575	932	357
Santa Cruz	73,485	95,407	21,922
Watsonville	33,957	50,324	11,367

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Live Oak	1 63	* 90	73	45	$26,000
Santa Cruz	2 06	1 48	58	28	35,810
Scotts Valley	1 46	* 90	56	38	53,876
Soquel	1 90	1 02	78	43	----------
High school					
Santa Cruz	1 51	1 33	18	12	----------
Unified					
Pajaro Valley	†3 18	2 15	1 03	32	92,000
San Lorenzo Valley	3 28	2 71	57	17	18,810

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* Denotes base rate

† Average rate of components of newly unified districts.

Shasta County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$173,665	$375,410	$201,745
IMPACT ON CITIES			
Anderson	2,573	5,894	3,272
Redding	56,042	94,465	38,422

	Old rate	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
IMPACT ON SCHOOLS					
Elementary					
Cascade	2 04	* 90	1 14	56	$6,271
Enterprise	1 54	* 90	64	41	152,518
Indian Springs	41	* 90	(49)	(50)	----------
Redding	2 21	1 38	83	37	33,760
High schools					
Anderson	1 36	1 05	31	23	----------
Shasta	93	76	17	18	----------
Unified					
Fall River	2 54	2 48	06	2	9,900

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* Denotes base rate

NOTE Indian Springs would not have to raise its tax rate if it did not want to participate in the state program In all likelihood it would not

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Sierra County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$14,013	$16,199	$2,186
IMPACT ON CITY			
Loyalton	1,098	1,125	27

IMPACT ON SCHOOL	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Unified					
Sierra-Plumas	1 82	*1 65	17	9	$82,253

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* Denotes basic rate

Siskiyou County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$162,102	$172,459	$10,357
IMPACT ON CITIES			
Dorris	2,573	3,891	1,318
Dunsmuir	6,084	9,247	3,163
Etna	1,454	2,164	710
Fort Jones	1,112	1,982	870
Montague	2,188	2,388	200
Mount Shasta	4,757	7,188	2,431
Tulelake	5,875	8,777	2,902
Weed	2,237	3,984	1,747
Yreka	10,666	16,960	6,294

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Dunsmuir	1 58	* 90	.68	43	$30,707
Etna	97	* 90	07	7	38,469
McCloud	1 68	97	.71	42	----------
Mt. Shasta	1 56	* 90	.66	42	35,854
Tulelake	1 30	* 90	.40	30	18,067
Weed	1 31	* 90	.41	31	46,103
Yreka	1 22	* 90	32	26	103,430
High schools—areawide tax not applicable					
Siskiyou	1 35	91	44	32	----------
Yreka	1 31	1 15	16	12	----------

* Denotes basic rate
• "Net additional revenue" money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Solano County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$241,660	$610,893	$369,233
IMPACT ON CITIES			
Benicia	10,645	11,520	875
Dixon	10,269	12,113	1,844
Fairfield	21,277	26,022	4,745
Rio Vista	5,212	7,413	2,201
Suisun	1,913	3,143	1,230
Vacaville	23,729	22,296	(—1,433)
Vallejo	64,182	86,444	22,262

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Crystal	1 35	* 90	.45	33	$59,147
Fairfield	1 52	* 90	62	41	286,641
Falls	1 54	* 90	64	42	2,620
Green Valley	1 57	99	58	37	----------
Rio Vista	1 44	1 55	(11)	(7)	----------
Suisun Valley	1 31	* 90	41	31	316
High schools—Areawide tax not applicable					
Armijo	1 37	1 02	35	25	----------
Rio Vista	.76	81	(05)	(7)	----------
Unified					
Benicia	3 20	*1 65	1 55	48	163,225
Dixon	2 33	1 99	34	15	12,760
Travis	2 01	*1 65	36	18	32,230
Vacaville	2 70	*1 65	1 05	39	212,323
Vallejo	3 72	1 90	1 82	49	491,496

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*Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Sonoma County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$301,881	$916,763	$614,882
IMPACT ON CITIES			
Cloverdale	3,749	5,877	2,128
Cotati**		344	344
Healdsburg	9,063	18,869	9,806
Petaluma	22,984	35,405	12,421
Rohnert Park	1,800	1,391	(—409)
Santa Rosa	64,499	107,595	43,096
Sebastopol	9,238	16,866	7,628
Sonoma	5,410	9,275	3,865

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Bellevue	1 35	* 90	45	33	$115,221
Cloverdale	1 72	* 90	82	48	32,063
Cotati	1 66	* 90	76	46	93,000
Healdsburg	1 70	* 90	80	47	40,635
Petaluma	1 93	* 90	1 03	53	138,998
Rincon Valley	1 43	* 90	53	37	202,629
Santa Rosa	1 63	1 03	60	37	----------
Sebastopol	1 94	* 90	1 04	54	4,920
High schools					
Analy	1 78	1 60	18	10	----------
Petaluma	1 58	1 24	34	22	----------
Santa Rosa	1 69	1 41	28	17	----------
Unified					
Sonoma Valley	2 81	1 69	1 12	40	‡34,630

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* Denotes base rate

† This new money results from the fact that Petaluma will receive new state money which would require a tax rate reduction below 90 cents. As 90 cents is the minimum local tax rate, this extra money will be used to improve the educational program. This results because Petaluma Elementary is a district with a small amount of wealth behind each child

‡ This comes from the increase in the unified bonus which each unified district will receive

** City did not levy property tax in fiscal year 1964-65

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Stanislaus County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$805,638	$849,731	$44,193
IMPACT ON CITIES			
Ceres	5 951	9,201	3,250
Modesto	112,704	191,058	78,354
Newman	5,016	9,371	4,355
Oakdale	7,461	11,984	4,523
Patterson	9,857	16,098	6,241
Riverbank	17,801	28,494	10 693
Turlock	27,945	58,257	30,309

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Chatom	1 46	* 90	56	38	$27,224
Empire	1 44	* 90	54	38	20,087
Hart-Ransom	1 57	* 90	67	43	19,948
Hickman	1 38	* 90	48	35	4,828
Hughson	1 35	* 90	45	33	58,532
Keyes	1 46	* 90	56	38	25,444
Milnes	1 70	1 18	53	31	----------
Modesto	2 26	1 15	1 12	49	----------
Mountain View	1 62	* 90	72	44	2,119
Newman	1 42	* 90	52	37	25,623
Oakdale	1 55	* 90	65	42	82,237
Paradise	1 27	* 90	37	29	3,076
Riverbank	1 50	* 90	60	40	66,590
Salida	1 35	* 90	45	33	26,286
Stanislaus	1 43	* 90	53	37	74,411
Sylvan	1 44	* 90	54	38	121,770
Turlock	1 55	* 90	65	42	194,530
Valley Home	1 33	* 90	43	32	4,375
Waterford	1 73	* 90	83	48	10,879
High schools—Areawide tax doesn't apply					
Hughson	1 37	1 13	24	17	----------
Modesto	1 84	1 60	24	13	----------
Oakdale	1 62	1 37	26	15	----------
Oreslumba	1 03	1 11	(08)	(8)	----------
Turlock	1 60	1 32	28	18	----------
Unified					
Ceres	2 78	*1 65	1 13	41	211,249
Denair	2 30	2 41	30	14	5,250
‡Patterson	2 74	2 37	37	13	16,640

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* Denotes basic rate

‡ Does not include annex of Bonita

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Sutter County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$136,016	$309,252	$173 236
IMPACT ON CITIES			
Live Oak	2,099	3,584	1,485
Yuba City	41,276	61,809	20,533

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Brittan	1 45	99	46	32	----------
Franklin	1 66	* 90	76	46	$7,854
High schools					
East Nicolaus	1 00	1 06	(06)	(6)	----------
Sutter	77	82	(05)	(6)	----------
Unified					
Live Oak	†2 42	*1 65	77	32	64,611
Yuba City	†2 72	1 85	87	32	68,130

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* Denotes basic rate
† Average tax rate in components of newly unified districts

Tehama County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$100 284	$170,502	$70,218
IMPACT ON CITIES			
Corning	7,847	11,099	3,252
Red Bluff	19 965	25,823	5,858
Tehama	102	128	26

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Corning	1 06	* 90	16	15	$117,673
Red Bluff	1 50	* 90	60	40	69,124
High Schools					
Corning	1 15	1 01	14	12	----------
Red Bluff	1 12	1 01	11	10	----------
Unified					
Los Molinos	2 68	1 87	81	30	5,200

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* Denotes basic rate

Trinity County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$26 565	$34,862	$8,297

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Hay Fork Valley	1 40	* 90	50	36	$26,723
Mad River	1 06	* 90	16	15	14,678
Weaverville	1 23	* 90	33	27	37,323
High school					
Trinity	1 22	1 01	21	17	----------

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* Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Tulare County

	Estimated loss in revenue	Estimated new revenue *	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$558,328	$952,578	$394,250
IMPACT ON CITIES			
Dinuba	10,740	14,805	4,065
Exeter	7,914	12,057	4,143
Farmersville	1,939	2,245	306
Lindsay	16,782	24,401	7,619
Porterville	38,477	57,508	19,031
Tulare	33,977	49,113	15,136
Visalia	57,170	102,966	45,796
Woodlake	3,136	4,543	1,407

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Dinuba	1 64	* 90	74	45	$74,656
Earlimart	1 65	* 90	75	45	31,374
Porterville	1 74	* 90	1 04	54	79,891
Tulare	2 06	* 90	1 16	56	52,330
Woodlake	1 43	* 90	53	37	66,774
High schools					
Dinuba	1 47	1 20	27	18	----------
Porterville	2 06	1 88	18	9	----------
Tulare	1 46	1 18	28	19	----------
Unified					
Lindsay	2 96	1 86	1 10	37	20,300
Visalia	3 24	1 82	1 42	44	115,350

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

Tuolumne County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$57,251	$112,638	$55,387
IMPACT ON CITY			
Sonora	5,463	9,484	4,021

IMPACT ON SCHOOLS	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
Elementary					
Twain-Harte	1 26	* 90	36	29	$8,591
Sonmerville	1 34	* 90	44	33	22,547
Sonora	1 38	* 90	48	35	23,525
Poverty Hill	1 63	* 90	73	45	1,052
Jamestown	1 54	* 90	64	42	15,415
Curtis Creek	1 09	* 90	19	17	19,036
Columbia	97	1 01	(04)	(4)	----------
Big Oak Flat	1 36	95	41	30	----------
High schools					
Summerville	1 65	1 54	11	7	----------
Sonora	1 03	98	05	5	----------

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Ventura County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$387,079	$1,750,307	$1,363,228
IMPACT ON CITIES			
Fillmore	3,027	6,592	3,385
Ojai	6,640	12,801	6,161
Oxnard	69,379	119,326	49,947
Port Hueneme	3,645	9,640	5,995
San Buenaventura	64,279	110,985	46,706
Santa Paula	23,906	39,964	16,058

	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
IMPACT ON SCHOOLS					
Elementary					
Fillmore	1 85	* 90	95	51	$8,384
Hueneme	1 72	* 90	82	48	316,372
Moorpark	1 92	* 90	1 02	53	29,968
Nordhoff Union	2 11	* 90	1 21	57	14,105
Ocean View	1 27	99	28	27	----------
Oxnard	1 96	1 19	77	39	----------
Pleasant Valley	1 83	91	92	50	----------
Rio	1 78	* 90	88	49	66,038
Santa Paula	1 93	1 06	87	45	----------
Valley Oaks	1 86	* 90	96	52	115,969
High schools					
Fillmore	2 07	2 04	03	1	----------
Nordhoff	1 44	1 10	34	22	----------
Oxnard	1 36	1 19	17	13	----------
Santa Paula	1 31	1 17	.14	10	----------
Unified					
Simi Valley	4 10	2 16	1 94	47	119,860
Ventura	2 62	2 27	35	13	186,570

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Denotes basic rate

Yolo County

	Estimated loss in revenue	Estimated new revenue	Estimated net gain
IMPACT ON COUNTY GOVERNMENT	$195,725	$483,140	$287,415
IMPACT ON CITIES			
Davis	41,476	50,035	8,559
Winters	4,673	6,249	1,576
Woodland	64,094	79,797	15,703

	Old rate	New rate	Tax cut	Percent cut	Net additional revenue
IMPACT ON SCHOOLS					
Unified					
Davis	4 09	3 08	1 03	25	$38,390
Esparto	2 64	2 42	22	8	5,020
Washington†	3.76	2 30	1 46	39	54,510
Woodland	*3 32	2 73	59	18	59,950

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money
* Composite average of component districts
† Excluding annexation of West Sacramento elementary districts

IMPACT OF AB 2270 ON COUNTY, CITIES, AND SCHOOL DISTRICTS—Continued

Yuba County

	Estimated loss in revenue	*Estimated new revenue*	*Estimated net gain*
IMPACT ON COUNTY GOVERNMENT	$102,216	$195,030	$92,814
IMPACT ON CITIES			
Marysville	42,559	65,296	23,737
Wheatland	915	1,217	302

IMPACT ON SCHOOLS	*Old rate*	*New rate*	*Tax cut*	*Percent cut*	*Net additional revenue*
Elementary					
Wheatland	95	* 90	05	6	$215,713
High school					
Wheatland	93	* 75	18	19	4,500
Unified					
Marysville	†2 86	1 83	1 03	36	74,390

"Net additional revenue" is money above and beyond that which school districts will receive to compensate for losses in property tax revenue due to reductions in rates and assessed values An increase in the Unification Bonus is the primary source of the new money

* Denotes basic rate

† Average tax rate in components of newly unified districts

Appendix C

IMPACT OF AB 2270 ON AN INDIVIDUAL IN THE STOCKTON UNIFIED SCHOOL DISTRICT

1.

Salary $6,000 per year
Married—two children
Smokes one pack of cigarettes per day
Home - $15,000—assessed at $3,375 (22.5 percent) with personal property assessed at $200

Increases	
Income tax	$10 00
Cigarette tax	18 25
Sales tax	19.00
	$47 25

Decreases

1 Exemption of household furnishings from property tax.
2 School tax rate reduction of $1 45

Computation.

Tax on present assessed value ($3,575) at $10 18 rate	$363 93
Tax on new assessed value ($3.375) at $8 73 rate	294 63
Property Tax Reduction	$69 30

Net Effect of AB 2270

Increase	$47 25
Decrease	69.30
Net Decrease	$22 05

2.

Salary: $10,000 per year
Married—two children
Smokes one pack of cigarettes per day
Home, $22,500—assessed at $5,062 (22 5 percent) with personal property assessed at $300.

Increases	
Income tax	$38 00
Cigarette tax	18.25
Sales tax	27 50
	$83.75

Decreases

1 Exemption of household furnishings from property tax.
2 School tax rate reduction of $1 45.

Computation:

Tax on present assessed value of $5,362 at $10 18 rate	$545.85
Tax on new assessed value of $5,602 at $8 73 rate	441 91
Property Tax Reduction	$103 94

Net Effect of AB 2270

Increase of tax	$83 75
Decrease of tax	103 94
Net Decrease	$20 19

3.

Salary $20,000
Married—two children
Smokes one pack of cigarettes a day
Home $40,000—assessed at $9,000 (22 5 percent) with personal property assessed at $1,100

Increases	
Income tax	$176 00
Cigarette tax	18 25
Sales tax	45 00
	$239.25

Decreases

1 Exemption of household furniture from property taxation
2 Reduction of school tax rate of $1 45

Computation

Tax on present assessed value ($10,000) at $10 18 tax rate	$1,028 18
Tax on new assessed value ($9,000) at $8 73 tax rate	785 70
Tax Reduction	$242 48

Net Effect of AB 2270

Tax Increases	$239 25
Tax Reduction	242 48
Net Reduction	$3 23

IMPACT OF AB 2270 ON A SENIOR CITIZEN IN THE STOCKTON UNIFIED SCHOOL DISTRICT

Retirement Salary: $200 per month ($2,400 per year)
Married—no children living at home
Smokes one pack of cigarettes per day
Home $15,000—assessed at $3,375 (22 5 percent) with personal property assessed at $200

Increases	
Income tax	$0 00
Cigarette tax	18.25
Sales tax	7.75
	$26 00

Decreases

1 Exemption of household furnishings from property tax.
2 School tax rate reduction of $145
3 Reimbursement of 55 percent of property tax for those over age 65 in this income group

Computation

Tax on present assessed value ($3,575) at $10 18 rate	$363 93
Tax on new assessed value ($3,375) at $8 73 rate	294 63
Tax Reduction	$69 30
Reimbursement of 55 percent of property tax (55 percent of $294 63)	162 04
Total Tax Reduction	$231 34

Net Effect of AB 2270

Increase in taxes	$26 00
Decrease in taxes	231 34
Net Decrease	$205 34

Appendix D

AN ANALYSIS OF THE PETRIS-UNRUH PROGRAM FOR PROPERTY TAX REFORM

By Professor Malcolm M. Davisson * (as presented to the Spring 1965 meeting of the City Managers' Department and the League of California Cities' Committee on Revenue and Taxation)

There appears to be general agreement that property tax relief and reform are among the most important fiscal issues facing California. The only question is how this is to be accomplished. The mandatory 25 percent reduction in school district property taxes would account for more than half of the proposed property tax relief, with the benefit accruing to all property owners within the more than 1,600 districts in the state Since school district taxes account for half or more of total tax levies in most counties, this would appear to be a good place to begin major tax reduction

Assessment of household goods has long been a dismal failure and 19 states have abandoned taxation of such property Many localities in five other states also exempt household goods under provisions permitting local governments to choose between taxation and exemption No rational defense can be made for inclusion of household goods in the ad valorem tax base and exemption would relieve assessors of what is perhaps their greatest headache and at the same time would clear the consciences of householders who quite naturally feel that they cannot afford to cooperate with the assessor in determining a value for their household and personal possessions.

Tax relief for the low-income aged is certainly entirely defensible, and the procedure contemplated in the Petris program would appear to provide relief to those most in need of it and to protect against abuse

Many years ago California abandoned ad valorem taxation of intangibles except for solvent credits which are taxed at a rate of one-tenth of 1 percent This relic of the tax on intangibles is an oddity today· the rate of one-tenth of 1 percent is uniform throughout the state and bears no relation to local revenue needs, assessment is difficult, and yield is small ($5 million)

The largest exemption in dollar terms is business inventories—$230 million of local tax relief Several arguments are advanced in support of this exemption:

(1) There is no common method of valuing inventories and as a result of nonuniformity inequities are widespread It is frequently alleged that industrial and mercantile inventories are assessed at a higher percentage of actual value than is other personal property and real property, and there is some evidence that this is the case

(2) Some businesses are harder hit than others under the current practice of assessing as of the first Monday in March The use

* Professor of Economics, University of California, Berkeley, and consultant to the League of California Cities

of an averaging procedure in lieu of a fixed lien date, which is the practice in a number of states, has not met with anywhere near unanimous support of business firms, and it is argued that provision of a choice between averaging and a fixed lien date would result in different systems and compound difficulties of administration and enforcement Futher, there is no consistent relationship among firms with regard to the ratio between the ad valorem tax on inventories and income of the business

(3) Exemption of inventories would improve California's business climate

Tax reduction through exemption of inventories would doubtless be welcomed by business firms, but whether it can be justified in terms of California's tax position relative to other industrial states is another matter. A study of California's tax treatment of manufacturing industry published in 1961 by the Economic Development Agency compared *total* tax burdens of firms located in this state with those of firms in various other parts of the country The conclusion was this.

"California imposes higher than average tax obligations on manufacturing State and local taxes in California are not, however, as high as they are in states like Michigan, Wisconsin, or Washington . . . state and local tax costs appear to run around two to five percent of total costs which are affected by geographical location The other cost factors are labor, freight, and public utility services For many industrial activities, this amount is significantly less than utility service costs There is evidence that the lower utility costs alone in California, as compared to most states, can offset California's somewhat higher tax costs

The fragmentary evidence suggests that tax differentials—within existing ranges—are largely offset by other cost advantages in the state, and there is a strong probability that California, for the majority of industries, affords higher than average profit potential. It does not appear necessary, or even desirable, that California make tax concessions to industrial firms to 'lure' them to locate or expand their activities here "

It should be noted that this study applied only to manufacturing industries Even though the effect of taxes on business location is probably exaggerated, the fact remains that this is a powerful argument that must be reckoned with.

It is difficult, if not impossible, to predict in advance where the benefits of tax relief to business firms would ultimately accrue Those who support such relief frequently argue that tax reduction would by the force of competition be reflected in lower prices of goods and services and thus benefit consumers. But whether or not this would be the case depends on the nature of the market in which the seller operates. About all that one can say is that the benefits of tax reduction to business firms would accrue in indeterminate proportions to the firms involved and to those who buy their products or services.

The same question arises in connection with tax relief for owners of rental property. To what extent would tax reduction be reflected in

downward revision of rents? Here again the nature of the market is the controlling factor and the only reasonable answer is that the benefits of tax reduction would accrue in indeterminate proportions to owners of rental property and their tenants

Funds in the amount of approximately $1 billion for state reimbursement of local governments for property tax relief and for the block grants and for state's own use would come from income, sales, inheritance, and commodity and service excise taxes in these proportions: 42 percent from taxes on incomes of individuals and banks and corporations, with by far the largest share from individuals, 35 percent from the sales tax; 13 percent from taxation of cigarettes and tobacco products, 8 percent from a gross receipts tax on public utilities (gas, electricity, and telephone), and 1 percent from the inheritance tax

Compared with other states using the personal income tax, California now makes relatively light use of this source of revenue, our exemptions tending to be higher and our rate structure lower than elsewhere This fiscal year, 1964-65, California will receive about 13 percent of its total tax revenue from the personal income tax compared with more than 40 percent in New York and about one-third in Massachusetts and Wisconsin. Our personal exemptions are $1,500 for a single taxpayer, $3,000 for a married taxpayer, and $600 for each dependent compared with $600 per person in New York Our rate range is from 1 to 7 percent compared with 2 to 10 percent in New York and Wisconsin

The personal income tax has several advantages over the sales tax, even one such as ours with foodstuffs and services exempt. If it is accepted that some minimum amount of income, increasing with the number of dependents the taxpayer has to support, should be exempted from tax burden, such exemptions are readily incorporated in the income tax structure Any attempt to make allowance for minimum living expenses under the sales tax, however, is necessarily both imprecise and inefficient

With regard to establishing an equitable set of tax rates for different individuals and families, income taxation is much more precise than sales taxation Under the income tax, rates can be made to vary in any fashion that is desired Under the sales tax, however, a precise result can be obtained only by using a perfectly general tax with a single rate. As soon as some commodities are exempted, or some taxed at higher rates than others, the effective burdens imposed on different people become uncontrollable What emerges is a highly irregular and haphazard tax rate structure.

Finally, the income tax tends to be more sensitive to increase in personal income than the sales tax That the California sales tax is not more responsive to increase in personal income appears to be largely attributed to its exclusion of personal services.

It is difficult to determine with precision how any given county, city or school district would come out under the tax revision program, but Assemblyman Petris states that local governments would be "more than completely compensated for any loss in revenue"

Neither is it possible to determine with precision how any individual taxpayer would come out At a press conference Assemblyman Petris

estimated that if the full program were enacted, a family of four with a $6,000 annual income and a $15,000 home would realize a net tax cut of $21 32 a year The same family with a $10,000 income would pay $15 50 less in state and local taxes under the overall program There are several variables that make extremely difficult the job of estimating tax saving and determining the cut-off point where taxes would begin to rise—e g What is the level of assessment for ad valorem taxation? To what income tax deductions is the individual entitled? Is he a smoker? Does he lease equipment? Will he benefit from lower prices of goods and services resulting from tax reduction for business firms? What will be the ultimate incidence of the gross receipts tax on public utilities?

Notwithstanding these difficulties, it seems clear that net tax reductions would go to those most in need of it and that the shift from property taxes to other sources of tax revenue is, in varying degrees, a move in the direction of a more equitable overall tax structure.

Appendix E

EXPLANATION OF THE SCHOOL FINANCE AMENDMENTS WHICH THE AUTHOR PLANNED TO INSERT IN THE BILL

1. *Change in Section 526 of the bill as amended May 17, 1965.*

This is the tax-cutting section of the bill. In order to make clear the Legislature's intent in cutting school tax rates, the section was rewritten to require that actual school district tax rates be reduced by the amount of the new state aid received under AB 2270, less any amount received on account of pupil growth, and less amounts received as unification bonus. This wording would have insured massive reduction in school property taxes

2. *Changes in various sections of the bill relating to adult education*

The intent of AB 2270 was to provide the regular foundation program for adults in junior colleges in regular graded classes. The May 17 bill inadvertently increased to $600 the program for all adults in junior colleges. Amendments were prepared to limit this increase to adult junior college students in regular graded classes.

3 *Override Tax for Capital Outlay*

The original intent of the bill was to encourage pay-as-you-go capital construction in school districts by authorizing a permissive override tax for this purpose. It was determined later that such an authorization might weaken the tax relief required by the bill. Consequently, the tax authority for such capital construction was reduced from $0 25 in nonunified, and $0 50 in unified districts, to $0 15 and $0 30, respectively and it was limited to districts not on the State School Building Aid Program. This would force all districts on the program to make a choice of financing capital outlay either on a pay-as-you-go basis or on a state loan basis.

Appendix F(1)

LOS ANGELES CITY SCHOOL DISTRICTS

STATEMENT REGARDING ASSEMBLY BILL 2270

Prepared by Richard H Lowrence
Legislative Coordinator
Los Angeles City School Districts

Assembly Bill 2270 merits the support of the State Legislature because it is the only measure introduced in recent years which recognizes the fact that the greatest mass migration in recorded history has so drastically changed the social and economic structure of California that there is urgent need for changes in fiscal policy that will result in more equitable and adequate financing of public services that are properly the responsibility of state government

In the important area of school finance, Assembly Bill 2270 offers a more realistic approach to the problem of state versus local support than has ever been proposed in previous legislation. This bill recognizes the urgent need for relief to local property taxpayers for the support of the public schools by establishing foundation program support levels which more closely reflect actual operating costs, and by establishing safeguards against unreasonable increases in local tax rates for school purposes At the same time, it provides sufficient flexibility to permit local school districts to cope with problems of growth, or to enrich their educational programs to the extent desired by the citizens of a particular community

The most significant fact about Assembly Bill 2270 is that it makes intelligent use of information gathered by the Legislature over a period of several years concerning California's economy, the nature of its wealth, and the manner in which it is distributed. The application of this knowledge is reflected in those sections of the bill which seek to ease the unequal burden presently being borne by the property taxpayers for the support of local government as well as schools It is also reflected in proposals that will bring more revenue to the state in the form of taxes paid by individuals who in the past have enjoyed the benefits of educational and governmental services without paying their fair share of the cost of such services.

Assembly Bill 2270 has received the endorsement of educators familiar with California's fiscal needs because it offers the most promising solution yet proposed to the pressing problem of providing adequate financing for the public schools of this state.

Appendix F(2)

CALIFORNIA ASSOCIATION OF SCHOOL ADMINISTRATORS

Burlingame, May 20, 1965

THE HONORABLE NICHOLAS PETRIS
State Capitol, Sacramento

Re: AB 2270

Dear Assemblyman Petris:

It is our pleasure to inform you that the Cooperative Finance Committee representing CASA, CASSA, CESAA, CJCA, CAPSBO unanimously recommended to their respective association full support of AB 2270 Subsequently the Joint Legislative Committee representing all of the above associations except CJCA took similar action.

For your information, we include the motion approved by the Cooperative Finance Committee together with some related comments.

Motion: MSC that the Cooperative Finance Committee recommend to their respective associations that they render strong support to the Petris-Unruh bill, AB 2270, and that we give a major portion of our time and effort to implementation and statewide publicity to this bill.

The comments were as follows:

1. This proposal is forward looking and establishes a new basis for the support of public education which we consider to be sound.
2. The foundation program established is approximately the same as current costs of public education at the elementary level and improves the situation at the secondary level
3. It will reduce the difference in the relative ability of districts to support an adequate educational program and includes more districts within the equalization program.
4. It results in substantial property tax relief, and at the same time provides for much needed increase in public school support
5. In repealing most of the permissive override taxes, it eliminates the "cookie jar" approach in school finances, freeing the local district to utilize financial resources as needed.
6. It is very beneficial in potential long term effects in establishing a new pattern of support in which the state obviously recognizes the necessity and responsibility for assuming a greater proportion of the support of public education.

Thank you very much, Mr. Petris, for your part and that of the Revenue and Taxation Committee of the Assembly and all others concerned for the development of and presentation of AB 2270.

Sincerely yours,

J. H. CORSON
Executive Secretary

Appendix F(3)

LEAGUE OF WOMEN VOTERS OF CALIFORNIA, INC.

San Francisco, May 11, 1965

HONORABLE JESSE M UNRUH
State Capitol, Sacramento

Dear Mr. Unruh:

Re: AB 2270; The League of Women Voters of California supports the school finance provisions incorporated in AB 2270

We cannot comment on the equity of specific tax measures included in the proposal because we do not have a state finance position which would authorize us to take a stand, however our members are cognizant of the need for adequate revenues to provide a public school system of high standards. We believe a strong, well-financed public school system is essential to the maintenance of our American way of life

In recent years, the League has been particularly concerned with the need for better financing of our schools We have been aware that the costs of education have increased greatly and the local property taxpayers have had to bear a large share of this increased cost The great inequalities in educational opportunity among the districts of the state as measured by money spent per pupil, and the inequities in local tax effort required to provide a given level of support, have also been of concern to our members

We believe strongly that the State of California has the responsibility for insuring an adequate educational opportunity for children, and the state should use its broader taxing powers to equalize the great variation in what local districts can equitably contribute to the education of their own pupils. It was, therefore, distressing to us to realize that, in spite of the increases voted by the Legislature in 1964, the foundation guarantees still fell far short of the actual amounts being spent—so far short that it was clear they could not meet anyone's criteria of what is needed to provide an adequate education.

It is our opinion that the changes in the Education Code included in AB 2270 will provide more adequate support for our public school system; will provide much greater equalization of educational opportunity for pupils through the state; and will assure that the state will assume a larger share of public school costs. The League of Women Voters enthusiastically supports all of these aims

The elimination of the special purpose tax rates will, we feel, be helpful to local boards of education as well as to citizens by simplifying school finance procedures and by allowing local school budgets to reflect more clearly the needs of the community.

We note that AB 2270, as introduced, would eliminate the possibility of increasing the new maximum tax rates by vote of the people Since we are convinced that one of the strengths of our public school system is in having its roots deep in individual communities, we believe that local citizens should always have the right to increase the local tax rate in order to provide improvements which they believe important. We urge that this bill be amended to conform to the stated intent of the authors, that local tax maximums can be raised by vote of the citizens.

The League of Women Voters is convinced that the problems of public school finance in California can be solved only by a very large increase in the State School Fund such as proposed in AB 2270. We know that such an increase is impossible without additional state revenues, and we, therefore, are very pleased to have these improvements in school finance offered in connection with a plan for providing the necessary revenue for the state

Very truly yours,

MRS RUSSELL STOCKWELL, *President*

Appendix G(1)

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

Sacramento, April 27, 1965

HON. NICHOLAS C PETRIS
Assembly Chamber

SALES AND USE TAXES—NO. 16822

Dear Mr Petris:

QUESTION NO. 1

Are the provisions in Assembly Bill No 2270, as introduced, relating to a credit against state sales and use taxes for such taxes imposed by local government, constitutional?

OPINION NO. 1

In our opinion, the courts would uphold these provisions.

ANALYSIS NO. 1

Assembly Bill No 2270, as introduced, proposes to amend Sections 6051 and 6201 of the Revenue and Taxation Code to increase state sales and use taxes from 3 to 5 percent, effective April 1, 1966. It would also add Sections 6051 5 and 6201 5 to the same code to allow a credit for sales and use taxes imposed by local government in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, which is set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code The bill also authorizes counties to increase county sales and use taxes from 1 percent to 1 08 percent, effective the same date, but a county would be obliged to allow a credit against the 1 percent sales and use tax imposed by a city within the county (Sec 7202, R. & T C.).

We find two possible constitutional issues with respect to these particular provisions of the bill First, the theory could be advanced that the state has made an invalid classification in imposing a sales and use tax of 5 percent in some areas of the state, while granting a credit against a portion of such tax in others Second, it might be argued that the Legislature is attempting to impose a state tax for local purposes in violation of Section 12 of Article XI of the Constitution of the State of California

While we believe neither objection is valid with respect to these provisions of the bill, the two issues will be discussed in turn

The power of the Legislature to make classifications for the purpose of taxation is very broad In making such classifications a sound discretion is accorded the Legislature Every reasonable presumption in support of a classification will be indulged in and if the classification

can be reconciled on any reasonable and natural theory it will be upheld (*Roth Drug, Inc* v *Johnson* (1936), 13 Cal App. 2d 720, 733).

In our opinion, a distinction between those who pay a local tax on the same privilege and those who do not would be upheld as reasonable The Supreme Court of the United States has stated that "Duplicated taxes, or burdens that approach them are recognized hardships that government, state or national, may properly avoid" (*Charles C Steward Machine Co* v *Davis* (1937), 301 U.S 548, 589, 81 L Ed. 1279, 1292). Provisions of law which allow taxpayers who have paid a tax to one governmental body to credit such payment against a similar tax imposed by another governmental body have been upheld (*Steward Machine Co* v *Davis,* supra, relating to social security; *State of Florida* v *Mellon* (1927), 273 U S 12, 71 L Ed. 511, relating to death taxes, *Gillum* v *Johnson* (1936), 7 Cal. 2d 744, relating to social security).

Moreover, we note that the Bradley-Burns Uniform Local Sales and Use Tax Law has been operative since April 1, 1956 (Sec. 2, Ch. 1311, Stats 1955), and has contained a provision providing for a credit against county sales and use taxes for such taxes paid to a city since that time (Sec. 7202, R. & T C). Although the validity of this credit provision was not called in question, apportionment of funds under this law was in issue in *City of Commerce* v. *State Board of Equalization* (1962), 205 Cal App 2d 387, and the court gave no indication that it deemed the law invalid

Therefore, it is our opinion that the crediting of local sales and use taxes against such taxes imposed by the state would be upheld by the courts against an attack on the ground that such procedure amounted to an invalid classification

With respect to the second possible objection to this bill on the basis that its credit provisons amount to the imposition of a state tax for local purposes, Section 12 of Article XI of the State Constitution provides, in part.

> "Sec 12 Except as otherwise provided in this Constitution, the Legislature shall have no power to impose the taxes upon counties, cities, towns or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes. . . . "

By general law, the Legislature has already authorized counties and cities to impose sales and use taxes (Secs. 7202, 7203, R. & T.C.; Sec. 37101, Gov C.). These local taxes have operated in conjunction with state taxes imposed on the same privileges for many years We know of no reason why a state tax for state purposes would take on the character of a state tax imposed for local purposes merely because a credit for taxes imposed by local agencies would be allowed as a credit against the state tax Therefore, it is our opinion that the provisions in Assembly Bill No 2270 relating to a credit against state taxes would be upheld against an attack based upon Section 12 of Article XI of the State Constitution

QUESTION NO. 2

Are the provisions in Assembly Bill No 2270 constitutional as they pertain to allocating a portion of state revenue derived under the Sales and Use Tax Law to cities and cities and counties?

OPINION NO. 2

If the money allocated were used for state purposes, it is our opinion that the courts would uphold these provisions in the bill.

ANALYSIS NO. 2

This bill would amend Section 7102 of, and add Section 7103 to, the Revenue and Taxation Code to provide for the following distributions of money from the Retail Sales Tax Fund·

"7102 The money in the ~~fund shall, upon order of the Controller, be drawn therefrom for refunds under this part or be transferred to the General Fund of the State~~ *Retail Sales Tax Fund shall be distributed as follows:*

"(a) The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part

"(b) That sum of money collected and deposited in the fund which is equal to seventeen hundredths of one percent (.17%) of the measure of the taxes collected under this part shall, upon order of the Controller, be transferred to the City Property Tax Relief Fund, which fund is hereby created

"(c) The money remaining in the Retail Sales Tax Fund shall, upon order of the Controller, be transferred to the General Fund of the state."

"7103 The money in the City Property Tax Relief Fund shall, upon order of the Controller, be paid quarterly to each of the cities and cities and counties of this state in the proportion that the taxes levied against locally assessed personal property by each such city and city and county in the tax year 1963–1964 bears to the sum of the taxes levied against locally assessed personal property during that time by all the cities and cities and counties in this state This proportion shall be determined by the board "

With respect to this proposal, Section 12 of Article XI, as noted earlier, denies power to the Legislature to impose state taxes for local purposes

Two cases are of interest in construing the above constitutional provision In *City of Los Angeles* v *Riley* (1936), 6 Cal 2d 621, the court was concerned with the validity of the Motor Vehicle License Fee Act (Ch 362, Stats 1935; see now Pt 5 (commencing with Sec 10701), Div 2, R & T C) The act, among other things, imposed an annual license fee on vehicles at the rate of 1¾ percent of a vehicle's market value and specified that the revenue derived from such fees would be deposited in the State Treasury to the credit of the Motor Vehicle License Fee Fund After payment of certain costs of administration, subdivision (b) of Section 9 of the act appropriated 25 percent of the

money remaining in the fund to be paid to cities and cities and counties to be used for the following purposes·

> ". . . The moneys so paid shall be expended by the cities and cities and counties for law enforcement and the regulation and control and fire protection of highway traffic "

After pointing out that the Legislature was prohibited by Section 12 of Article XI from imposing a state tax for local purposes, the court went on to say, commencing on page 623 and with citations omitted·

> "What constitutes a local and what a state purpose is a question not always free from doubt There are some functions performed by cities that are both local and state in nature The constitutional provision above quoted does not prohibit state taxation for a state purpose, even though, under some circumstances, the purpose could also be local To some extent the spheres of operation of the two overlap In the present case, the purposes designated in the state are 'law enforcement and the regulation and control and fire protection of highway traffic ' There cannot be any reasonable doubt but that those purposes are state in character, within the meaning of the above constitutional provision "

In addition to the foregoing, subdivision (c) of Section 9 of the Motor Vehicle License Fee Act of 1935 also allocated a portion of the moneys in the Motor Vehicle License Fee Fund to counties and cities and counties but, in this case, did not specify for what purposes the money was to be used On the same date that it upheld the allocation of state money to cities to be used for state purposes, the California Supreme Court upheld the allocation to counties in *County of Los Angeles* v *Riley* (1936), 6 Cal 2d 625

In this latter case, after pointing out in some detail the different relationship between the state and counties, as opposed to the relationship between the state and municipal corporations, since counties are political subdivisions of the state for purposes of government, the court stated, on page 628·

> "Keeping the above discussion concerning the nature of counties in mind, we have in the instant case a statute general in its terms, appropriating money to counties from a fund collected by a general state tax already held to be valid without expressly limiting its use As already pointed out, the state could levy a general tax and appropriate the sums collected in whole or in part to the counties to assist them in performing their many state functions The Constitution prohibits a tax for local purposes Under such circumstances, may it not be presumed that the Legislature had in mind in passing section 9(c) the provisions of article XI, Section 12? Must we not, in interpreting section 9(c), read into it the limitations found in the constitutional provision? We think that the answers to these questions is clear We are of the opinion that, properly interpreted, section 9(c) appropriates the moneys therein mentioned to the counties, as limited by article XI, section 12, i e , for state purposes."

As will be noted, both of the *Riley* cases were concerned with application of Section 12 of Article XI of the State Constitution, as it relates to the imposition of state taxes for local purposes. As far as the cities were concerned, the court held that the specified purposes for which moneys from the Motor Vehicle License Fee Fund could be used constituted state purposes As for the counties, the court implied that such money would be used for state purposes, even though the statute was silent with respect to the purposes for which the money could be used. However, in reaching this latter conclusion, the court placed certain emphasis on the special relationship of the state to counties, as opposed to the state's relationship to municipal corporations

We have found no case specifically holding that a state purpose would be implied when revenues derived from a state tax are allocated to cities with no specific directions as to the uses for which the money is intended However, it is our opinion that the same result would be reached by the courts as was reached by the court in the second *Riley* case, i e, that the money could only be used for state purposes and that such a limitation would be read into the statute.

In the context presently under discussion, Section 12 of Article XI is allied to Section 31 of Article IV, which provides, in part·

> "Sec 31. The Legislature shall have no power . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever. . ."

As is the case with the imposition of state taxes for use by local government, the courts have held that the provisions of Section 31 of Article IV are not violated by the expenditure of public funds for a state purpose, even though local purposes might also be served thereby (*City of Los Angeles* v *Post War Public Works Review Board* (1945), 26 Cal 2d 101, 114)

On this ground, it is our opinion that the provisions in Assembly Bill No 2270, as introduced, pertaining to an allocation of state revenue derived under the Sales and Use Tax Law to cities and cities and counties would be deemed to be constitutional by the courts, so long as the allocations were used for state purposes We believe the courts would read this limitation into Section 7103, which the bill proposes to add to the Revenue and Taxation Code

Very truly yours,

GEORGE H MURPHY
Legislative Counsel

By RUSSELL L. SPARLING
Deputy Legislative Counsel

Appendix G(2)

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

Sacramento, April 28, 1965

HON. NICHOLAS PETRIS
Assembly Chamber

SENIOR CITIZENS PROPERTY TAX REIMBURSEMENT—NO. 16792

Dear Mr. Petris:

QUESTION

Is the Unruh-Petris Senior Citizens Property Tax Reimbursement Act, as contained in Assembly Bill No 2270, as introduced at the 1965 Regular Session, constitutional?

OPINION

We are unaware of any case in which the courts have considered the questions raised by this proposal However, if satisfactory evidence could be produced to show that, on the whole, persons 65 years of age or older who are paying property taxes on their principal personal residences and who have annual incomes of not more than $3,500 were in need of such assistance, it is our opinion that the courts would uphold the act.

ANALYSIS

Assembly Bill No 2270, as introduced, proposes, among other things, to add Chapter 25 (commencing with Section 19501) to Part 10 of Division 2 of the Revenue and Taxation Code * This chapter would establish a procedure, whereby state funds could be allocated to persons 65 years of age or older in accordance with a formula computed on the basis of such a person's income and the amount of property tax paid (see Secs 19504, 19521) Income for purposes of obtaining such an allocation is defined as follows.

> "19502 'Income' shall mean all income of the claimant and spouse and of all other individuals living in the principal personal residence from whatever source derived. It shall include but not be limited to the sum of adjusted gross income as used for purposes of the California Personal Income Tax Law (including items of income excluded by Article 3 of Chapter 3), plus alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act and veteran's disability payment, all interest received from the federal government or any of its instrumentalities, all interest received from the State of California or any of its political subdivisions, realized capital gains, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance proceeds, and gifts It does not include surplus food or other relief in kind supplied by a governmental agency.

* Unless otherwise indicated, all future section citations refer to sections proposed to be added to the Revenue and Taxation Code by this bill

"Total income shall be determined for the calendar year (or approved fiscal year ending within such calendar year) which ends within the fiscal year for which the property taxes have been assessed."

The Unruh-Petris Act formula would include consideration of the tax on only the principal personal residence of an elderly person and only to the first $5,000 of assessed valuation (Secs 19503, 19521, 19522). Only one claim for each principal personal residence would be allowed, even though more than one person might otherwise be eligible to make a claim under the act (Sec 19522). The amount of state money to be allocated under the act is then determined by a scale set forth in Section 19523.

The scale would allow an allocation of an amount equal to 95 percent of the amount of tax accrued and paid on the first $5,000 of assessed valuation of a principal personal residence, if the claimant's annual income was not more than $1,000. This allocation would decrease by one percentage point on the amount of tax accrued and paid as income increased by $25 increments, until a claimant with an annual income of not more than $3,500 would only be allocated 1 percent of the amount of tax accrued and paid.

Thus, the question for consideration is whether the Legislature has power to enact legislation to allocate state moneys to persons 65 years of age or older who have an annual income of not more than $3,500 and who are paying property taxes on their principal personal residences. As the act is worded, it seems safe to assume that individual allocations would not be in large amounts, due to the fact that the formula contains a limitation on assessed valuation (Sec 19522), and includes the following definition of "property tax accrued":

"19507. 'Property taxes accrued' means current property taxes (exclusive of special assessments, interest, penalties, principal payments on improvement bonds and charges for service) assessed against a claimant's principal residence by any city, city and county, or county for any fiscal year beginning on or after July 1, 1965 . . ."

Initially, it should be noted that while the Unruh-Petris Act speaks of "property tax reimbursement," it actually constitutes a payment of state funds to elderly persons in accordance with the formula since property taxes on private residences are collected by local taxing entities, while the act would provide for "reimbursement" from state funds.

It follows that the proposal is, in essence, a plan to make grants-in-aid to elderly persons from the General Fund of the state. These grants would be made on the basis of a person's income and the amount of his property taxes on his home, even though he might own considerable other property which was producing limited revenue.

Therefore, if the Unruh-Petris Act were to be adopted, the principal question as to its validity would be raised by Section 31 of Article IV of the State Constitution. This section denies power to the Legislature "to make any gift or authorize the making of any gift, of any

public money or thing of value to any individual, municipal or other corporation whatever . . . "

It is well settled that this provision does not apply to expenditures of public funds if a public purpose is being served thereby (see *San Bernardino County* v. *Way* (1941), 18 Cal. 2d 647) Therefore, the question before us is to determine whether or not gifts from the State Treasury under the Unruh-Petris Act would serve a public purpose

Subdivision (2) of Section 22 of Article IV of the State Constitution authorizes the Legislature to grant aid to "aged persons in indigent circumstances " Under the Old Age Security Law (Sec 2000 and following, W & I C), a recipient is able to own certain property without reference to its value and remain eligible for public assistance (Secs 452, 454, W & I C) Moreover, the courts have held that the care and relief of aged persons who are in need is a matter of state concern and does not constitute a gift of public funds within the constitutional prohibition (*County of Los Angeles* v *La Fuente* (1942), 20 Cal 2d 870, 877; see also *Board of Social Welfare* v *County of Los Angeles* (1945), 27 Cal 2d 81) Finally, it should be noted that an applicant for assistance under the Old Age Security Law, generally speaking, is entitled to an amount of aid which, when added to the income of the applicant, equals $105 per month, plus a cost of living adjustment (Sec. 2020, W & I C , but cf Secs 458, 2020 001, W & I C)

Thus, it may be seen that even though the Old Age Assistance Law is based on need, the income of a recipient may become a factor more important than the recipient's assets in determining eligibility for assistance As pointed out earlier, this could also be the case in many instances under the Unruh-Petris Act

Whether or not the Unruh-Petris Act, if adopted in California, would be deemed to carry out a purpose similar to the Old Age Assistance Law is open to some doubt However, if satisfactory evidence could be produced to show that, on the whole, persons 65 years of age or older who are paying property taxes on their principal personal residences and who have annual incomes of not more than $3,500 were in need of such assistance, it is our opinion that the courts would probably find that the plan served a public purpose and did not constitute an invalid gift of public funds

In reaching this conclusion, we have considered the possibility that this act might be considered as an invalid classification in that some elderly persons with modest incomes would be denied benefits under the program, as they were paying no property taxes (see Amend. 14, U S Const.; Art I, Sec. 11, Art. IV, Secs 22 and 25, Cal Const) However, it is our opinion that there is ample authority to uphold the act against an attack on this ground (see *Roth Drug. Inc* v *Johnson* (1936), 13 Cal App. 2d 720, 733; *Watson* v. *Greely* (1924), 67 Cal. App 2d 328, 344, 345).

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel
By Russell L Sparling
Deputy Legislative Counsel

Appendix G(3)

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

Sacramento, May 24, 1965

HON. NICHOLAS PETRIS
Assembly Chamber

INCONSEQUENTIAL RESOURCES—NO. 21873

Dear Mr Petris

QUESTION

Does the language in lines 48 and 49 on page 95 of Assembly Bill No 2270, as amended in Assembly May 17, 1965, make it clear that benefits received under the Unruh-Petris Senior Citizens Property Tax Reimbursement Act shall be excluded from income as defined for public assistance recipients?

OPINION

In our opinion, the language makes it clear that such benefits should not be includible in the income of a recipient of public assistance

ANALYSIS

Assembly Bill No 2270, among other things, proposes to add Chapter 25 (commencing with Section 19501) to Part 10 of DIVISION 2 of the Revenue and Taxation Code to establish procedures for paying state funds to certain persons 65 years of age or older with limited incomes in accordance with a formula based on income and property taxes accrued and paid With respect to payments received by elderly persons pursuant to this proposed act, it is stated in lines 48 and 49 on page 95 of the bill:

> ". . Any reimbursement received under this chapter shall be deemed to be inconsequential resources" (Proposed Sec 19523, R & T C)

Section A-211 07 of the State Department of Social Welfare's Manual of Policies and Procedures on Old Age Security provides the following definition

> "A-211 07 Income from an inconsequential resource is the net return from an interest in real or personal property which makes no appreciable contribution to the continuing needs of a recipient under the OAS standard Such income is not to be considered in determining the amount of the aid payment" (See also subd (b), Sec 443, W & I C)

In view of the above definition and the express language proposed to be added to the Revenue and Taxation Code, it is our opinion that benefits received by persons 65 years of age or older under the Unruh-Petris Act would not be includible in their incomes for public assistance purposes

Very truly yours,

GEORGE H MURPHY
Legislative Counsel
By Russell L Sparling
Deputy Legislative Counsel

Appendix G(4)

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

Sacramento, May 9, 1965

HON. NICHOLAS PETRIS
Assembly Chamber

CHANGING THE LIEN DATE—NO. 16791

Dear Mr Petris.

QUESTION

Would it violate the Constitution to change the lien date from the first Monday in March to the first day of January, as proposed by Assembly Bill No 2270, as introduced at the 1965 Regular Session of the Legislature?

OPINION

While the matter would not be entirely free from doubt until tested in the courts, it is our opinion that the Legislature could constitutionally change the lien date in the manner proposed

ANALYSIS

Assembly Bill No 2270, among other things, proposes to amend Sections 405 and 751 of the Revenue and Taxation Code to require county assessors and the State Board of Equalization to assess all taxable property at 12 01 a m on the first day of January, rather than at noon on the first Monday in March It would amend various other provisions to conform to this change (see, for example, Secs 220, 225, R. & T C in the bill), and would provide that tax liens would attach annually at the earlier date (Sec 2192, R & T C)

The courts have held that the power of the Legislature in the field of taxation is limited only by constitutional restrictions (*Delaney* v *Lowery* (1944), 25 Cal 2d 561, 568) And we have found no express limitation on the Legislature's power in the Constitution which would prohibit it from changing the lien date from the first Monday in March to the first day of January.

Some confusion in this regard has resulted from the language of Section 8 of Article XIII of the State Constitution, which reads:

> "The Legislature shall by law require each taxpayer in this State to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at 12 o'clock meridian, on the first Monday of March "

We find nothing in any of this language that can be construed to constitute a requirement of the kind mentioned. The section merely relates to the filing with the county assessor of an annual statement showing the property that the taxpayer owns, possesses or controls as of noon of the first Monday in March It provides that the Legislature shall enact

legislation to require such filing. It is entirely silent, however, on the subject of valuation

There is judicial authority to the effect that the taxable status of property is fixed as of the first Monday in March on the basis of the following: Section 8 of Article XIII, provisions, now in Section 441 of the Revenue and Taxation Code, which merely implement Section 8 of Article XIII by duplicating its provisions, and provisions, now in Section 405 of the Revenue and Taxation Code, which require the assessor to assess taxable property to the person owning, claiming, possessing or controlling it as of noon of the first Monday in March (*Dodge v. Nevada Nat Bank*, 109 Fed 726) However, neither in that authority nor in any other of which we are cognizant is there any support for the view that Section 8 of Article XIII in and of itself fixes the taxable status of property, for valuation or any other purpose, as of noon of the first Monday in March

We conclude, therefore, that Section 8 of Article XIII would be no bar to the proposed legislation insofar as an assessment date for such fiscal year other than the first Monday in March would thereby be prescribed in respect to the property involved

However, this constitutional provision does require that taxpayers deliver a statement to the county assessor setting forth all the real and personal property owned by them at noon on the first Monday in March. Assembly Bill No 2270, as introduced, proposes to amend Section 448 of the Revenue and Taxation Code in the following manner

> "448. The property statement shall show all information as of ~~noon on the first Monday in March~~ *12:01 a.m. on the 1st day of January and as of noon on the first Monday in March The statement shall set forth all the real and personal property owned by such taxpayer, or in his possession, or under his control at 12:00 meridian on the first Monday of March.*
>
> *"Additional information required by this article shall be furnished regarding property owned, controlled by or in the possession of a taxpayer on the 1st day of January Additional information with respect to property owned or in the possession of a taxpayer at noon on the first Monday in March beyond that required by this section shall not be necessary"*

In other words, Section 448, if amended in the manner proposed, would require taxpayers to submit the information specified in Section 8 of Article XIII concerning their property at noon on the first Monday in March, but would require all additional information with respect to such property set forth in Article 2 (commencing with Section 441) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code only for the January lien date The information required by this article relates to such matters as the situs of property, debts to be deducted from solvent credits and a legal description of real estate (see, for example, Secs 443, 444, 447, R & T C).

We think the above proposal satisfies the constitutional requirement that taxpayers report on their property as of noon on the first Monday in March Moreover, we find nothing in Section 8 of Article XIII of the

Constitution which we would construe as prohibiting the Legislature from requiring a property statement at some date in addition to the first Monday in March

Therefore, while the matter will not be entirely free from doubt until this particular proposal is construed by the courts, it is our opinion that the Legislature may constitutionally change the lien date from the first Monday in March to the first day in January

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel
By Russell L. Sparling
Deputy Legislative Counsel

Appendix G(5)

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL

Sacramento, June 5, 1965

HON. ROBERT T. MONAGAN
Assembly Chamber

PASSAGE OF BILLS—NO. 22983

Dear Mr Monagan

QUESTION NO. 1

If A B. 2270 is passed by the Assembly with a majority vote but less than two-thirds, and it is then sent to the Senate, what happens to the provisions of the bill requiring a two-thirds vote; that is, do they automatically drop out of the bill or are they still in the bill but merely inoperative?

OPINION NO. 1

In our opinion the provisions would remain in the bill, but could not become effective unless, at the final stage in the proceedings, the bill receives a two-thirds vote in each house

ANALYSIS NO. 1

A B 2270, as amended on May 17, 1965, would substantially revise and supplement the laws of the state relating to taxation The bill contains certain provisions which require a two-thirds vote for passage, notably, provisions exempting personal property from taxation (Secs 6, 8, 15), provisions making appropriations (e g. Sec 93), and provisions increasing the rate of taxation under the Bank and Corporation Tax Law (Secs 245, 248, 250, 253)

Unless the Constitution otherwise provides, the vote necessary for final passage of a bill is a majority of the elected members of both houses of the Legislature (Cal Const, Art IV, Sec 15). There is no exception in the case of a bill which is to take effect immediately as a tax levy (*Roth Drug, Inc* v *Johnson*, 13 Cal App 2d 720, 727–729)

It follows that A B 2270, as amended, with the exception of those provisions of the bill which require a two-thirds vote, could be passed by a majority vote It also follows that unless the bill receives a two-thirds vote, those provisions of the bill which require such a vote will not become effective We think that the courts would hold those provisions are severable from the remainder of the bill and failure to secure sufficient votes to enact the provisions requiring a two-thirds vote would not necessarily affect the validity of the other sections

It is our opinion, therefore, that if A B 2270 receives a majority, but less than a two-thirds, vote in the Assembly, and is sent to the Senate, the provisions of the bill requiring a two-thirds vote would not be effective, unless the necessary vote is obtained in the Assembly at the final stage in the proceedings

There is nothing in the law or rules that would cause the provisions in question to drop from the bill upon the failure of the Assembly to give a two-thirds vote Affirmative action would have to be taken to amend the provisions out of the bill Otherwise, they would remain in the bill, even though they could not be given effect

QUESTION NO. 2

Assuming the inoperative provisions are still in the bill, and the bill eventually receives a two-thirds vote in both houses (i e , adoption of conference report), would the previously inoperative provisions become operative?

OPINION NO. 2

In our opinion if the bill ultimately receives a two-thirds vote in both houses, the provisions would become operative

ANALYSIS NO. 2

We think that whenever the Constitution calls for a two-thirds vote on a bill or measure, the reference must be construed to require a two-thirds vote on final passage of the bill or measure This office has consistently held to this position

There appears no basis on which to make an exception in the case of A B 2270 The constitutional provision calling for a two-thirds vote on increases under the Bank and Corporation Tax Law speaks of the vote on passage of the bill (Cal Const , Art XIII, Sec 16), while the provision requiring a two-thirds vote on property tax exemptions simply states that "The Legislature, two-thirds of all of the members elected to each of the two houses voting in favor thereof . . may exempt entirely from taxation any or all forms, types, or classes of personal property" (Cal Const , Sec 14). With respect to appropriations, the Constitution provides that appropriations from the General Fund shall be void unless "two-thirds of all the members elected to each house of the Legislature vote in favor thereof " (Const Art. IV, Sec 34a). In all of these instances, we think that the Constitution has reference to the final vote on passage of the measure in each house.

The Assembly Rules declare that the vote on concurrence or upon the adoption of a conference report shall be deemed the vote upon final passage of the bill. We are of the opinion, therefore, that if A.B 2270 were amended in the Senate, and the Assembly concurred in the amendments or in a conference report concerning the bill, and gave a two-thirds vote in doing so, all of the provisions of the bill would become operative.

Very truly yours,

GEORGE H MURPHY
Legislative Counsel
By Edward K. Purcell
Deputy Legislative Counsel

Appendix H

TIME LINE FOR REVENUE AND REFORM PROGRAM

AB 2270—1965 GENERAL SESSION

July—1965	January—1966	April—1966	July—1966	October—1966
Taxes increased cigarette 5c bank and corp 1½% sales tax reforms (leases and occasional sales) small inheritance tax increases	Withholding begins Income tax rates extended, more conformity with federal internal revenue code Increase state sales tax 1% to reduce school property taxes by 25% average	All 1965 income taxes forgiven (except capital gains), $200 million in taxes not collected	Counties authorized to levy property transfer tax State to relinquish part of its sales tax Local government to receive 17/100 of 1% of state sales tax revenues, and counties to receive additional 8/100 of 1% of state sales tax revenues	Property tax relief of an additional $315 million Property tax relief for aged Full exemption for Household goods Business inventory Solvent credits

Appendix I

SAMPLE LETTER SENT IN RESPONSE TO OBJECTION RAISED ABOUT PROPERTY TRANSFER TAX PORTION OF AB 2270

Dear Mr. _____

One of the perils and unpleasant features of tackling tough assignments in the Assembly is that every now and then we run smack into opposition from supporters and friends.

You write in connection with the portion of AB 2270 which would allow counties to impose a real property transfer tax This authorization was included in the proposed tax package as an alternate source of revenue for county government. If the real property transfer tax were standing alone, I would oppose it But our whole concept in AB 2270 is to correct a large number of problems in one big package We are eliminating some bad inequities from our tax structure, such as the taxes on household furniture and furnishings, business inventory and solvent credits. But the money thereby taken away from local government must be made up from other tax sources more fair and equitable

Attractive as it is, I would not vote for (in fact in the past I have repeatedly voted against) repeal of the tax on household furniture and furnishings unless there was replacement money ($45 million) for local government.

In addition to exempting inventories and household furnishings, this bill also mandates a sizable reduction in tax rates. School taxes will be reduced by an average of 25 percent throughout the state Tighter controls are also imposed to insure that this tax relief will continue making homeownership much more attractive The net effect of the bill will be seen in lower monthly payments for all homebuyers, even assuming a transfer tax is enacted locally

In addition to the fact that the massive decrease in property taxes far outweighs tax liabilities of a transfer tax, several other points should be kept in mind:

1—The first $15,000 of improved property will be exempt from the transfer tax so the total tax on a $25,000 house would be only $100.

2—It appears that the federal government will repeal its transfer tax—abandoning this source to the states.

3—The transfer tax is not imposed by this bill It will still be up to counties to actually impose the tax

4—Twelve other states impose a property transfer tax

In conclusion, let me remind you that we have to balance the equities of certain sections against others in order to determine if (1) the overall impact of AB 2270 is fair and equitable, (2) there is a net gain to the hard-pressed homeowner I think the bill meets these tests

There are a great number of other property and income tax reforms in this bill which I feel certain you would support Would you have them all defeated because of objections to this one feature?

Thanks for writing to me.

Sincerely yours,

Appendix J

LIST OF REVENUE SOURCES WITH THEIR YIELD

Revenue Source	*Estimated yield per year ($ in millions) 1965–66*
Cigarette tax—5¢ increase	120
Tobacco tax—20 percent of wholesale price	14
Sales tax—@ 3 percent	
Increase ½ percent	167 5
Increase 1 percent	335
Remove exemptions	
Gas and electricity	69
Animals, feed, fertilizer, seed	35
Gasoline	69
Food	178
Newspapers and magazines	5
School meals	4
Containers (Sec 6364)	27
Prescription drugs	9 5
Sales to U.S Government	Unknown, but very large
Extension to services	
Auto and truck repair	20
Farm implement repair	1
Repair of personal property	10
Services (excluding professional services)	26 8
State hotel tax	9 7
Amusements	18 6
Telephone	40
Water delivered through mains	6
Property transfer tax	
Rate of 1 percent	150
Rate of 1 percent on amount transferred in excess of $15,000	80
Income tax	
Withholding	60
Rate increases (Rates now 1 percent to 7 percent)	
Double rates—2 percent to 14 percent	415
Increase by 50 percent—1 5 percent to 10 5 percent	208
Increase by 10 percent—1 1 percent to 7 7 percent	40
Increase rate on income over $25 000 by 1 percent	7 5
Increase maximum tax rates at $2,500 intervals to 10 percent	33 7
Increase maximum tax rates at $2,500 intervals to 15 percent	61 1
Increase each bracket by 1 percent to 2 percent to 8 percent	190
Selected conformity ·	
Adopt federal $600 exemption	130
Adopt $600 exemption and reduce rate on 1st $1,000 of taxable income to ½ percent	86
Adopt $600 exemption and reduce rate on first $3,000 taxable income for joint returns and $1,500 for others to ½ percent	65
Eliminate armed forces exemptions	1

Revenue Source	*Estimated yield per year ($ in millions) 1965–66*
Bank and corporation tax	
Increase rate by ½ percent	29
Increase rate by ½ percent, assuming bank tax reduced due to reduction of business personal property tax	36
Reduce oil depletion allowance to 20 percent	24
Insurance taxes	
Eliminate principal office deduction	57
Limit principal office deduction to space occupied by owner for insurance purposes	25
Increase rate from 2 33 percent to 2 5 percent	76
Oil severance tax	
At Louisiana rates (18¢ per barrel)	54
Stock transfer tax	
At New York rates (1¢ to 4¢ per share)	3
Inheritance tax	
Increase rates by 10 percent	11
Double rates	112
Increase class A rates to 3 percent, 4 percent, 5 percent, 9 percent, 10 percent and 12 percent	125
Remove charitable exemptions	20
Capture tax on pass through of capital gains at death	55
Eliminate county treasurer's commission	.7
Institute 1 percent gross tax before exemption	32
Repeal of 5 percent discount	$33 million loss 1st year 66 million loss 2nd year 3 million gain each year thereafter
Include all insurance policies in value of estate	26
Gift tax	
Increase rates by 10 percent	.5
Conformity on exclusion with federal	5
Chain store tax	
At 1935 rates—$500 for each store over 10	35
Horse racing	
Increase tax by 1 percent (up to 6 percent to 9 percent)	75
Collect all breakage	15
10 percent admissions tax	15
A.B.C.	
Increase beer tax from 4¢ to 8¢ per gallon	12
Increase distilled spirits tax from $1 50 to $2 per gallon	19
Wine taxes	
Dry—1¢ to 2¢	2
Sweet—2¢ to 4¢	3
Champagne—30¢ to 60¢	.4

SOURCE Compiled by Department of Finance Figures are estimates of tax revenue derived in first full year of operation based on 1965–66 fiscal year

Appendix K

The letter reproduced below was presented as a minority report on that portion of the bill which mandates a standard ratio for use in assessing property values.

ASSEMBLY, CALIFORNIA LEGISLATURE
December 11, 1964

HON NICHOLAS C PETRIS, *Chairman*
Assembly Interim Committee on Revenue
and Taxation
State Capitol, Sacramento

Dear Mr. Petris:

I do not agree with one of the recommendations made in the final report of the Committee on Revenue and Taxation The committee has suggested that a mandatory ratio of appraised value to full cash value be accepted as standard practice in this state.

After our year long survey of the California tax structure, I am convinced that in any consideration of proposals for additions or changes in the revenue system three questions are all important These are.

(1) Will it produce the desired result? (purpose)
(2) Is it beneficial or restrictive? (economic effect)
(3) Is it workable? (administrative feasibility)

Let us consider a statutory or mandatory ratio of assessed value to estimated full cash value in the light of these three questions

I—PURPOSE

Proponents assert a stipulated or fixed ratio will (a) legalize the long prevalent practice of percentage assessments, and (b) produce a higher degree of uniformity of assessments than is now being attained.

I would say that percentage assessments are an established fact of life, long sanctioned by the Legislature and by the people, and repeatedly given validity by the courts

In California's more progressive counties, equality of property assessments is demonstrably greater now than ever before and the quality of the assessment rolls is steadily improving.

II—ECONOMIC EFFECT

Proponents imply more than is openly stated An implied "floor" under assessments will, in reality, become a "ceiling".

Economic benefits to all are implied However, if, as it is claimed, that *state assessed* properties are presently carried on assessment rolls at a ratio to full cash value which is 60 or 70 percent greater than the ratio of locally assessed properties, then this proposal raises a very real threat of economic shock of no small magnitude, varying greatly in the numerous dissimilar jurisdictions.

That portion of net total taxable valuation which was state assessed on the 1964–65 assessment rolls ranged from a low of 7.35 percent in Santa Clara County to a high of 75 3 percent in Plumas County

For 20 counties this range was from 7 35 percent to 11.75 percent These counties' rolls carried approximately 73 percent of the state's valuation base.

For 20 counties, the range was from 12 04 percent to 21 62 percent These counties' rolls carried approximately 17 percent of the state's evaluation base.

For 18 counties, the range was from 22 25 percent to 75 30 percent. These counties' rolls carried approximately 9 percent of the state's valuation base.

Equally wide-ranging variations exist among the numerous jurisdictions within California's 58 counties

For example, in San Diego County, with 13 incorporated cities and the usual proliferation of school and other special districts, *state assessed* property comprises 6 percent of total taxable value in the City of Coronado and 52 percent in the City of Carlsbad

Any abrupt alteration in such truly significant segments of California's taxable valuation base would create reverberations of unforeseeable consequence throughout the entire economy.

III—ADMINISTRATIVE FEASIBILITY

Is it workable? More to the point in this case, is it more workable than that which it is proposed to replace?

First, just what would it replace?

Existing statutes provide each of the 58 counties with a practical measure of local administrative control at the county level

Intracounty equalization is achieved at the local, the county, level.

That a high degree of intercounty uniformity is being developed under existing statutes and practices would seem to be evidenced by the fact that since 1955 the State Board of Equalization has issued only 19 orders to counties to change assessment rolls

In 522 reviews of county assessment ratios, the State Board action affirms 96 4 percent acceptability.

To assert that a statutory ratio will make for greater uniformity of assessments within counties, or between counties, is to look away from one ever-present reality, best stated in this question

PERCENT OF WHAT?

Property values are never static. Among numerous properties there is no such thing as a uniform rate of change Yet the disturbed taxpayer, or the easily misled group of irate property owners usually direct their indignation at changes in assessed valuations.

Selling price is proof of desire for ownership It may also be evidence of poor judgment on the part of some one buyer or seller It may also be the result of a distress sale

Mandatory ratio may readily become a cudgel in the hands of any taxpayer who is alert to advantages created by such a law.

No "fixed percentage" statute will produce the high degree of uniformity which is the mark of good assessment administration

No entirely valid assessment is to be achieved by adoption of a fixed percentage of a sale price, nor a fixed percentage of an opinion

Qualitative judgments called for, preclude any such eventualities

The indicated solution will not be found in a frozen ratio. It must come in an unfreezing of assessed valuations—only attainable within a realistic short-term cycle of review of all properties—a short-term in which value trends may be recognized and effectively dealt with before they get out of hand.

Current value can be estimated, can be defended, can be understood by property owners But keeping a county's assessment roll up-to-date demands a continuing program of equalization, not the once-in-awhile bucking of the economic tide which inevitably prepares the seed bed of taxpayer revolt

This is fundamental.

This is simple, inescapable, reality

This is the core of every assessment administrator's challenge.

A frozen ratio is no solution A frozen ratio will *create,* not *solve,* problems

What every assessor needs most is (1) a comprehending Board of Supervisors, and (2) and understanding citizenry. Given these, a dedicated staff can maintain a sound and equitable valuation base reflecting current levels of value With that accomplishment—and some progressive counties are proving it is attainable—the taxpayers may more profitably direct their attention toward those decisions which annually find expression in the budget

CONCLUSION

If, as is claimed by some, state assessed property is currently assessed at 40 percent or more of full value, and

If, as the State Board of equalization reports, properties on some county local rolls are now assessed at 20 percent or less, and if a fixed ratio were deemed necessary,

Then to cushion the inevitable adverse economic shocks, a period of several years should be permitted in which to "merge" the various components of the state's valuation base under a mandatory ratio

In today's dynamic and extremely complex economy, the 58 dissimilar counties will need to be provided with a realistically broad tolerance range to achieve even a pretense of a workable mandatory ratio of assessment, for the ultimate goal is the ever-elusive concept: value

Very truly yours,

RICHARD J. DONOVAN

Appendix L

WITNESSES BEFORE ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, INTERIM 1963–1965

Bruce Bailey
Appraiser
Assessor's Office, County of
San Luis Obispo

Keith Ball
Department of Motor Vehicles

Justin F Barber
Planning Director, Placer County

Charles Barry
Chief, Division of Inheritance and
Gift Tax, State Controller's Office

Rev Canon G William Beale
Episcopal Diocese of California
(Representing Bishop Pike)

William Bechill
Executive Secretary
Citizens Advisory Committee on
Aging for the State of California

Hon Peter H. Behr
Member of the Board of Supervisors
of Marin County

M F Berg
Chairman of the Board
City National Bank of Beverly Hills

Richard Bibbero
President, Medical Management
Control, San Francisco

Ben Bieringer
Director, Property Taxpayers
Council, Los Angeles

Hon James Harvey Brown
Councilman, City of Los Angeles
13th District

W L Brown
Mendocino County Assessor
and President of the State Associa-
tion of County Assessors

John D. Brownson
Assessor-Collector
City of Berkeley

Thomas Budig
Chief, Public Service
Division, Los Angeles County
Assessor's Office

Marjorie Burnett
Western Casting Company

Jud Callagan
Director, Bay Area Air
Pollution Control District

John Callaghan
California Forest Protective
Association

Richard Carpenter
League of California Cities

Rev. Harvey N. Chinn
First Evangelical United
Bretheren Church, Sacramento

Larry Chrisco
President, Senior Citizens Associa-
tion of Los Angeles County, and
Member of the Board of Directors of
the State Allied Association of
Senior Citizens Clubs

Robert L Clark
Member, Orange County
Grand Jury Tax Committee

Don Collin
Director of Research
California Farm Bureau Federation

Frank Converse
Los Angeles Chamber of Commerce

Fred F Cooper
Attorney, Oakland

Vincent Cooper
Assistant General Manager
County Supervisors Association of
California

Bernard Coyle
Southern California Beverage
Distributors

Henry Cramer
Incentive Tax Committee

Orvill Cumming
San Diego County Cattlemen's
Association

Ralph Currie
Chief Financial Economist
State Department of Finance

Herb Davis
Western Mobile Homes

Malcom M Davisson
Professor of Economics
Universty of California, Berkeley

Robert de Fremery
Vice President
Onox, Inc , San Francisco

John Doherty
Deputy County Assessor
County of Riverside

Dewey Dunn
California Automotive Wholesalers
Association

George Feinberg
Assistant Chief of Representation
Division of the California State
Employees Association

Donald Feragen
Assessor, County of Alameda

George Fisher
Secretary, Southern California Tax-
payers Council for Simplified Govern-
ment

Mike Fletcher
Californians Advancing Sound Taxation
Norman Fries
Farmer, Fresno County
James Frush, Jr
James C Frush Company
San Francisco
G B Gard
Assessor, County of Fresno
Edward Gerber
Representing San Diego County Chief Administrative Officer
Leland B Groezinger
Life Insurance Association of America
Mr Elder Gunter
Pasadena City Manager
James Hamilton
Senior Counsel
Franchise Tax Board
Dr Curtis C. Harris, Jr
Department of Agricultural Economics
University of California at Davis
Howard Hassard
Attorney, Representing California Medical Asssociation
M Justin Herman
Executive Director
San Francisco Redevelopment Agency
Mr Russ Hofendahl
Western Casting Company
San Jose
L S Hollinger
Chief Administrative Officer
County of Los Angeles
Melvin Horton
Property Owners Tax Association of California
Leslie Howe
Director of Tax Department
California State Chamber of Commerce
Martin Huff
Executive Officer
Franchise Tax Board
Thomas M Jenkins
California Association of Homes for the Aged and the Association of Northern California Homes for the Aged
John Keith
Chief Deputy Assessor
County of Los Angeles
Lewis Keller
Association of California Life Insurance Companies
Arnold Klaus
Assistant Manager
San Diego Chamber of Commerce
Reuben Kliewer
Farmer, Kern County
Fred Lawrence
San Diego City Controller
Richard J Lawrence
Deputy County Counsel
County of Riverside
Richard W Lazansky
Assistant Chief Financial Economist
Department of Finance
Ray Leavitt
Chief Assessor for the City and County of San Francisco, representing State Association of County Supervisors
Clark Lee
Chief Statistician, Franchise Tax Board
George Lewis
U S Treasury Department Internal Revenue Service
Franklin W Lilley
City Manager, Oceanside
Ralph G Lindstrom
Lindstrom, Robison, Lovell and King, Los Angeles
Alex Lozier
Legislative Chairman of the West Pico Democratic Club and member of American Association of Retired Persons
John Lynch
Chairman, State Board of Equalization
Richard Malcolm
City Manager, City of Claremont
John Marshall
Senior Statistician, State Board of Equalization
William L McCoy
City of Los Angeles, Chief Legislative Representative
William MacDougall
General Manager, County Supervisors Association of California
John McFarland
General Indemnity Company Firemen's Fund
Edward A McMillan
City Assessor, City of Santa Barbara
Howard E McNamer
Auditor-Controller, Contra Costa County
John McQuilken
San Diego County Assessor
Edwin Meese, Jr.
Treasurer and Tax Collector of Alameda County
Elmer Mehlschau
San Luis Obispo County Farm Bureau
Robert Michalski
Palo Alto City Attorney
Jay Michael
League of California Cities
Leonard D Miller
Vice President, LACAR Enterprises, Menlo Park
John Mitchell
Farmer, Fresno County

John Nagy
California Homeowners Association
Hon Richard Nevins
Member, State Board of Equalization
Charles Newby
California Properties of Women's Division of the Methodist Church
Charles J O'Brien
Chief Deputy Attorney General (on behalf of Attorney General)
Rt. Rev. Msgr. Thomas J. O'Dwyer
Department of Health and Hospitals, Archdiocese of Los Angeles
Francis H. O'Neill
Attorney, Los Angeles
Charles Otteman
Tax Counsel, State Board of Equalization
Charles Paul
Director, Department of Agriculture
William Payne
Executive Officer, State Employees' Retirement System
Hugh Plumb
Assessor, County of Orange
H. Jackson Pontius
Executive Vice President, California Real Estate Association
Bud Porter
Legislative Representative, City of San Diego
A Alan Post
Legislative Analyst
J. B Quinn
Master, California State Grange
Donald H Razee
Managing Editor, *California Farmer*
Kent Redwine
Trailer Coach Association
Walter Reed
Acting Assessor, City of Pasadena
Hon George Reilly
Member, State Board of Equalization
Ralph Rice
Professor of Law, UCLA
Ralph Rosedale
Tax Chairman, Tulare County Farm Bureau
Professor Gerhard Rostvold
Professor of Economics and Dean of the Faculty, Pomona College
Saul Ruskin
Attorney, Palm Springs
Stanley Sapiro
Attorney, Los Angeles
S. S Schier
Rancher, North San Diego County
E. Robert Scrofani
Chairman, San Francisco Committee to Reform the Assessment of Private Property
Frank Seeley
Assistant Assessor, County of Riverside
Leo Sellenger
General Manager, Civil Service Employees Insurance Company of San Francisco
Mr. Marion Sellers
Greater San Jose Chamber of Commerce
John Sheehan
Legislative Secretary to the Governor
Harold M. Simon
Attorney, Palm Springs
Bob F. Small
Representing San Diego County Board of Supervisors
Dr J Herbert Snyder
Department of Agricultural Economics, University of California at Davis
William B Stinger
Agricultural Council of California
Joseph Thomas
Chief Assistant Insurance Commissioner of the State of California
Vernon Timmons
Economic Development Agency of State of California
William T. H Tulloch
President, San Diego County Farm Bureau
James E Umfrid
Assistant Regional Tax Commissioner, Santa Fe Railway
Max Eddy Utt
Association of Southern California Homes for the Aged
Don Vial
California Labor Federation, AFL-CIO
Bruce Walker
Assistant Executive Officer, Franchise Tax Board
E F. Wanuka
Assessor, County of Contra Costa
Philip Watson
Assessor, County of Los Angeles
Carl E Weidman
California Land Title Association
Dr Felix Weil
Secretary, Property Taxpayers Council
Ronald Welch
Assistant Executive Secretary, State Board of Equalization
Eugene B Wilson
Resident Counsel, California Retailers Association
Russell Wolden
Assessor of City and County of San Francisco

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963–65

VOLUME 5 NUMBER 9

FINAL REPORT

ASSEMBLY INTERIM COMMITTEE ON FISH AND GAME

MEMBERS OF THE COMMITTEE

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VINCENT THOMAS, *Vice Chairman*

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JAMES R MILLS
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R Kieth Binford, *Special Consultant*
Helen R. Trainor, *Committee Secretary*

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA
January 1965

HON JESSE M UNRUH
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON JEROME R WALDIE
Majority Floor Leader

HON ROBERT T MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON FISH AND GAME
January 8, 1965

THE HONORABLE JESSE M. UNRUH
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
Assembly Chamber

Gentlemen:

In accordance with House Resolution 500.8, your Interim Committee on Fish and Game herewith presents a report of findings and conclusions together with recommendations and substantiating material concerning those subjects and bills assigned and studied by this committee for the interim period 1963/1965.

Respectfully submitted,

PAULINE L. DAVIS, *Chairman*
Assembly Interim Committee
on Fish and Game

INTRODUCTION

All through the interim period, the question of how to place value and what kind of value should be placed on the state's natural resources came again and again before the committee at hearings, and through the mails

This, most certainly, is not a new problem, but our population pressures and increasing interest in outdoor recreation by millions of Americans have given the question of value a new acuteness The question is not entirely one of economics, of general or special funds, nor of who pays the bill for increased efforts to enhance or preserve our natural resources There are esthetic values, the preservation of natural beauty, that often are set aside and ignored in favor of dollar values The act of ignoring such other values, however, is in effect, a decision *against* natural resource preservation and enhancement

When the coastal forests were logged decades ago, and hundreds of streams were choked with timber debris, and later erosion further damaged the streams, the age-old beauty of the forest was disturbed, but the silver salmon, an important recreational and economic asset, was pushed to near extinction

The economic advantage accruing to the timber interests from these methods of harvesting a natural resource was done at the expense of another vast, important economic resource of the future, the silver salmon fisheries

When decisions were made to build an irrigation system including damming the San Joaquin River, the economics of agriculture dictated the necessity, but the San Joaquin River's king salmon runs suffered near extinction and the pollution of the rivers which followed served to further the damage to the fishlife of that drainage system When freeway construction, in the interest of economy of route, damages, destroys or forever alters a natural setting, any other value has been set aside or negated in the interest of economy

No one can question the value of increased irrigation water to the general economy or the need for good highway transportation, but a serious question can be raised as to the lack of planning to prevent the loss to the economy of an important commercial and sport fishery, and to the virtual disregard of other values

Economic values are an important incentive, an easy-to-define and understood basis for public decisionmaking There is no question that economic values to society must be considered in expenditure of public funds, and appropriate criteria for defining areas of state responsibility to the general public and to specific segments of the public are seriously needed

If the commercial activities of the salmon fisheries contribute jobs, taxes and benefits to the whole state, then, perhaps, the state's efforts to increase the number of salmon, protect spawning gravel, and conduct research might well be supported by the economy as a whole

This is an example of economic criteria for making decisions which are not available to policymakers in California because no effort has been made to discover or define the contribution made by the state's natural resources to the general economy.

There is also another seriously needed element in public policy formation. In consideration of economic decisions, how do you justify the inclusion in the deliberations and give weight to criteria which are subjective; i e, beauty, spiritual uplift, the outdoor experience, the access to solitude—these are additional criteria for decisionmaking that are difficult to assess and, hence, more often completely excluded from public policy formation.

It is the intention of this committee to open both the question of defining economic criteria for decisions in natural resource policy and the question of subjective criteria as a base for public decision. If our society is to progress, it must find a balance between these two. Subduing the natural environment is no longer man's greatest task or greatest challenge Other tasks and challenges are absorbing his collective attention now, and the natural endowments of our state might well slip away into oblivion if some criteria to prevent this is not defined and utilized by the policymakers of our state

FISCAL AFFAIRS
Department of Fish and Game

Prepared by
OFFICE OF LEGISLATIVE ANALYST
STATE OF CALIFORNIA

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NOVEMBER 1964

I. ORIGIN AND SCOPE OF THE STUDY

This study of the Department of Fish and Game was undertaken at the request of the Assembly Interim Committee on Fish and Game and the Assembly Rules Committee The committees asked for a review of the programs of the department from a fiscal point of view and identification of areas needing attention of the Legislature either in the form of budgetary revisions or new legislation

The requested study proposed a review of the objectives of the Department of Fish and Game and provided that on the basis of the objectives and fiscal data available, or to be gathered in the study, the activities of the department were to be arranged in a program format Analysis of the program format was to be the final step in the study to identify problem areas on which suggestions or recommendations to the committees would be made

As the study progressed, it became evident, as discussed in more detail in the next chapter, that the lack of clear departmental objectives did not permit developing at this time a format adequate for program analysis The emphasis of this study was therefore shifted to explore more fully the problems of defining departmental objectives and to give particular attention to the possibilities of resolving these problems In addition, the committees added a further request for a review of General Fund versus Fish and Game Preservation Fund financing of the Department of Fish and Game Finally, this report includes an enumeration of specific problem areas in which suggestions or recommendations are made for savings, increased efficiency or other improvements which were identified during the course of the study

In 1958 the Legislature ordered an extensive review of the Department of Fish and Game It contained an extensive review of the department's planning, administrative and organizational problems In contrast the present study of the Department of Fish and Game does not contain any analysis of fish, game and wildlife management as a specialized field of knowledge since it is beyond the scope of the study Our study does touch on many of the department's planning, administrative and organizational problems discussed in the 1958 report It is interesting to note that many of the department's problems of this type are essentially the same ones found in 1958

A large number of the resources management recommendations made in the 1958 report have been adopted by the department and several of the internal management recommendations have been adopted in part Other innovations or improvements in the report have also been adopted by the department in the past few years Unfortunately, some of its problems have grown rapidly also and new ones have occurred so that, overall, the department is still confronted with many serious problems Basic to many of these problems seems to be the continuing difficulties in clarifying the objectives of the department.

II. OBJECTIVES OF THE DEPARTMENT OF FISH AND GAME

Essential to the most efficient and rational operation of any governmental undertaking is a clear definition and understanding of the objectives an organization is to achieve Otherwise, it is difficult for any governmental program to be organized, financed, executed and finally evaluated. Much of the difficulty in the state's activities with respect to fish and game can be traced directly to the uncertainty or lack of agreement on objectives because these objectives have changed with time and with differing uses for the resources involved

The Fish and Game Code states that the fish and wildlife of the state belong to the people of the state. Currently the use of fish and game by the general public is as a food supply made available through commercial food channels In other respects the public ownership of fish and wildlife is largely for its aesthetic and moral value. Thus, there is a broad and vague public interest in all fish and wildlife and a very special interest among hunters and fishermen in certain species of fish and wildlife that they prefer to take either for its food or recreational value.

The hunters and fishermen are a minority of the citizens of California. For example, 641,038 hunting licenses and 1,587,773 sport fishing licenses were issued in 1962 calendar year and 1962–63 fiscal year, respectively, out of a total state population of 17,044,000 in July 1962. It is not unusual for the State of California to establish a special organization operating out of a special fund to finance work done by the state in behalf of a segement of its population These programs frequently lead to controversy, however, if the general public interest is not clearly defined and distinguished from the special interests

The Department of Fish and Game manages the fish and game resources of the state primarily in behalf of the hunters and fishermen who support its activities through their purchases of hunting and fishing licenses This naturally leads the department to give utmost consideration to the wishes of the hunters and fishermen because, among other reasons, it has an interest in keeping revenues coming into the department to pay the costs of departmental operations Yet the department also has a fundamental objective to preserve and protect fish and wildlife throughout the state whether or not of interest to fishermen and hunters who support the department For example, whenever the department proposes to discontinue the wildlife refuges it operates in order to maximize hunting, elements of the general public oppose these efforts in the belief that a public interest is served by the refuges

It is generally agreed that the department also has another prime objective to manage the fish and game resources of the state in order to "conserve" such resources Webster defines "conservation" as "a conserving, preserving, guarding, or protecting, a keeping in a safe or entire state, preservation" Conservation usually includes reasonable use of naturally occurring resources such as minerals and timber to meet the needs of mankind and where possible to provide for natural regrowth to develop a sustained yield or continuing supply. Conservation does not normally include the farming approach, i.e., raising a supply to meet a demand The farming approach is frequently used in "put and take" operations of fish and game management and creates

confusion when it is not clearly distinguished from the conservation approach such as natural habitat improvement

Lack of clarity in basic programs can also lead to confusion in derivative programs. Thus, proponents of water projects are disturbed by the fact that the department exerts strong opposition to many water resources development projects on the grounds that they may destroy a natural fishery, while it simultaneously spends large sums for put and take fishing and is actively engaged in perfecting the use of water project reservoirs for a warm water fishery. This indicates the existence of alternative solutions to the fishery problem created by water development projects, but there is no clear policy for applying these alternatives The department certainly should not be criticized for desiring to utilize all available resources and for exploring new techniques to increase resources, but it is difficult to tell when the department is doing this and when it is only reacting to diverse pressures

In the preparation of this report, an effort was made to identify that portion of the work of the Department of Fish and Game which has a broad, general public interest The following were identified: import quarantines on various undesirable animals, certain aspects of water pollution control, operation of sanctuaries and refuges where no hunting is allowed, and protection of certain rare species With the exception of the department's water pollution control work, which is discussed in Chapter VI, the activities of the department with a broad public interest are minimal in nature and involve virtually no money. For example, although the Department of Fish and Game has a quarantine on starlings it is doing no work on the control of starlings and their depredations

A number of activities which directly benefit fishing and hunting were found to be supported by the General Fund, or are generally expected to be financed from the General Fund Among these are the projects of the Wildlife Conservation Board and the payments for enhancement of fish and wildlife at water projects These are discussed in detail in Chapter V.

Most of the activities of the department fall between the above two categories because they serve both a general public interest, to a limited extent, and a special interest on the part of hunters and fishermen, to a major extent This is the area where the most money is spent, where state policy is very uncertain and where most of the difficulties in establishing departmental objectives and programs occur

A further grouping has arisen among fishermen and hunters This consists of clubs and the commercial hunting establishments with limited memberships and rather expensive dues Whereas in the put and take programs for catchable trout, the trout are placed in public waters that are easily accessible to the public, the clubs and commercial establishments raise much of their own catches under the close supervision and sometimes with the assistance of the department, or as in the case of duck clubs, are favorably located next to publicly owned and operated management areas These clubs and commercial establishments have tended to produce "easy" hunting Their activities serve neither the general public nor the typical licensee yet the department spends money to assist them.

An effort was made in this study to determine the existence of a comprehensive, generally recognized budgetary rationale or philosophy covering the expenditure of state funds for fish and wildlife activities based on the beneficiaries identified in the preceding paragraphs None was found It was found that as a practical matter the department's statutory responsibility to protect and preserve all fish and wildlife in the state has required the department on occasion to expend its special fund money for the public benefit At the same time it was found, as discussed in Chapter V, that the state spends a substantial sum of General Fund money for purposes which exceed the public interest and directly serve the interests of the fishermen and hunters

Since the public own the fish and game of the state, it would be reasonable to surmise that the people of the state have placed some financial burden on the hunters and fishermen of the state in return for the privilege of taking their fish and game This burden might reasonably be assumed to be the protection of all the fish and wildlife of the state in behalf of the general public As already noted this appears to be the practical effect of the present law However, the general attitude seems to be developing within the department and among conservationists that it is a General Fund responsibility to protect that part of the fish and wildlife of the state which hunters and fishermen do not wish to take Such a policy might mean that the hunters and fishermen have an obligation to the people of the state only for the protection and replenishment of the fish and game species they wish to take Either way, the concept of the relative responsibility which should be borne by the public or the hunters and fishermen to protect fish and wildlife remains a point of debate As a practical matter under present practices it seems to vary with the species involved

The State Constitution authorizes the Legislature to delegate legislative authority to the Fish and Game Commission and this has been done This may be one reason why the Fish and Game Code does not give adequate recognition to the need for clearly stated objectives and fiscal or operating policies derived from such objectives The interests of the general public versus those of the licensed fishermen and hunters are not adequately defined Broad programs are authorized without stating how they relate to other programs Directives to conserve what is natural and if possible restore it leave an almost unlimited area of discretion to the Department of Fish and Game The regulations and policies of the Fish and Game Commission narrow the area of discretion somewhat, but still leave a broad area for departmental discretion (See Fish and Game Code Sections 325, 355, 452, 1000, 1007, 1008, 1009, 1120, 5650 for examples)

In an attempt to solve the problems of uncertain departmental objectives, a major public information and conservation education program by the Department of Fish and Game was undertaken Its purpose was to win public acceptance for the department's views on management of fish and game and particularly the either-sex deer hunt Such an information and education program has been undertaken by the department, but it is doubtful that it has contributed much even though almost $600,000 was spent last year Sound programs and public acceptance of fish and game management would probably result more directly from discussion of basic departmental objectives and agreement on

them If agreement on objectives can be reached, the need for selling the department's programs will diminish because the basis for much of the controversy will have been removed

At this point, however, it is important to recognize that the status of public reaction and thinking may not permit agreement on certain objectives Even if this is the situation, it is desirable to establish the extent of this condition and to recognize that public information activities alone will not resolve it It is also important for purposes of this study to recognize that resolution of the department's objectives in a satisfactory manner is an important step leading to sound decisions on fiscal problems This study emphasizes developing processes to clarify objectives, policies and programs rather than to evaluate any particular decision Consistent, although not perhaps fully rational, programs can be constructed around almost any reasonable set of objectives. This is not possible, however, when these objectives are in conflict or unclear

III. DEPARTMENTAL PLANNING

A departmental planning effort was not undertaken until last fiscal year when, as part of the State Development Plan, the Department of Fish and Game began to develop a significant planning effort The concept of planning for the Department of Fish and Game is changing Present planning efforts are more sophisticated and reflect the need to integrate planning for the future of our fish and game resources not only to supply program data to the Department of Fish and Game but to integrate these data in a plan for the comprehensive utilization of all the state's natural resources

Last year our analysis of the fiscal year 1964–65 Budget Bill reviewed the impact of the State Development Plan on the Resources Agency It suggested that the departments of the Resources Agency should carry the primary responsibility for meeting their planning needs, rather than turning the work over to outside planners or consultants We are pleased to note that this is the direction of the planning effort in the Department of Fish and Game We are also pleased to note that the Administrator of the Resources Agency has established a Resources Agency Programing Committee, representing the constituent departments of the agency, with the responsibility to advise the administrator on the following

(a) Definition of long-range planning policies, objectives and programs of the agency,
(b) Advice, review, and encouragement of development and implementation of long-range planning programs by constituent units of the agency,
(c) Coordination of the long-range planning programs of the agency units,
(d) Coordination of the long-range planning interests of the agency with the planning efforts of outside organizations

The planning efforts of the Department of Fish and Game are therefore included in provisions to integrate them with related planning involving forestry, water resources, recreation, soil conservation, etc, going on in state government

Federal grant funds available to the State Office of Planning for expenditure on the State Development Plan in the amount of $110,000 have been allocated to the Department of Fish and Game for the planning work A small departmental coordinating staff has been organized which reports to the deputy director This staff provides planning coordination and instructions to the regional managers and the staff branches in Sacramento who actually are doing the planning work. The planning effort consists of three stages The first stage is an inventory of all fish and game resources and habitat, the second stage is a projection of land-use changes and patterns of development to show how the presently-existing resources will be changed in the future, and the third stage is the determination of the needs for fish and game resources in the next 20 years Finally, conclusions will be made on the best methods to supply the estimated needs The work now underway is scheduled to be completed in October 1965

Our review of the department's planning effort indicates that it is making progress The results that may be available from this 18 months' project will surely be limited and leave much to be desired because this is a first effort Just how much the department can reasonably accomplish is not known, but it appears to be making a genuine effort for which it should be commended

It has already been pointed out that the planning function can provide invaluable information to resolve some of the conflicts in basic objectives of the department A look ahead will provide significant guidance on the extent to which the department can be a conservation agency or will be forced to adopt put and take farming approaches Coordination with resources planning work of other departments may develop compromises to set aside areas where conservation efforts will be paramount while designating other areas where farming approaches will be employed For example, it is already becoming apparent from the long-range planning work that the Department of Fish and Game is doing with the Department of Water Resources in the north coastal area that water resources development on the lower Klamath River will be expensive and that the construction of a large dam on the lower river may destroy the anadromous fisheries of the river As the Department of Fish and Game develops information on the future demands for this type of fishing and the future resources available, it may be possible to make an informed decision whether the river should be preserved in a wild, undeveloped state

A promising planning job has been done by the Department of Fish and Game, under financing provided by the Department of Water Resources, to solve the most important problems of fish and wildlife protection associated with the Delta Water Project In this case the necessary work was carefully determined, attention of the personnel was concentrated on important features and extraneous influences eliminated The results have been startling and appear to demonstrate how water can be transferred across the delta by a peripheral canal without significant detriment to fish and wildlife and with major enhancement The findings of the department are reported in the third progress report with simple language and logical discussion A highly controversial problem has probably been greatly eased by diligent planning.

Other difficult decisions confronting the department should also receive assistance in their solution by the right type of long and short range planning Thus planning will provide some leads to the type of research that the department should be concentrating on by showing the relative magnitude and the nature of some of its future problems. Planning of the right type should also assist the department in distributing its available funds and manpower more precisely among the various approaches to species management such as habitat improvement, hatchery operations, artificial environments, etc In short, planning should provide a powerful basis for formulation of more efficient programs within the department

IV. PROGRAM FORMULATION, BUDGETING, AND COST ACCOUNTING

A program budget presents the proposed expenditures for a department on the basis of money requested to carry out a given program or activity. The purposes, timing, expected results and reasons for doing the work are spelled out in the budget justification material Essentially, program budgeting involves requesting funds on the basis of what is to be accomplished with the money rather than costing out the positions and operating expenses of a department Emphasis is placed on both work to be done and its cost rather than on cost alone

Most state departments have prepared their budgets by computing the costs of the positions needed and the operating costs associated with these positions The accounting systems of these departments have been based on a similar approach, one that determines the expenditures for salaries and wages and associated operating expenses in an organization This is the traditional accounting system used in government at all levels, but it differs markedly from the system used by business Business firms prefer a cost accounting system that reports the cost of producing a given product or each of a variety of products manufactured A cost accounting system has seldom been used in government except for capital outlay projects, perhaps because its application requires a definition of the work to be done before costs can be charged to the individual tasks or projects

Program budgeting and cost accounting are complementary and can be fitted together for governmental use to make a complete program control system to improve the internal management of a department as well as to serve the budgetary and accounting requirements of government The common denominator is the definition of a department's programs on a basis adequate for both budgeting and accounting purposes, so that the accounting for expenditures can be made against the same work used in budgeting and requesting funds In addition, for certain activities a work order system can be added which controls the timing and rate of expenditure, so that no employee can charge expenditures to a given job until a work order for that job is issued The work order should contain both a description of the work and authorization to charge a given amount of money up to the amount stated in the budget. A work order can be kept open from one fiscal year to another so that expenditures for a long-range project can be accumulated on it, or it can be terminated to assure that no expenditures for the work it covers are made at any time the work is not desired.

The Assembly Ways and Means Committee, the Resources Agency Administratrator, the Department of Finance, and the Legislative Analyst have been urging the adoption of program budgeting in the Resources Agency. Program budgeting and a cost accounting system are well suited for the work of a department such as the Department of Fish and Game. Much of the work of the Department of Fish and Game is represented by individual projects which can be clearly defined and which, when properly organized into a rational budgetary arrangement, constitute an annual plan to accomplish given objectives.

Particular attention is given to program budgeting and cost accounting in this report because it represents an extremely important step which the Department of Fish and Game is now taking and which is probably the greatest improvement in its management that can be made at this time. A review of the actions now underway is needed to clarify the present status of events and develop needed legislative action.

Last year the Department of Fish and Game prepared its first program budget for "information purposes." It was a revision of the official line item or organization budget recast into an approximation of a program budget format. It was recognized to be a first step and is to be followed this year with another informational program budget prepared on a revised and improved basis. The official budget of the department will still be the line item budget.

The program budget of the Department of Fish and Game was deficient in that it grouped expenditures into such large programs or activities that it communicated less information than the old line item budget. For example, the federal government has required that Pittman-Robertson and Dingell-Johnson grant moneys be detailed on a project by project basis. These projects have been regularly included in the line item budget of the department which to this extent has approximated a limited program budget. When the department prepared its program budget last year it consolidated these projects under vague titles such as "fact gathering" and "evaluation." This consolidation actually reduced the overall ability of the program budget to provide information although some new information was added by other programs that were identified. The department should be moving in the opposite direction so that the various projects it finances with Fish and Game Preservation Fund money are detailed in a manner similar to that now done in the line item budget for federal expenditures.

Although the federal projects are detailed in the Governor's Budget at this time, no comparable data are available for related work done by the department using state rather than federal funds. Obviously a very close program relationship exists, but it cannot be evaluated through the present budgetary processes. A comparison of the federal and state programs gives a clear illustration of the value of program budgeting when compared to line item budgeting.

The program budget not only can communicate much significant information for budgetary purposes to the Legislature and other interested groups but it also can facilitate the preparation of better departmental programs and budgets as well as contributing to sounder decisions by departmental management. It is extremely difficult to evaluate the results of many departmental activities under the present budget because it is not clear what is to be done or what is hoped to be accom-

plished Without this information it is almost impossible for anyone in a management position to judge accurately whether the expenditure of funds was sound and wisely administered

It is clear that the department does have problems in its program execution For example, a review of the Final Segment Report, dated August 21, 1964, for Dingell-Johnson program expenditures shows innumerable examples of work scheduled which could not be done because of higher priorities for other work, shortage of manpower, inadequate planning and other reasons A highly decentralized organization such as the Department of Fish and Game has a special need for strong program control and budgeting because of the autonomy necessary if each of the five regional offices is to react to its diverse local problems However, without strong program direction from the Sacramento office, the regions can become too autonomous and develop independent and duplicating activities in fish and game management studies, research, or fact gathering without sufficient regard to the work of other regions and the knowledge of the central office specialists

Legislation was enacted in 1959 to require the Department of Fish and Game to establish a cost accounting system This system has been established and quarterly cost accumulation reports on departmental expenditures are furnished to the Legislature The present system appears to represent more motion than substance since the accounts are excessively broad categories of work and there is little evidence that it is being used by management of the department for programing or expenditure control purposes since the cost accounts are not integrated into a work order system nor are they set up on the basis of projects or investigations In addition, the present practice of spreading costs for "other activities" distorts the expenditure figures by adding to each expenditure account some portion of "other activities" expenditures which do not relate to the account to which it is added It has also been noted that a new account for "planning" does not include expenditures by field personnel. These personnel are currently devoting major portions of their time to the planning inventory but are charging their time to other accounts and thereby undermining the cost accounting system

The Department of Fish and Game presently has two separate accounting systems, the traditional line item accounting system for budgetary control and the cost accounting system Under present law it is required to have both, but it does not need both and should not have both An unnecessary expenditure of Fish and Game Preservation Fund money is required to keep both systems going No department of state government has yet established either a cost accounting system or a program budget which has not involved setting up at least a partially duplicating accounting system This statewide practice is becoming increasingly expensive The Department of Fish and Game presents an excellent opportunity to integrate its cost accounting system and its program budgeting to provide a single system that meets all accounting and control requirements (including personnel transactions and other needs) without duplicate accounting systems

It is recommended that Sections 13200–13204 of the Fish and Game Code be revised to require that the cost accounting system of the depart-

ment be perfected and be made the official basis for control of all aspects of internal management and budgeting

In summarizing the results of this study regarding the broad aspects of fiscal management of the Department of Fish and Game, it may be stated that:

(1) The department and the Legislature should act to clarify as much as possible the uncertain and conflicting objectives of the department

(2) The department should proceed with its planning efforts and should develop planning approaches that will assist in increasing the precision of its programming by facilitating the evaluation of alternative programs with a view to long-range considerations.

(3) An integrated program budget and cost accounting system should be developed so that the internal management of the department's programs can benefit from more specific and direct channeling of the department's funds and manpower into projects and investigations which are clearly defined and which demonstrate the greatest promise for both long- and short-range results.

Disproportionate emphasis on any individual phase of management such as planning, program budgeting, cost accounting or other management improvements will not by itself produce the most effective results for the department All of these management tools should be developed and applied simultaneously and in a carefully conceived pattern to produce major improvements In view of the great variety of field activities of the department's personnel and the almost unlimited choices before these personnel in making program decisions, it is especially important that program formulation be placed on a basis which emphasizes clear definition of the program, the nature of the work to be done and the expected results so that adequate evaluation of the proposal and the results can be made

V. SOURCES OF FUNDS FOR DEPARTMENT PROGRAMS

The request for this study of the Department of Fish and Game specifically included a review of sources of funds Historically, the main source of funds for operating the department has been the Fish and Game Preservation Fund According to the Constitution as well as the Fish and Game Code, all money collected under any law of the state relating to the protection, conservation, propagation or preservation of fish and game and all fines imposed by any court for the violation of such laws must be used and expended exclusively for the protection, conservation, propagation and preservation of fish and game, and for administering and enforcing laws relating to fish and game.

By far the greatest source of revenue to the fund has been the sale of hunting and fishing licenses and stamps Over the years the department has operated within its annual revenues or utilized the revenues along with some of the accumulated surplus in the Fish and Game Preservation Fund During the early part of the 1950's, the department's operations began to eat into the surplus of the fund and, in 1957, the Legislature increased certain hunting and fishing license fees.

Since that time, the surplus in the fund has increased until today the amount of the surplus is larger than it has been at any time during the past 15 years

FISH AND GAME PRESERVATION FUND
ACCUMULATED SURPLUS, END OF EACH FISCAL YEAR
MARINE RESEARCH COMMITTEE FUNDS EXCLUDED

Fiscal Year	*Amount*	*Fiscal Year*	*Amount*
1950–51	$5,940,649	1958–59	$3,373,676
1951–52	5,667,177	1959–60	4,527,340
1952–53	5,421,193	1960–61	4,987,615
1953–54	5,285,078	1961–62	5,149,998
1954–55	5,129,036	1962–63	5,418,437
1955–56	4,662,079	1963–64	6,481,300
1956–57	3,275,472	1964–65*	6,200,958
1957–58	2,615,891		

* Estimated

While the accumulated surplus in the fund is at a relatively high level in comparison to prior years, the ratio of the surplus to the department's annual budget has declined In fiscal year 1950–51, the budget for the department was roughly comparable to the amount of the accumulated surplus in the fund The 1964–65 surplus is about the same but the budget is roughly twice as great as the surplus The present fund revenues cover all expenditures and leave some increase in surplus They are therefore considered to be adequate and there does not appear to be any necessity for an increase in license fees to support the department's programs at their current level No other higher level has been given major consideration by the department

In addition to support from the Fish and Game Fund, the department also receives financial assistance from the federal government through the Pittman-Robertson and the Dingell-Johnson Acts. The Pittman-Robertson program is financed from a federal exise tax on sporting arms and ammunition and Dingell-Johnson from a tax on sport fishing tackle and equipment The federal government pays approximately 75 percent of the cost of approved projects undertaken with this money while the state pays the balance of about 25 percent

According to the federal laws, the funds for these two programs may be spent on wildlife restoration projects, including acquistion and development, and research into problems of wildlife and fisheries management The department has elected to utilize its federal game funds for the operation of waterfowl management areas and some waterfowl and upland game investigation projects The fisheries' money has been allocated to projects and research on inland fisheries and marine sport fishing in the proportion which the number of license buyers for ocean sport fishing bears to the number of licenses to fish on inland waters The present apportionment is approximately 65 percent for inland fisheries and 35 percent for marine fisheries projects

Although most of the funds for the operation of the department come from federal or state moneys derived from hunters and fishermen, there are several areas in which the General Fund pays for fish and game progams Included among these is the Wildlife Conservation Board which was established in 1947 The purpose of the board, according to the code is " .. to acquire and restore to the highest possible level, and maintain in a state of high productivity, those areas that can be most

successfully used to sustain wildlife and which will provide adequate and suitable recreation " As provided in Section 19632 of the Business and Professions Code, support of the Wildlife Conservation Board programs comes from the annual transfer of $750,000 of horserace license revenues to the Wildlife Restoration Fund This revenue would otherwise go to the General Fund

In the early years of the board's operations, funds were allocated mostly for such large capital outlay projects as hatcheries and waterfowl management areas However, the board did not provide funds for the maintenance and operation of these newly acquired facilities The responsibility for the upkeep of the facilities fell upon the Department of Fish and Game and became a drain on department revenues Since that time the board has shifted its emphasis to the development of projects for which there is assurance that maintenance and operation will be provided by a local agency

Proposition 1, the recreation bond issue, was approved by the voters on November 3, 1964 This proposition includes $5,000,000 which is specifically earmarked for the projects of the Wildlife Conservation Board In the past the projects being constructed by the Wildlife Conservation Board were not subject to budgetary approval Proposition 1 requires that projects financed by the $5,000,000 shall be approved by the Resources Agency Administrator after being placed in a priority arrangement with other related projects financed under Proposition 1 It also makes the money available only after appropriation by the Legislature The availability of this large sum of bond money will require a careful reevaluation of the program of the Wildlife Conservation Board in relation to the total fish and game program of the state and the current program orientation of the board toward projects containing large elements of local interest and responsibility

As of July 1964, the Wildlife Conservation Board had allocated over $19 million for projects as follows

Fish hatchery and stocking projects	$4,434,499
Fish habitat development and improvement	2,593,933
Angling access (includes boat launching ramps and piers)	5,278,731
Game farm projects	140,805
Game habitat development and improvement	6,024,135
Hunting access	378,154
Miscellaneous	238,297
Total allocated to specific projects	$19,074,684

Several activities are carried on by General Fund supported departments which are beneficial to the wildlife and fisheries resources of the State For example, grants are made by the Soil Conservation Commission for wildlife habitat improvement by soil conservation districts, in accordance with the policy of the Soil Conservation Commission A few soil conservation districts have carried out these projects under the guidance of the Department of Fish and Game

The sole purpose of the Tule Elk Reserve in Kern County is to preserve the tule elk species as a matter of public interest The reserve is financed from the General Fund and operated by the Division of Beaches and Parks at an annual cost of $20,000 All other elk herds are under the control of the Department of Fish and Game except a

herd maintained as an incidence to operation of the Prairie Creek Redwoods State Park

As a general practice, departments that utilize inmate labor from conservation camps reimburse the Department of Conservation, Division of Forestry, for the costs Generally, the Department of Fish and Game follows this practice and so does the Wildlife Conservation Board when it finances the work However, service provided the Department of Fish and Game by inmate labor from the Mono-Inyo Conservation Camp located near Bishop has not been reimbursed In the past fiscal year, the Department of Fish and Game received approximately $32,000 in services from this conservation camp for such projects as clearing and cleaning rearing pools at hatcheries, construction of rock walls, and stream clearance projects Inmate labor from the Mono-Inyo Camp is also provided without charge to Bodie State Historic Park of the Division of Beaches and Parks, which is a General Fund supported project

A major source of financial support beneficial to fish and game interests results from the expenditure under the Burns-Porter Act of water project funds for the enhancement of fish and wildlife at state and local water projects It is generally expected that all of this expenditure will eventually become a General Fund charge although not all of the fiscal transactions involved have been spelled out by legislation or administrative policy

The Davis-Grunsky Act authorizes grants for local water projects to cover the costs of a local project allocated to fish and wildlife enhancement and other purposes A total of $130,000,000 is authorized under the Burns-Porter Act for loans and grants Of this amount, many millions of dollars will eventually be expended primarily to benefit fishermen under terms of present law and assuming the continuation of the grants during the next ten or more years These grants will primarily pay for reservoirs made usable for fishing, access to the reservoirs and perhaps some downstream fisheries enhancement

Large sums of money will be allocated to fish and wildlife enhancement at the various features of the State Water Project now being constructed by the Department of Water Resources The Department of Water Resources has estimated that perhaps as much as $200,000,000 of the eventual construction costs of the State Water Project will be allocated to recreation and enchancement of fish and wildlife For example, the capital costs allocated to fish and wildlife enhancement in the construction of the peripheral canal in the delta are presently estimated by the Interagency Delta Committee to be $46,000,000 to be shared equally by the state and federal governments Although there are now available only rough estimates of the costs which will eventually be incurred and allocated to fish and wildlife enhancement, it is possible that under present policies more than $100 000,000 in benefits may be received by hunters and fishermen from the State Water Project

The present level of expenditure from the Fish and Game Preservation Fund to support the Department of Fish and Game is approximately $12,000,000 annually, and this may be expected to increase moderately over the next few years General Fund money or money eventually expected to come from the General Fund and expended by the Wildlife Conservation Board and the Department of Water Resources, plus small expenditures made by other departments which are

beneficial to fish and wildlife, may approximate the magnitude of Fish and Game Preservation Fund expenditures or even exceed them There is presently no basis for accurate, comparison but available data suggest that only about half of the total state expenditures beneficial to fish and game will be contributed by the direct beneficiaries The General Fund will eventually pay the rest.

It has already been noted in Chapter II that there is no budgetary philosophy differentiating costs for activities of the Department of Fish and Game which benefit the general public from those which benefit the licensed hunters and fishermen Departmental costs benefiting the general public, to the minor extent they are incurred, are paid from the Fish and Game Preservation Fund

The policy is stated in Sections 11912 and 11913 of the Water Code that costs of state water projects allocated to enhancement of fish and game are nonreimbursable to the project's water contractors, that this enhancement benefits the general public and shall therefore be paid from the General Fund However, the fish and game resources enhanced by the project are not available to the general public, but only to those portions of the general public who purchase licenses and thereby contribute revenues to the Fish and Game Preservation Fund. In the case of recreation expenditures at state water projects, these expenditures supplement the programs of the Division of Beaches and Parks which is a General Fund program maintained in behalf of the general public, and are therefore consistent with the financing pattern established.

It is recommended that the Legislature explore and develop new and more consistent financing patterns for the fish and game programs of the state A general objective consistent with the present policies of self-support for the Department of Fish and Game should be for self-support of all fish and game programs and benefits The major area needing financing lies in the extensive costs of water projects allocated to the enhancement of fish and wildlife (primarily fisheries benefits) which are now anticipated eventually to be General Fund costs. Guidelines for determining the extent to which such water project costs should be allocated for payment by fishing licenses should be established by the Fish and Game Commission and the Legislature.

The material contained in Chapters II and V represents a search for the basic elements needed to formulate a fiscal rationale for the Department of Fish and Game As such, it is only a beginning that will require much additional work and it should be viewed in that light rather than as firm conclusions

VI. SPECIFIC RECOMMENDATIONS

1. Eliminate Some Hearings for Antlerless Deer Hunts

In 1964, the department recommended 37 antlerless hunts. The Fish and Game Commission set 20 hearings for 38 hunts in 20 counties. There was no opposition at the hearings in 12 of the 20 counties

The cost of the hearings is not great, involving mostly travel, stenographic, and duplicating costs but there is no usefulness in hearings where the program is well known and no controversy exists.

It is recommended that the Fish and Game Code be amended so that whenever there was no opposition at hearings during the previous year

and no written opposition is received by the commission within a certain period of time after published notice, no hearing be held.

2. *Remove Restrictions on Surplus in Fish and Game Preservation Fund*

Section 13005 of the Fish and Game Code requires that 50 percent of all revenue attributable to the increase in license fees established by the Legislature in the 1957 Regular Session shall not be available for expenditure unless and until specifically appropriated by the Legislature. Currently, 50 percent of the increase amounts to about $1.7 million As a practical matter, this restriction has no effect Language added each year in the department's support appropriation has the effect of removing the restriction. The unrestricted surplus of $4 7 million in the Fish and Game Preservation Fund is sufficiently large also to negate the restriction Meanwhile, the department continues to determine monthly the amount of 50 percent of these increased revenues The section only requires additional accounting work and keeps ineffective language in the Fish and Game Code It should be deleted from the code

3. *Transfer Certain Water Pollution Control Enforcement Work*

NOTE The Committee on Fish and Game, because of the far-reaching implications of this recommendation, withheld its own recommendation until further study and research can be accomplished

The department spends approximately $225,000 a year on activities relating to investigation, analysis and evaluation of water quality, and the enforcement of water pollution laws and regulations These activities include field investigations of existing or potential pollution problems, laboratory investigations on potential pollutants to determine effects on fish and wildlife, special investigations at the request of regional water pollution control boards, the review of pollution control board requirements and participation in court cases

It is extremely difficult with available information to determine whether there is any significant amount of duplication between the work of other state agencies with responsibilities in water pollution control and the department There are presently four agencies in water pollution control work and substantial amounts of unproductive effort result merely because of the major efforts needed to coordinate all the various agencies involved One means of eliminating any expenditures that are not absolutely essential to water pollution control is to concentrate the work in those agencies that have the most important responsibilities for each phase of the work The Department of Fish and Game has a major responsibility for research on fisheries problems involving water quality and for recommending provisions of waste discharge requirements where fishlife is affected This important responsibility should remain with the Department of Fish and Game.

Four agencies of the state have the responsibility for enforcement of waste discharge requirements The Department of Fish and Game is one of these agencies but the primary responsibility lies with the individual discharger and the regional water pollution control boards In all state agencies except the Department of Fish and Game, the enforcement activities are supported from the General Fund Maintaining good quality water throughout the state is in the interest of the general public and is properly a General Fund responsibility after waste discharge

requirements are set Unless the fishing and hunting interests of the state wish to use their money for financing the enforcement of waste discharge requirements which are of general public interest, this enforcement activity should be eliminated and left to the other state agencies concerned, principally the regional water pollution control boards In view of the scattered nature of this work as performed by the Department of Fish and Game, it is not possible to determine the precise impact of this recommendation, however, it is likely that only a few man-years of work are at issue Since the recommendation is not to transfer the work but for the Department of Fish and Game to withdraw from work which is essentially already being done by other agencies, no significant additional funding from the General Fund is expected to be needed To the extent that personnel of the Department of Fish and Game travel in the headwater areas of the state and observe pollution conditions, an exception should be made, and these personnel should gather a sample of the polluted water and report the condition to the regional boards In other areas of the state the Department of Fish and Game should withdraw from enforcement activities

4. Application for Permits Before the State Water Rights Board

The Department of Fish and Game reviews applications of proposed water projects to determine the effect the construction will have on fish and wildlife resources of the state The department spends annually approximately $375,000 in this activity, a major portion of which is related to applications filed with the State Water Rights Board The workload of the department could be more efficiently handled and perhaps eventually reduced if the agency requesting a project which will divert or affect a stream would include in its application to the State Water Rights Board data on preservation of fish and wildlife Eventually provisions to meet fish and wildlife needs must be formulated as the project progresses to hearing, and experience indicates that provision for fish and wildlife will be included under present laws where it is important An amendment to the Water Code to require that data on fish and wildlife be included in the application for a permit to appropriate water would provide a more orderly and efficient means of doing what is now done in an inefficient and haphazard manner.

5. Wildlife Protection

The wildlife protection activities of the department account for the largest expenditure of funds of all the activities in the department The current rate is about 31 percent of the department's budget, or approximately $3,750,000 The work consists of patroling with the intent to prevent violations, issuing warnings and citations, checking licenses of hunters and fishermen, investigating and apprehending violators of fish and game laws, and assistance in presenting court cases In addition, the warden force is responsible for hunter safety training, including the training of instructors Originally the wardens made up the entire Department of Fish and Game However, as time went on it became apparent that the preservation of habitat and the management of wildlife resources was as important as the enforcement of the laws regulating the taking of fish and game

The size of the warden force has remained fairly constant in recent years However, there has been no detailed evaluation as to whether the wardens are being utilized most effectively in view of the knowledge that current wildlife management possesses In 1954, the Department of Fish and Game requested the Department of Finance to survey the Wildlife Protection Branch " to establish a basis upon which to judge the effectiveness, and present and future staffing requirements of this important function " The Department of Finance issued a report which was" not intended as a final answer since study of the problem has not been exhausted " However, the report did recommend that fish and game wardens be budgeted on the basis of one such position for each 7,500 angling and hunting licenses sold According to the report, "admittedly this ratio of wardens to licenses is an arbitrary one " In other words, the scope of the study by the Department of Finance was too limited to cope with the problem of developing criteria for the staffing of the warden force

In 1958, the Booz, Allen and Hamilton report on the Department of Fish and Game did not evaluate the work of the wardens but recommended that the "generalist" concept be adopted in the department This approach would have integrated the field personnel and activities of the Wildlife Protection Branch with inland fisheries and game management field work The recommendations would have required a departmental reorganization of major proportions and therefore was not followed

It is our understanding that the department has begun an evaluation of the Wildlife Protection Branch with a goal of establishing criteria for the number and location of wardens The study is approriate and should be helpful in future evaluation of this activity

Included in the wildlife protection activities is the enforcement of marine fishing regulations along the coast The department has several boats for this purpose The largest is a relatively new, steel-hulled patrol boat, the *Albacore* The boat is stationed at Sausalito and is responsible for patroling the coast northward from San Francisco About 90 feet in length the boat was built in the late 1950's for the department at a cost of approximately $280,000 The crew consists of a warden captain, a boarding officer warden, an engineer and three deckhands Fully staffed, the annual direct operating costs of the vessel are about $70,000, according to the department Amortizing the cost of the vessel and including overhead costs, the annual cost of operating the boat is roughly $90,000

The *Albacore* is proving a costly operation for the effectiveness it has displayed According to the daily log of the vessel, the crew during the period from July 1, 1963, through June 7, 1964, a period three weeks short of one year, carried out enforcement activities as follows

Angling licenses checked	50
Commercial licenses checked	91
Registrations checked	45
Citations issued	4

Of the four citations issued, three were for commercial fishing without a license, and one was for the commercial taking of crab within the closed area of Humboldt Bay We do not suggest that workload effectiveness be measured exclusively by citations, but an expensive enforcement

vessel must do more than make an appearance and give token effort to enforcement if it is to justify its cost.

The department believes the north coast area needs some marine patrol It is recommended that the department investigate alternatives for patrolling the fishing activity in that area and alternate uses or disposal of the *Albacore* in favor of a smaller, less expensive craft or even in favor of leasing a boat as needed

VII. SUMMARY OF RECOMMENDATIONS

1 The department and the Legislature should act to clarify as much as possible the uncertain and conflicting objectives of the department.

2. The department should proceed with its planning efforts and should develop planning approaches that will assist in increasing the precision of its programing by facilitating the evaluation of alternative programs with a view to long-range considerations.

3 An integrated program budget and cost accounting system should be developed so that the internal management of the department's programs can benefit from more specific and direct channeling of the department's funds and manpower into projects and investigations which are clearly defined and which demonstrate the greatest promise for both long and short range results

4 The Legislature should explore and develop new and more consistent financing patterns for the fish and game programs of the state A general objective consistent with the present policies of self-support for the department should be for self-support of all fish and game programs and benefits. The major area needing financing lies in the extensive costs of the water projects allocated to the enhancement of fish and wildlife, primarily fisheries benefits, which are now anticipated eventually to be General Fund cost

5. The Fish and Game Code should be amended so that whenever there was no opposition at antlerless deer hunt hearings during the previous year and no written opposition is received by the commission within a certain period of time after public notice, no hearing need be held

6 Section 13005 of the Fish and Game Code, which requires that 50 percent of all revenue attributable to the increase in license fees established by the Legislature in the 1957 Regular Session shall not be available for expenditure unless and until specifically appropriated by the Legislature, should be deleted from the code

7. The department should withdraw from certain enforcement activities concerning water pollution control requirements The primary responsibility for enforcement lies with the individual discharger and the regional water pollution control boards (See page 25 for committee reservation of this report.)

8. The department reviews applications of proposed water projects to determine the effect the construction will have on fish and wildlife resources of the state. The workload of the department could be more efficiently handled and perhaps eventually reduced if the agency requesting the project which will divert or affect a stream would include

in its application to the State Water Rights Board data on preservation of fish and wildlife.

9 The department should investigate alternatives for the marine patrol of fishing activity in the north coast area and alternate uses or disposal of the patrol boat *Albacore* in favor of a smaller, less expensive craft.

By Assemblywoman Davis

HOUSE RESOLUTION NO. 407

Relating to a Study of Salmon

Resolved by the Assembly of the State of California, That the Assembly Rules Committee is directed to assign to the appropriate interim committee the study of salmon fisheries of the Pacific Coast, including the effect of the Alaskan, Canadian and northwestern states activities on the California salmon resources, and to direct the interim committee to report to the Legislature not later than the fifth legislative day of the 1965 Regular Session of the Legislature

FINDINGS

1 That the salmonoid and anadomous fish of California are vital natural assets of great economic value which have been ill used by man's manipulation and depredation of the habitat

2 That a great deal of effort has been made to end the long decline of the salmon and these efforts have apparently been successful for the silver salmon of the coastal area and much less so for the king salmon of the Sacramento River

3 That much effort and several facilities are yet needed to provide the maximum effort in rehabilitating the once-great salmon resource of the several dramage systems of California

4 That the salmon, because it is a marine resource fished by commercial and sport fisheries of several states, is, in part, an interstate concern and, as such, the federal government should participate in efforts to preserve and enhance this resource

RECOMMENDATIONS

1 That the California Legislature memorialize the Congress of the United States concerning the favorable consideration of legislation pending before that body relating to the conservation, enhancement, and development of the nation's anadromous fish in participation with the several states

2 That the Department of Fish and Game prepare priority lists of those projects, including their costs, which could be undertaken under federal-state cooperative program to improve the anadromous fish resource

3 That the subject of salmonoid and anadromous fish be studied further, within the fabric of the broader study discussed in the introduction to this report

TEXT

It is estimated that the salmon and anadromous fish resource produces an economic return in excess of 20 million dollars annually through the recreational and commercial fisheries

In the last fiscal year, the Department of Fish and Game spent $1,400,000 in license fee revenues, and the Wildlife Conservation Board provided $784,600 from its General Fund allocation, for programs or facilities for the preservation of salmon and other anadromous fish (A total of $241,058 of the Wildlife Conservation Board's funds has been allocated for as yet uncompleted projects.)

Federal legislation which would provide California with approximately $11,000,000 over a five-year period has been pending before Congress. Assemblywoman Pauline L. Davis, chairman of the committee, visited Washington to urge passage of the bill which would provide the funds to carry out some seriously needed preservation and enhancement programs to improve the salmon resource in California.

The federal funds would be in the form of matching funds for projects undertaken by the state. Some of the urgent actions which are needed in California were pointed out by a representative of the State Department of Fish and Game in testimony before the U.S. Congress Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries. These were:

"A hatchery should be constructed at Keswick on the Sacramento River to take care of the winter king salmon run. The Nimbus Hatchery on the American River should be expanded. To bolster the silver salmon and steelhead populations, an additional silver salmon and steelhead hatchery should be built. Futhermore, a central hatchery on the coast could serve as a base hatchery for runs of many streams.

"There are several major water diversions where fish screens are badly needed, since large percentages of salmon fry are presently being lost on these locations. These are as follows: Woodbridge on the Mokelumne River, Anderson-Cottonwood on the Sacramento River, Glenn-Colusa on the Sacramento River, Hallwood-Cordua on the Yuba River, West Stanislaus on the San Joaquin River, Banta Carbona on the San Joaquin River, and the P.G.&E. Van Arsdale on the Main Eel River.

"Fish passage facilities are needed at Asa Bean Creek on the Eel River, Upper Deer Creek, Middle Deer Creek, and Clear Creek on the Sacramento River, Los Padres Dam on the Carmel River, and the Big Sur River.

"Spawning channels, incubation channels, spawning control weirs and holding ponds are needed in the Klamath River, Big River, and lower Battle Creek.

"Stream clearance of coastal streams, gravel loosening in the Klamath River, vegetation removal from the Tuolumne, Stanislaus, Feather and Merced Rivers, gravel restoration in the Stanislaus, Cosumnes, Tuolumne, and Mokelumne Rivers, streambed realignment in the Merced, Cosumnes, Feather, and Yuba Rivers, and correction of erosion and siltation are also necessary for restoration of salmon.

"Controlled waterflows for salmon would necessitate water storage. Engineering investigations and biological studies for water storage facilities in Cottonwood Creek, Cow Creek, Stillwater Creek, Thomes Creek, and Paper Mill Creek need to be inaugurated.

"A flow-control structure at Old River in the delta is necessary to allow adult migration of salmon into the San Joaquin River system by preventing existing flow reversal caused to a major degree by pumping at Tracy by the U.S. Bureau of Reclamation for the Central Valley Project.

"Completion of this work would bring the salmon environment into a favorable position to take advantage of mitigation or enhancement features connected with future water developments in the entire San Joaquin River drainage."

By Assemblywoman Davis

HOUSE RESOLUTION NO. 494

Relating to a Study of an Interstate Deer Herd Commission

Resolved by the Assembly of the State of California, That the Assembly Rules Committee is directed to assign to an appropriate interim committee the study of the desirability of creating an elective commission to regulate the migrating deer herds which migrate between California and Oregon and California and Nevada, with the interim committee to report to the Assembly not later than the fifth day of the 1965 Legislature

By Assemblywoman Davis

ASSEMBLY JOINT RESOLUTION NO. 20

Relating to Range Improvement

Requests Congress to appropriate adequate funds for improving and enhancing deer ranges and forage

FINDINGS

1 The decline of the California-Oregon Mule Deer Herd is apparently a result of the combination of excessive hunting pressure and long-recognized general decline in the capacity of the ranges frequented by this herd

2 That research efforts to improve techniques of range improvement and revegetation are being conducted

3 The size and quantity of legally taken deer in the interstate herd is of considerable importance to the economy of the northeastern counties of California The hunters from other areas who hunt the interstate deer herd contribute greatly through their purchase of equipment, supplies and services

4 Buck deer size in the mule deer herd is a function of age Both states have held hunts of forked horn or yearling bucks which result in fewer young deer living to attain the age and size expected by the layman hunter of the mule deer

5 If the ranges and the interstate herd are to be successfully rehabilitated, closer coordination between the States of Oregon and California and other public agencies concerned is required.

6 That unfair advantage of the migratory herd is being taken by hunters who have built tree stands and chairs in areas near the state line through which the deer must pass

RECOMMENDATIONS

1 Inasmuch as a large part of the range frequented by the interstate mule deer herd is located on federally owned and controlled land, the respective state agencies should make every effort to cooperate, assist, and recommend to the appropriate federal agencies in matters pertaining to the improvement of the forage and browse of the herd's ranges.

2 That all agencies interested in and responsible for research and improvement of wildlife habitat coordinate their activities, and cooperate wherever feasible, to accelerate the acquisition of knowledge in this subject

3 That legislation be introduced in California requiring the California Fish and Game Commission to annually submit its recommendations and request for funds as it pertains to range improvement on federal land to federal agencies, and that this be done in time for budget considerations of the agencies involved

4 That the "three-point buck law" and restrictions on antlerless hunting be maintained in District 1¾ until legislative determination of its effect is made

5 That a no-hunting "buffer strip" be established by legislation in both states along the state line as a protective measure during the hunting season in behalf of fair play for the interstate herd as it migrates.

6 That legislation be introduced in each state requiring the two Commissions of Fish and Game to meet in informal, joint sessions at least annually to discuss the management of the interstate migratory mule deer herd and possible hunting regulations pertaining thereto, and to consider other fish and game matters to common interest to both states

TEXT

The California-Oregon interstate mule deer herd migrates annually across the state line in the region encompassing Modoc and eastern Siskiyou Counties

The interstate deer herd, in normal winters, migrates to the winter ranges in California The 1962–63 winter was an unusually mild winter and the California State Department of Fish and Game estimated from track counts that the migration consisted of about 5,000 fewer deer than the previous year. The 1950 to 1963 estimates of the interstate deer herd population, made from track counts, are as follows·

1950	13,256	1957	**11,696**
1951	17,570	1958	12,819
1952	10,547	1959	14,642
1953	11,601·	1960	14,203
1954	17,615	1961	13,091
1955	17,170	1962	12,112
1956	12,240	1963	7,191

In the 12-year period, beginning in 1950, the deer kill consisted of the following

	Bucks	*Does*
California	7,618	7,545
Oregon	45,733	25,260

The Oregon figures are close estimates derived from mail sampling of sportsmen by the Oregon State Department of Fish and Game and not as reliable as the tag counts maintained by California

The 1964 year's deer season in Oregon ran from September 28 to October 20, which is a shorter season than previous years and Oregon did not allow antlerless, nor less than forked-horn bucks to be taken

California instituted a "three-point buck law," and also did not allow a doe kill

These steps were taken by both states to relieve some of the hunting pressure on the interstate deer herd It may also serve to make the relative share of deer kill in the two states more equitable

The Economic Impact

The contribution to the economy of the counties visited by the hunters of deer of the interstate herd was summed up by Mr J D Proctor of the Inter-Counties Chamber of Commerce of Northern California

He said "We are also interested in the economic feature involved and, believe me, it is tremendous The hotel operators, the motel operators, the service stations, the bars everyone on the highway is affected by the recreation dollar It can and will reduce our taxes and help carry the load of state and county administration all the way through This interstate herd is a good big piece of this recreation dollar"

Herd Condition

The condition of the deer herd was described by James D Stokes, regional manager for the California Department of Fish and Game·

"In my estimation, the trend of the deer numbers has been down since 1938 There have been fluctuations or undulations in this trend, but over the long period, the trend has been down

"The major reason for that downward trend has been an equal downward trend in the quality of the deer range The range also has had fluctuations which are directly tied into annual precipitation and distribution.

"These herds are very vulnerable to the hunter This area is predominantly an easy terrain, very adequately covered with roads, particularly accessible to 4-wheel-drive equipment This has made it possible for the hunters to crop the bucks very heavily

"The range improvement is the vital thing, because if we do nothing to stop our downward trend of range, we are inevitably going out of the picture with the deer The downward trend, I feel, is directly tied in with the forage on the range, and, particularly, the forage that is on the winter range itself."

Management of the Herd

In 1945, members of the Fish and Game Commissions of California and Oregon recognized that the interstate deer herd posed a joint problem, as a result of studies done by the Forest Service and technicians assigned to the area Since that meeting of 1945, the two commissions had not held a joint meeting until this year, when prompted by action of this committee, they met together on January 9, 1964, in Klamath Falls Oregon The interest in 1945 on the part of the commissions culminated in the formation of the Interstate Deer Herd Advisory Committee The committee consists of technicians of the two states' Departments of Fish and Game, and of the U S Forest Service, and the Bureau of Land Management The committee is a study group charged

with ascertaining the facts that were pertinent to management of the interstate herd The recommendations of the Interstate Deer Herd Advisory Committee reflect the professional aspect of its membership, and to obtain better balance in the formation of the management policy of the interstate deer herd, members of the Fish and Game Committee felt that some representation of local residents and interests should be introduced Inasmuch as the California Fish and Game Commission is constituted to represent and mitigate the various elements of public policy formation in fish and game matters, it was the Assembly committee's unanimous decision to recommend legislation which would require the California Fish and Game Commission to meet with its Oregon counterpart to better coordinate the management of the interstate mule deer herd

It was felt that joint consideration of the facts relating to setting of seasons, bag limits, and age and sex to be hunted would result in better management of this vital natural and economic resource

The chairman of the committee also strongly urged the retention of the "three-point law" until such time as a legislative determination of its effect in District $1\frac{3}{4}$ could be made

Range Improvement

Some limited range improvement programs are being carried out, for the most part, by federal agencies The Bureau of Land Management, through its timing and limitation on the number of cattle grazing permits and recently instituted research in the areas near and including the interstate deer herd winter range, has acted to relieve the effect of overgrazing of the ranges There is some indication that this removal from the public ranges will increase the grazing pressure on private ranges, which have provided a great deal of winter forage for the interstate deer herd

The Forest Service is also expending funds to improve the range through revegetation, controlled burning, and wildlife habitat improvements These include planting, well drilling, check dam construction, building fences, and noxious weed eradication In addition, the Forest Service has prepared and submitted through the President to Congress a 10-year program of range improvement in Modoc National Forest

One presentation of the U S Forest Service reported that the critical problem of the winter range was the competition between deer for forage and browse Because of excessive grazing, both cattle and deer, in the 1940's, continued poor vigor of the principal browse, the bitterbrush plants, and severe drought, the trend in all of the key winter deer ranges condition is downward

The growth conditions of the bitterbrush for 1962 were better than previous years, but it would take several years of better than average growth, more than in 1962, to successfully reverse the range condition trend

In-the-field research is being conducted by the Pacific Southwest Forest and Range Experiment Station, a Forest Service facility, for

the purpose of improving deer habitat throughout the State of California The experiment station has been working in the northern deer ranges for more than 10 years.

"The Buffer Strip No-hunting Zone"

It was revealed in testimony before the joint committees that because of geographical formations along the migratory route of the interstate herd which cause the deer to concentrate in areas very near the state line, some hunters had permanently fixed chairs and stands in trees

The California committee unanimously voted to recommend the establishment of a buffer strip, consisting of a mile-wide strip, extending from the state line southward, if a like refuge were established by Oregon on its side of the state line The purpose of this recommendation was to stop unsportsmanlike killing of deer from chair stands fixed in trees, in areas where the deer have to pass during their migration

By Assemblywoman Davis

HOUSE RESOLUTION NO. 288

Relating to a Study of Marine Research

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to assign to an appropriate interim committee the study of the research which has been done by the Marine Research Committee and persons under contract with the committee, and to direct the Marine Research Committee to report to such interim committee on all research projects undertaken by it and persons under contract with it, with such interim committee to report to the Legislature not later than the fifth calendar day of the 1965 Regular Session of the Legislature

FINDINGS

1 That the purpose of state-sponsored marine research is to discover where man can enter the ecology of the California current system for the maximum gain and benefit and to discover the wise use of the resources found there—to ultimately acquire the knowledge to manipulate those marine resources in order to achieve the maximum potential benefits which they offer.

2. That the Marine Research Committee in its association and assistance to the California Cooperative Ocean Fisheries Investigation (CAL-COFI) is proceeding towards the accomplishment of the above goals

3. That the support of the Marine Research Committee through a tax upon certain species of the commercial fisheries catch is not burdensome to the industry and is considered a good investment by union and company representatives and that expenditures from this revenue represent only a portion of the total amount being spent for the benefit of all ocean resources research.

RECOMMENDATIONS

1. That the Marine Research Committee be continued in its quest for greater knowledge of our marine resources.

2. That the Marine Research Committee be encouraged to accomplish more orderly dissemination of its research findings through regular complete progress reports, and to become more active advocates of the accomplishment of recommendations derived from its research.

3 That legislation be introduced, amending Section 726 of the Fish and Game Code, so that it will read "fish" rather than "sardines," for now there are not enough representatives of sardine packers on the board to make the board technically legal.

This is because there are not enough companies in California dealing chiefly with packing and processing of sardines to place the required number of members on the board

TEXT

The Marine Research Committee was formed in 1947 by action of the Legislature Its nine members are appointed by the Governor. Five members of the committee, according to law, must be actively engaged

in the sardine industry, one member must represent an organized sportsman's group, and at least one must represent organized labor. It conducts coordinated research programs jointly with Scripps Institution of Oceanography, the Division of Fish and Game, the California Academy of Sciences, Stanford University's Hopkins Marine Station, and the United States Fish and Wildlife Service All work undertaken by the Marine Research Committee is done by contract with the various participating agencies

The main research and marine investigation programs carried out by the Marine Resources Committee with the aid of its contractual agencies have centered around the sardine, but the committee also sponsors research on mackerel, anchovy, herring and other game and food fishes

In addition, studies of oceanography, food habits and migrations of fish, the abundance of various species and their relationship to each other and to oceanographic conditions have made up part of the contractual studies

In order to avoid duplicating ocean research by other agencies, the Marine Research Committee assisted in formation of the California Cooperative Ocean Fisheries Investigation (CAL-COFI) in which interested governmental and commercial entities participate

The research conducted by CAL-COFI is directed towards making it possible for the public to more fully utilize the poorly known and little understood living marine resources The CAL-COFI program is a coordinated effort based on voluntary association of several agencies, each concerned with the same or overlapping problems The coordinated effort prevents duplication and permits an approach to problems too large or too diverse for a single agency to undertake The Marine Research Committee provides the stimulus for CAL-COFI coordination and assists financially and provides a liaison between the needs of the public and the work of the scientist

The financial support for the Marine Research Committee and its participation in CAL-COFI is derived by a tax of $1 per ton of certain species of fish caught by the commercial fisheries of California This tax is supported by industry and unions alike as a good investment The Marine Research Committee's authority to collect the tax is renewed each two years and a small reserve is held in anticipation of an orderly phasing out of projects should the Legislature see fit not to continue the authority at some future date

By Assemblyman Thomas

HOUSE RESOLUTION NO. 297

Relating to a Study of Marine Resources

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to assign to an appropriate interim committee the study of this State's marine resources, including, but not limited to

(a) The extent and condition of all species of fish,

(b) The economic impact the commercial and sport fishing industry has on the economy of the State;

(c) The changes which have taken place and the future developments in the methods and costs of taking fish;

(d) How California's marine resources and their utilization and development compare with other states; with such interim committee to report to the Legislature not later than the fifth calendar day of the 1965 Regular Session

TEXT

The subject of California marine resources, because of its immensity, does not lend itself to "findings" or "conclusions" in the usual legislative sense

Certain factors were requested to be examined by House Resolution No 297 and these can best be reported as they were treated by the witnesses before the committee at the San Pedro hearing on September 26 and 27, 1963

Assembly Bill No 2738, relation to a reduction of anchovies, was also discussed at the San Pedro hearing

WALTER T. SHANNON, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FISH AND GAME

"In general, the marine fish resources off California are in very good condition, with the exception of a few species that are depleted or may be being harvested too heavily

"The sardine population is seriously depleted with no sign of recovery in the immediate future under present fishing practices.

"The Pacific mackerel fishery used to produce much more than it does today. There is a good chance that Pacific mackerel are presently being overharvested

"California halibut appear to be adequately harvested, although the halibut population seems to have recovered somewhat in the last couple of years.

"Yellowfin tuna, although not usually found adjacent to the California coast, have been harvested past the limit need to maintain the maximum yield, and are presently under internation regulations, and proposals for international regulations are under consideration.

"But aside from these species, the marine resources are, as I said, in good shape

"There are many latent resources in the sea which are virtually untapped

"In addition to the species mentioned, there are many others that could be better utilized The saury is a small species that lives near the surface and feeds on minute animals, it is extremely abundant and extends clear across the Pacific Over 400,000 tons a year are taken off Japan The Russians take a similar amount They are fished by attracting them with powerful night lights and catching them with blanket nets

"The hake population also is a resource relatively unfished [1]

"The task ahead of the department is to find out what and where our potential resources are, and how they may be caught We also must find out how many can be caught without depletion

"As far as we know, no survey of the economic impact of the sport and commercial fisheries on the economy of California has ever been conducted [2]

"We have computed values of the price paid to fishermen for commercial landings and shipments in California. In 1961—the latest figures available—this price was over 74 million dollars

"We have also roughly estimated the number of ocean sportfishing angler days The total annual marine angler day figure is probably somewhere around five million, exclusive of pier and jetty anglers, which represents an extensive recreational expenditure

"Turning to the state of ocean fishing today, we find a greatly different situation than that which prevailed not too many years ago

"The greatest advances have been been in the field of technological improvement The use of fathometers, radio, radar, and similar electronic equipment has wrought vast changes in the makeup of the fishing fleets

"Sportfishing boats have increased their size and the distance they can travel from their home ports

"The use of airplanes for fish spotting has made location of fish much more positive and has greatly reduced the number of hours previously spent at sea in search of fish

"The technique of refrigeration, of course, gave the commercial fishermen the impetus to go on the high seas for extended periods of time rather than having to fish locally

"All of this improved equipment is extremely expensive, but it is also far more efficient than what has existed before And efficiency is vital to our fishing industry, for there is a major problem ahead This is competition with other nations for the marine resources of the world

"To meet the needs of the expanding world population, it is necessary to turn to the sea. Between 1938 and 1961, the world's fish and sea food production doubled It went from 20 5 million metric tons to 41.2 During this time, the United States increased its production by only 22 percent

"Since 1956, the United States dropped from second place among nations to fifth Japan leads with 6 7 million metric tons. Peru is second with 5 2—Communist China third, with 5 million, the USSR, fourth,

[1] Testimony of John Radovich, Chief, Marine Fisheries Branch, California Department of Fish and Game

[2] It would be within the purview of the Subcommittee on Economic Development of the Assembly Committee on Ways and Means, within the scope of the broader study proposed in the introduction of this report to conduct such a survey

with 3.2—and the United States, in fifth place, produces 2 9 million metric tons

"Compounding our problems of competition with other nations is the oceanic fishing fleet which is being put to sea by Japan and the USSR This fleet can and does fish right up to within a few miles of our coast. This has caused considerable consternation, particularly off Alaska on this coast To date, foreign nations have abstained from fishing under conditions where we are adequately harvesting our resources, where we are actively conducting research, and where we are managing the resources It behooves us, then, to adequately harvest our marine resources, to manage them, and to conduct research on them if we are to keep them for ourselves

"California leads the states in *value* of seafood production Except for a few years in the last two decades, California has also led all other states in *volume* of seafood production. San Pedro leads all over United States ports

"It is imperative that California develop these resources, and, more important, manage them wisely.

"If we do not provide adequate facilities and personnel now to study these resources and to manage them wisely and successfully, we may very well begin to lose them in direct competition with foreign nations —competition for our own resources

"We will also be faced with a tremendously growing demand—from our own commercial fishermen and the expanding throng of recreation-seeking, marine sportfishermen for more and more use of our ocean fisheries."

PROFESSOR JOHN ISAACS, SCRIPPS INSTITUTION OF OCEANOGRAPHY, INSTITUTE OF MARINE RESEARCH

"We're not in a position to ask knowledgeable questions of the ocean, and to conduct knowledgeable and sophisticated experiments on a broad scale, but only step by step

"In general, the wide expanse of oceans are not highly productive. It has been estimated that the entire production of organic material, that is the basic plant life in the ocean, is about the same as on total land—but unlike the land, where the decay takes place in the sunlit layers of the soil, at sea, the decay and release of the nutrients take place only after the debris has settled down deep into the lower zones of the water where no plant can hope to grow

"Thus, although the California current remains rich and productive year after year, we believe, the temperature of the water and the type of food available to its creatures, undergoes both short- and long-term changes One would imagine that these changes would be reflected in the abundance of the resident fish, and we believe that this is so; and in the case of the sardine and anchovy, we believe that we understand how these species are influenced by changing conditions

"The California current provides a handsome home and sets a bountiful table for her myriad children, but in some years, some are served better than others Thus, any single species will undergo considerable fluctuation from natural effects alone, but the sum of species will probably be well fed.

"I believe that in all cases, the utilization of the marine environment there are no fundamental conflicts, as between fisheries and sewage disposal, waste heat disposal, atomic energy disposal, resalination and brine disposal, nor, as I have said, between sport and commercial fisheries themselves Each time I have looked into one of these conflicts, I have concluded that if properly and thoughtfully developed, each use of the ocean can actually benefit the other users.

"I believe that real progress has been made in understanding this conflict and the conflict exists only because of the limitations of our vision, and knowledge, and will dissolve, I believe, for there is abundant resource for all

"Thus, even in the relatively sterile broad oceans of the world, there is an abundance, and in this richer California current, there is also an abundant resource for both sport and commercial fisheries, and the development of the state can well benefit from the basic economic input of the commercial fisheries

"We cannot consider the weather, the oceanography, nor the fish use events of California isolated, but rather only in the context of the entire North Pacific or even the entire northern hemisphere

"It is my prime point that California possesses the safeguards, and the responsibility to begin these sophisticated experiments quite unlike conventional management, and the use of her resources, and to ultimately guide the world in the rational utilization of ocean wealth of this planet, and I firmly believe this is destined to be California's true marine product

"A more important point, though, I think is this: that it is not the destiny of the State of California to forever produce fish meal and oil, or canned fish, but rather, by acting rationally on the resources that are rightfully hers, it is her destiny, I believe to point out to the world the basic scientific management of these resources

"In the future, she will export not fish meal or oil, any more than we now export the hide and tallow of the Spanish Regime, but rather we will export the ideas and the understanding and from an economic point of view, the specialists in the education, the tools, and the methods and the investments in the marine realm that will call California their home port

"Already California's scientists, industrialists, and fishermen stand high in world status This is something like the present trend in the development of the tuna and shrimp industry, where California interests are widely ranging about the world This has emerged almost entirely from development and research that took place in California "

RESERVATION OF WATER AND FISHLIFE

Assembly Bill No 1977 (1963), as introduced by Assemblywoman Pauline L Davis, Chairman of this Committee, was intended to create and stimulate debate on the present authority of the Department of Fish and Game to provide water reserves to protect and enhance fish and wildlife in California waters

Two major areas of difficulty have been identified by the Legislative Analyst at the request of this committee in regard to water reservations

These are discussed in the specific recommendations part of the Fiscal Affairs Section In brief, these were.

(1) The current practice of rather haphazard pollution control work by the Department of Fish and Game, which rarely results in sufficient punitive action, and

(2) The present review procedure of applications of proposed water projects by the Department of Fish and Game to determine the effect the construction will have on fish and wildlife resources of the state. The Legislative Analyst's office has suggested that a more efficient handling of this review would be accomplished if all applications to appropriate water submitted to the State Water Rights Board were required to include information regarding fish and wildlife preservation

PROPOSED BILLS STEMMING FROM THE CONTENTS

of

THE REPORT

INTRODUCTION:

House Resolutions requesting appropriate interim study of

1 Economic criteria for natural resource decisions

2 Subjective criteria for public decision making.

ANADROMOUS FISH:

1 Memorialize Congress to favorably consider the passage of bills pending before previous Congress on the protection, enhancement, and improvement of salmon and anadromous fish

2 House resolution requiring Department of Fish and Game to prepare a priority list of projects and costs for possible federal-state cooperative salmon enhancement programs.

INTERSTATE DEER HERD:

1 Resolution requiring the California Fish and Game Commission to annually submit the recommendations and requests for range improvement and research funds to cognizant federal agencies in time for federal budgetary consideration.

2 Resolution requiring maintenance of "three-point buck" law

3 Bill requiring the establishment of a no-hunting "buffer strip" on the Oregon border, if Oregon also establishes one

4 House resolution requiring Fish and Game Commission to meet annually with Oregon counterpart

MARINE RESEARCH:

1 Commendatory-type resolution, suggesting more orderly and active dissemination of Marine Research Committee's findings and research results.

2 Bill changing Section 726 of Fish and Game Code to legalize board's present makeup by substituting "fish" for "sardine" in the language of that section

RESERVATION OF WATER:

1 Resolution requiring interim study of the pollution control work of the Department of Fish and Game, as recommended by the Legislative Analyst.

2 A bill requiring that applications for appropriations of water to the State Water Rights Board include the proposed action to protect fish and wildlife affected by the proposed construction or appropriation

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963–1965

Volume 6 Number 21

1. Problems of Construction on Expansive Soil
2. Neighborhood Parks in New Subdivisions
3. Fines and Forfeitures

Final Report of the

ASSEMBLY INTERIM COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

House Resolution No. 500

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Minority Floor Leader

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January 11, 1965

LETTER OF TRANSMITTAL

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY:

Your Interim Committee on Municipal and County Government in accordance with H R 500 of the 1963 Regular Session submits herewith its final report to the 1965 Legislature The report covers six different subjects and is contained in two parts

Part I contains the findings, recommendations and conclusions of the committee on the subjects of

1 Problems of Construction on Expansive Soil
2 Neighborhood Parks in New Subdivisions.
3 The Adequacy of the Current Formula for Apportioning Fines and Forfeiture Revenue (Penal Code Section 1463.)

Part II contains similiar materials on the subject of:

1 Control of Special District Securities
2. A District Reorganization Law
3 Review of the Operations of the Local Agency Formation Commission

In this connection, Assemblyman George Zenovich has indicated that he does not wish to concur in the recommendations of the committee on the subject of "Control of Special District Securities"

Assemblyman Frank Lanterman does not concur in the recommendations of the committee on the subjects of

Local Agency Formation Commission
District Reorganization Law
Neighborhood Parks in New Subdivisions

Mr Lanterman has succinctly explained the reasons for his dissent in a letter which I have attached to this letter of transmittal

Respectfully submitted,

JOHN T KNOX
Chairman

JOHN P QUIMBY
Vice Chairman

Don A Allen, Sr
Alfred E Alquist
Anthony Beilenson
Carl A Britschgi
Clair W Burgener
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Frank Lanterman
Leo J Ryan
Alfred H Song
Philip L Soto
John G Veneman
Charles Warren
George N Zenovich

STATEMENT OF ASSEMBLYMAN FRANK LANTERMAN

January 7, 1965

HONORABLE JOHN T KNOX
Chairman, Interim Committee
Municipal and County Government
State Capitol, Sacramento, California

Dear John:

The following are my comments of dissent relating to the committee's recommendations for change in the Local Agency Formation Commission, the District Reorganization Law and the Neighborhood Parks in New Subdivisions proposal

1 *Local Agency Formation Commission*

Mr Lanterman dissents with most of the proposed committee recommendations in this section relating to local agency formation commissions He especially points out the lack of control checks under (B) and (C) of Paragraph 2, and the loss of local government control of the functioning of the commission if outside assistance grants may be accepted in designing a master plan for consolidation of local government He basically disapproves of any broadening of the authority of the commission unless there is provision for an appeal by the people affected, other than resort to the courts He earnestly recommends that an appeal procedure be established on the order of a four-fifths vote of the elected legislative body of jurisdiction to which the appeal has been made by the persons affected

2 *District Reorganization Law*

Assemblyman Lanterman dissents with the committee recommendation contained in the last sentence of the final paragraph because it would tend to extend the authority of the commission to become, in fact, a master planning agency for the entire county with no provision for appeal to an elected body by the people affected and could ultimately provide for the dissolution of all district forms of government regardless of the will of the electorate of the district in question

3 *Neighborhood Parks in New Subdivisions*

Mr. Lanterman dissents with the proposed amendments to the Subdivision Map Act as unenforceable and potentially confiscatory without sufficient protections in either paragraphs 3 or 4

Cordially yours,

FRANK LANTERMAN

PART I

REPORT ON PROBLEMS OF CONSTRUCTION ON EXPANSIVE SOIL

FINDINGS

1 Hundreds of homes built upon expansive soil in California have cracked to such an extent as to make continued habitation therein uncomfortable, unsafe, and, in many cases, impossible

2 Existing state law regulating home construction does not extend to soil conditions, and local ordinances requiring soil analysis prior to home construction are virtually nonexistent. Consequently, the potential homebuyer is without minimum assurance that his purchase will be a safe and habitable home

3 Where extensive structural damage has occurred, home repairs have proved too costly to be practicable

4 Aggrieved homeowners have found no recourse available to them other than civil litigation which is lengthy, expensive, and generally unsatisfactory Moreover, such a course of action is further complicated by the fact that laws dealing with the specific source of their problem—construction on expansive soil—have yet to be written

5 Professional engineers specializing in soils unanimously agree that the existence of expansive soil on a potential building site can be easily identified by standardized and relatively inexpensive tests

6 The same engineers are similarly agreed that the application of presently available engineering solutions to expansive soil situations can insure that homes will escape any significant structural damage The additional cost of such engineering solutions has been estimated to be minimal and easily financed both by the builder and by the subsequent homebuyer.

CONCLUSIONS

1. The occurrence of critically expansive soils throughout the state, together with the graphic evidence of damage such soil may cause to homes unwittingly or unknowingly constructed upon it, poses a major problem. The problem, although local in nature, is statewide in scope.

2. In general local governments have not yet developed an adequate response to this problem Local requirements for soils investigation prior to home construction are sporadic, after-the-fact, and generally insufficient to guarantee the health and safety of the homeowner or the security of his investment.

3. The principal answer to this problem does not lie in direct state intervention in the field of local building ordinances, but in state insistence that all local governments face up to this problem and enact appropriate local ordinances to protect potential homebuyers In this fashion, prerogatives of home rule can be preserved while minimum protections are extended to the consumer.

4. Specifically, the following legislative recommendations are made

(a) Appropriate sections should be added to the State Housing Law requiring each city and county to enact ordinances requiring preliminary soils reports to be made prior to home construction. These sections should also empower local building officials to determine what corrective actions shall be taken when such analyses reveal the presence of dangerously expansive soil

(b) The Subdivision Map Act should be amended to require that each subdivision map indicate the types of soil or soil conditions present in a subdivision, noting particularly the expansive characteristics of the soil.

(c) The provisions of the Business and Professions Code which regulate real estate transactions should be amended to require that the notice of intention to sell or lease subdivided land which must be filed with the Real Estate Commissioner include a statement revealing the soil conditions within the subdivision together with a statement indicating that the soil has been, or will be, reasably prepared so that structural damage will not occur.

(d) The State Housing Law should be amended to require each city and county to retain one copy of approved plans and specifications for homes constructed within subdivisions for a period of one year.

(Draft legislation implementing these recommendations may be found in Appendix pp. 25–28).

5. Two suggested courses of action are *specifically rejected* as inadequate.

(a) Amending the Subdivision Map Act to require cities and counties to adopt ordinances regulating soil bearing qualities in subdivisions would have uneven application Such a requirement would apply only to new subdivisions even though the perils of expansive soil are potentially present in all residential construction. Such a mild attempt at regulation moreover, provides no assurance that subsequent local ordinances would address themselves to the problem of soils analysis

(b) Reliance on the Uniform Building Code to protect the homebuyer would be ineffective and unrealistic The U B C may, or may not, be adopted by local governments as they see fit; once adopted, it may not be regularly updated In addition it is a proprietary code, outside the jurisdiction or control of government, and can be amended at any time by its authors It is subject to pressure and influence by producers of building materials and cannot guarantee that the most inexpensive and progressive techniques will be employed to protect the homebuyer Necessary regulation should take the form of thoughtful ordinances drafted by local officials to meet the exigencies of local conditions.

I. INTRODUCTION

Numerous unfortunate California homebuyers have discovered that the foundations and walls of their new homes have buckled and cracked because they had been built upon a type of soil which expands when wet and contracts when dry Such soil is found throughout California and the consequences of construction upon it without necessary precautions have been drastic and costly for the state's homeowners, builders and lenders.

Several very pointed examples of the effects of unregulated, or improperly regulated, construction upon expansive soil have highlighted the immediacy of this problem The personal tragedies and heavy financial losses suffered by Californians because natural expansive-contractive properties of soil had been ignored prompted the introduction of H R 192 (Donovan) at the 1963 session of the Legislature The resolution directed an interim study of the protection afforded buyers from improper prior preparation of land upon which houses are built

Pursuant to this directive the committee began a program of extensive research, study and preparation, climaxed by a two-day hearing on February 25–26, 1964 in San Diego, an area hard-hit with expansive soil problems At the hearing statements were presented by homeowners, builders, lenders, engineers, and by representatives of federal, state, and local agencies which had in some way been connected with problems of construction on expansive soil All interests were fully represented, from those of the Attorney General to those of professional lending institutions Testimony ranged from the recitation of personal grievances by homeowners to the highly technical expositions of engineers

The balance of this report outlines the expansive soil problem, examines the alternative avenues of protection for both consumer and builder, and provides the basis for legislative recommendations which would insure that personal and community losses due to expansive soils will be curtailed throughout the state

II. EFFECTS OF EXPANSIVE SOIL—CASE STUDIES

A. Spring Valley

In late 1958 a development firm began construction of approximately 1,800 homes in the Spring Valley section of San Diego County These homes were to sell in the $13,000–$14,500 price range During the rainy seasons of 1959–1960 and 1960–1961 some of the homes began to show initial signs of structural damage due to soil expansion. After the 1961–1962 rainy season the cumulative effect of the expansive soil exhibited itself—in severe foundation and structural failure.

Slab foundations cracked and buckled This initial failure began a chain reaction Walls cracked, sagged and pulled away from ceilings Cabinets pulled away from the walls Doors opened and closed improperly or not at all Carpeting and other floor covering were saturated by rainwater seeping through cracks in the floor slabs. Some homes were even invaded by insects which made their way through the cracks in the flooring and walls

Hundreds of homes were severely damaged, a situation which had the added effect of promoting the disintegration of a new, suburban community Pride of ownership was stifled in its infancy and a large segment of the area has since become inhabited by a transient population which is unconcerned about the problems of creating or maintaining a viable community

Affected homeowners complained to the county board of supervisors, the district attorney, the Better Business Bureau and the State Contractors' Licensing Board, all to no avail Fifty-seven homeowners have undertaken civil action and embarked upon a lengthy, expensive, and at times disheartening course of litigation Their case is still pending [1]

B. Conejo Valley

In 1962, Ventura County suffered more than 300 foundation failures in residences which had been built on slabs during or before 1961 The damage was due to construction upon expansive soil and was comparable in character to that which occurred in Spring Valley.

The Ventura County Grand Jury investigated the failures in 1962 and found that no felonies had been committed More significantly, it also found that existing ordinances were inadequate and that more and better inspection personnel were needed Homeowners petitioned the Governor and the Attorney General, but neither of these officers found any grounds for intervention Complaints filed with the State Contractors' Licensing Board failed to return a decision against the contractors and claims for damages filed against Ventura County by 38 homeowners were denied by the board of supervisors

The lending institutions holding mortgages repaired some homes by lifting them off their foundations and by placing heavily reinforced 11-inch slabs over the original slabs at a cost of approximately $2,500 to $5,000 per house

Because the source of the damage was improperly or inadequately prepared expansive soil, a situation not covered by existing building ordinances, Ventura County immediately set about revising its ordinances in this respect The county has currently adopted an amend-

[1] For further details of the Spring Valley situation see the transcript of hearing on the subject of *Problems of Construction Upon Expansive Soil*, Assembly Interim Committee on Municipal and County Government, meeting in San Diego, California, February 25–26, 1964 Two volumes (hereafter referred to as *Transcript*)
See especially the statements of
Charles Paularena and Henry Barber, Co-chairmen Spring Valley Homeowners Association Volume 1 pp 3–8
Richard Roddis, Deputy Attorney General Volume 1, pp 8–10, 59–76
Philip H Benton, Benton Engineering, Inc, San Diego, California Volume 1, pp 77–78, 84–101
T G Atkinson, Whitman, Atkinson and Associates, San Diego Volume 1, pp 104–110
Statement of Bollenbacher and Kelton, Inc, San Diego Volume 2, pp 56–63

ment to the Uniform Building Code but has been under some pressure to modify these standards because builders maintain that present controls are unnecessarily restrictive and expensive [2]

C. Calexico

The Hermosa Homes tract in Calexico, Imperial County, is composed of 86 units in the $10,000 price range The tract was the first urban redevelopment project completed in the State of California The first year following completion of the homes, some cracking of walls and foundations appeared and was patched by the builder It was not until the warranty period had expired and the tract had experienced its first heavy rainfall that severe structural damage occurred Slabs cracked badly causing such distortion in the homes that doors are ofttimes impossible to close and lock, water pipes and windows break repeatedly, and many of the homes are, or are becoming, virtually uninhabitable.

The Hermosa Homes tract marked the first venture into property-owning for most of its residents and the experience has not been a pleasant one Aid has been sought from local, state and federal agencies but it has not been forthcoming. The Administrator of the United States Housing and Home Finance Agency has expressed concern, but relief from the federal government does not appear to be imminent Through an oversight, FHA building standards which might have prevented such damage were not applied to this project.[3]

SUMMARY

Additional complaints have been filed with the committee from northern California, especially from the areas of Santa Clara and Contra Costa Counties. The facts in each of these cases are somewhat different, but the effects in terms of personal loss are much the same. There has been little or no protection offered to the homebuyer in these instances and his avenues of recourse have been very narrow. Local ordinances requiring soil analyses are virtually nonexistent. Thus when a soil deficiency occurs the burden of action, the expense and aggravation of pursuing remedies have fallen upon the largely unprotected citizen. The fact that some local agencies have subsequently revised local subdivision standards is of very little comfort to the family who has invested and is forced to live in a home with cracked floors and walls

III. "CHARACTERISTICS" OF EXPANSIVE SOIL

Expansive soil is composed primarily of fine clay materials. It exhibits the characteristic of expanding in volume when wet and of shrinking in the process of drying Different soils and soil mixtures

[2] For further details on the Conejo Valley situation, see statement of M C Lorenz, Director of Public Works, Ventura County *Transcript*, Volume 2, pp 78–87

[3] For additional details of the Calexico situation, see *Transcript*, Volume 1, statements of
Luis M Legaspi, City Councilman, City of Calexico, pp 37–39
Harold D Blaser, Zone Site Engineering Advisor, Federal Housing Administration Zone 6, pp 44–48
Statement of John H Stepping, publisher, Calexico *Chronical*, pp 114–116

are expansive or nonexpansive to varying degrees Thus some soils will expand and contract a great deal when alternately wet and dried, while under comparable conditions, other soils will expand and contract only slightly.

Engineers have developed several classification systems for soils which reflect this expansive characteristic The American Association of Highway Officials, for example, uses a classification system which rates soils by expansiveness and load carrying capacity They group soils in general categories from A-1 through A-7 Groups A-1 through A-3 are composed of granular materials and exhibit relatively little expansibility and high load carrying capacity. Soil groups A-4 through A-7 are composed of silt-clay materials and exhibit increased plasticity and decreased load carrying capacity In general one might say with confidence that A-1 soils would expand the least and possess the greatest load carrying capacity while A-7 soils would expand most and possess the least load carrying capacity.

Expansive soil lacks load carrying capacity for two related reasons When soil contracts, it pulls away from the structure resting upon it. Consequently, any weight or load exerted upon that structure must be borne by the structure alone, without the necessary support of the underlying soil Second, when the soil expands in volume, it commonly exerts upward pressures which may amount to two, three, and four thousand pounds per square foot Because such soils are capable of exerting such enormous upward pressures through expansion and because they can lose substantial volume through contraction, homes built directly upon them are subject to severe structural damage When the soil expands and subsequently contracts, foundations may crack and buckle, causing walls to crack and to pull away from floors and/or ceilings.

Expansive soils which can produce serious structural damage in homes occur fairly commonly throughout the State of California. The degree of soil expansibility often varies considerably within small areas, and the total area affected tends to be relatively small vis-à-vis the total area of the state It has been roughly estimated that approximately 10 percent of the land surface of the State of California is composed of expansive type soils Not all such soil can be accurately termed "critically" expansive Whenever soil is measurably expansive, however, additional tests should be made before building to determine the degree of expansibility and to establish appropriate precautions which must be taken [4]

IV. ENGINEERING SOLUTIONS TO EXPANSIVE SOIL CONDITIONS

There are two general categories of solutions which may be applied to the problem of construction upon expansive soil They are (1) soil solutions and (2) structural solutions. Prerequisite to either type of solution is recognition of the problem and identification of the soil

[4] For a thorough discussion of the character and effect of expansive soils by a number of licensed engineers, specializing in soils investigation and analysis, see *Transcript*, Volume 1, pp 11-25, 77-116, Volume 2, pp 6-11, 40-44

If preliminary soils analyses are undertaken by qualified, licensed engineers, the major step toward control will have been completed Once the soil has been identified as requiring corrective measures, the following solutions may be applied.

A. Soil Solutions

1 The expansive soil is removed to depths greater than three feet below the finished grade of the building area Then nonexpansive fill is placed and compacted over the expansive soil in horizontal 6-inch layers at an optimum moisture content of at least 90 degrees of maximum dry density in the upper three feet This procedure obviates need for special building foundations or steel reinforcements

2 Expansive soil may be presaturated under engineering control before building begins This method must be accompanied by the use of structural techniques which will assure the retention of the wet condition of the soil Such techniques include the placement of sand between the slab and presaturated soil and the placement of a waterproof membrane within or beneath the slab

The rationale behind all techniques of presaturation is to raise and maintain the moisture content of the soil to such a level before, during, and after construction that any additional moisture reaching the soil would cause only minor movements The presaturation solution is very difficult to implement and requires a series of special circumstances together with extraordinary expertise and patience In addition it requires maintenance of substantially constant moisture content in the soil throughout the life of the structure

3 The expansive soil may be removed, mixed with an additive such as lime, and then replaced This is also a difficult solution in application, but has been found to be effective, particularly in heavy highway construction.

B. Structural Solutions

1 A 10- to 12-inch thick, heavily reinforced concrete slab can be built under the house This type of construction will generally prevent the cracking of the slab, but may result in the tipping or rocking of the entire structure under the heaving pressures of the soil

2 Raised wood floors built on reinforced concrete grade beams and cast-in-place concrete piles can be constructed In this plan, the load of the structure is carried by the piles which extend to nonexpansive soil.

3 Raised wood floors can be built on continuous reinforced concrete foundation [5]

C. Controls Presently Required by F.H.A. and V.A.

The Federal Housing Administration recognized early in the 1950s that steps had to be taken to safeguard against the possible effects of uncontrolled construction upon "cut and fill" sites After thorough investigation of the kinds of soil problems that might be encountered in home construction, F H A developed the comprehensive control pro-

[5] For a further discussion of soils solutions and structural solutions, see *Transcript*, Volume 1, pp 77–113, Volume 2, pp 32–35, 39–42, 69–87

cedures contained in Data Sheet No 79 Because the nationwide building boom has reached its greatest momentum in California, F H A developed separate procedures for various California locales even before the national control program went into effect

In general the F H A procedure requires a preliminary soils report which identifies the type of soil found on the building site If the soil is determined to be dangerously or critically expansive, the F H A requires that proposed engineering recommendations for dealing with the soil condition be submitted for its approval The agency approves or disapproves fill and foundation specifications before construction is allowed to begin It further requires that continuous engineering supervision be maintained at the site to insure that specified fill, compaction, or structural operations are, in fact, carried out [6]

Where these procedures have been followed, they have proved adequate to insure against subsequent structural damage from expansive soils [7]

The Veteran's Administration requires similar controls for construction on expansive soil and the two agencies accept each other's inspection reports The effects of the V A requirements have been quite as salutary as those of the F H A [8]

V. AVERAGE COSTS OF SOLVING EXPANSIVE SOILS PROBLEMS

A. Soil Analysis

Hearings testimony indicated that the cost of a soils analysis would vary according to circumstances, but that the range of variance would not be very wide and would be predictable The following estimates represent the judgment of professionals and are believed to be very representative.

Assuming it would be necessary to drill to average depths of around 15 feet and to drill four to six times on a subdivision of 50 to 100 lots, the cost would be from $1,000 to $2,000 This would include laboratory testing of representative samples of each soil stratum taken in the drilling [9]

If preliminary analysis revealed that it would be necessary to analyze each lot, field identification procedures could be employed to tell if soils were expansive After grading had been completed, borings would then be necessary to classify the soils One boring per lot would run approximately $10 or $15. If more borings were necessary the price would be commensurately higher [10]

Thus an initial test might cost $2,000 for a 100 lot subdivision or $20 per lot. If additional tests were found to be necessary, the cost might rise another $15 per lot for a total of $35 per lot [11]

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[6] Federal Housing Administration *Land Planning Bulletin #3*, "Lot Improvements—Data Sheet 79"

[7] Harold D Blaser *Transcript*, Volume 1, pp 41–51

[8] The Office of Architecture and Construction, School Section, in the State Department of General Services also has rigid requirements for construction on expansive soil which have proved satisfactory Since these procedures are applicable only to schoolhouse construction, they are not discussed here

[9] Philip H Benton *Transcript*, Volume 1, pp 29–30

[10] *Ibid*, p 29

[11] *Ibid*, p 29

B. Soil Solutions

The cost of moving soils and/or of burying expansive soils is dependent upon the source of the nonexpansive soil to be used in the upper three feet If nonexpansive soil must be imported or over-excavation is required, this alternative could be costly If the nonexpansive soil is very close to the site or on other parts of the subdivision site, the cost of moving could be minimal The unit cost for earthmoving and compaction on the same site can vary from a probable minimum of $0 25 per cubic yard to several times as much depending on length of haul, source of materials, and other factors

The presaturation method has so many variants and can include so many structural adjuncts that it is also very difficult to estimate its cost in advance Suffice to say that because of structural requirements, it will generally be more expensive than the soil replacement or soil burying solution.

Repacking the soil with a lime additive, although technically feasible, has not been employed to any significant extent in home construction Thus no estimates of this method are available

C. Structural Solutions

The cost of thick, steel reinforced concrete slabs may run from $500–$700 per house [12]

Raised wood floors on grade beam and pile foundations would run about $500 more than a slab foundation which was not intended to compensate for the expansive soil [13]

In summary, preliminary soil analyses would not cost more than $75 for a single lot or more than $300 for a 25-house tract This would mean an increased monthly house payment to a subsequent homeowner of less than $10 Assuming that a structural solution was decided upon to answer the problem, it might cost an additional $800–$1,000 to build a home properly on expansive soil Representatives of large institutional lending organizations indicate that such costs would mean an additional monthly payment of $6–$8 per $1,000 on a normal loan amortization Such an increase, they indicate, would not impair the ability of any reputable institution to finance the home construction [14]

Contrast these costs with the actual cost of repairs to homes damaged by expansive soil Two estimates concerning the cost of repairing houses in Conejo Valley were presented at the hearing One put the cost of repair of slabs at between $1,500 and $6,000 per house, depending upon severity of damage [15] The Director of Public Works of Ventura County put the cost at between $2,500 to $5,000 per house Repair was undertaken by mortgage holding banks and entailed jacking up each house and placing a heavy, reinforced 11″ concrete slab over the original slab.[16]

[12] Harold D Blaser *Transcript*, Volume 1, p 54
[13] T G Atkinson *Transcript*, Volume 1, pp 109 112, 113
[14] Elwood A Teague, Vice President, Great Western Financial Corporation *Transcript* Volume 2, p 18
[15] Richard L Roddis *Transcript*, Volume 1, p 72
[16] M C Lorenz *Transcript*, Volume 2, p 8

VI. CONCLUSIONS

Existing requirements and industry practices in regard to construction on expansive soils are generally inadequate to safeguard homebuyers from subsequent major structural damage and financial loss. The following summary lists present practices and their inadequacies.

Both the State Housing Law [17] and the California Administrative Code [18] provide local agencies with the discretionary authority to require soils investigation prior to new residential construction Unfortunately the various local agencies responsible for enacting building codes have not employed these provisions widely enough to prevent the occurrences described in this report.[19] Although some local ordinances have been developed after widespread damage had occurred, such steps are of no value to the homeowners who have suffered the damage

Although the Federal Housing Administration and the Veteran's Administration have successfully established controls over construction on expansive soils, the great majority of new homes constructed in the state are not insured by either agency and thus not subject to these controls.

Some private lending institutions have established their own control procedures [20] Because many homes are not financed through these institutions, and because the only authority available to them is denial of loans, this type of regulation is not comprehensive enough to be effective

The Subdivision Public Report of the Division of Real Estate contains reference to the depth of fill on each lot and to the degree of compaction in each filled lot being offered for sale The Subdivision Public Report does not indicate the presence or absence of expansive soil Moveover the Subdivided Lands Law primarily gives the Real Estate Commissioner power to require disclosure of certain conditions in the Public Report. The commissioner could not prohibit the sale of parcels containing critically expansive soil even if the seller had disclosed that fact.

The Contractors State License Board also has some jurisdiction in this area, in that it can revoke the licenses of contractors or otherwise penalize them for violation of building codes. When building codes are nonexistent or inadequate, as in the case with those dealing with expansive soil, the contractors will not be held responsible by the board for cracking of foundations by expansive soil Even if he were, the homebuyer would not benefit from the revocation or suspension of contractors' licenses Because of the long period which generally elapses before the extent or true nature of the damage becomes obvious, the statute of limitations applicable to complaints before the board may exclude the possibility of action in these cases

[17] Health and Safety Code, Div 13, Part 1 5
[18] Title 8 Chapter 9, Article 8
[19] In 1960 the Portland Cement Association conducted a survey of cities and counties to determine what codes were in effect covering concrete floor construction for residential housing The result of this survey indicated that virtually no city or county had adequate codes covering concrete residential floor construction on expansive soil
See statement of Leo Nicholson, Portland Cement Association *Transcript*, Volume 2, pp 47–48
[20] Elwood A Teague *Transcript*, Volume 2, pp 19–20.

In order to alleviate the present situation in regard to construction on expansive soil, to guarantee minimum standards of health and safety to homebuyers and to preserve authority over enforcement of building standards at the local level, the committee makes the following recommendations for corrective legislation

1 That appropriate sections be added to the State Housing Law requiring each city and county to enact ordinances requiring preliminary soils reports to be made prior to the issuance of a building permit These sections should also empower local building enforcement agencies to determine what corrective actions may be taken when soils reports reveal the presence of dangerously expansive soil Such a requirement will insure that steps are taken at the local level to prevent damage to homes due to their construction upon expansive soil Involving only minimum state action, it leaves major responsibility, discretion, and power in the hands of local officials These specific provisions will also enable the buyer of a defective home to demonstrate the negligence of a developer in the event legal action were necessary because of damage caused by improper preparation of foundation pads

2 That the Business and Professions Code provisions which regulate sales of subdivided land be amended to provide that the notice of intention to sell or lease subdivided land which must be filed with the Real Estate Commissioner must include a statement of the amount of fill used or proposed to be used on the indicated lot The notice should be required to include a statement revealing the soil conditions within the subdivision and a statement indicating that the soil has been or will be prepared so that structural damage will not occur The legislation should also provide that failure to report as indicated would be grounds for the denial of a public report The present requirement that the public report be given to prospective purchasers prior to the sale or lease of subdivision lots or parcels of lots should be extended to include lots or parcels of lots which are being offered for sale or lease after repossession

Such legislation would increase the protection available to the homebuyer by enlarging the disclosure requirement placed upon the subdivider. It would place no additional burden upon the subdivider, who would have to submit a similar report to local authorities under the new sections which would be added by the previous recommendation.

3 That the Subdivision Map Act be amended to require that the subdivision map indicate the types of soil or soil conditions present on a subdivision The map should indicate further whether or not adverse effects could result from a change in the moisture content of the soil

Such an amendment would guarantee that both builder and local building authorities would be aware, prior to construction, of any need for special measures to obviate the effect of expansive soil

4. That the State Housing Law be amended to require each city and county to retain one copy of approved plans and specifications for dwellings constructed within subdivisions The copy of plans and specifications would be filed with the local building department for at least two years

In many cases plans and specifications of buildings are not retained by builders, contractors or building departments This discard of documents makes it difficult to repair buildings and obstructs the cause of any future litigation

In conclusion two approaches to the problem of expansive soil should be specifically rejected as inadequate solutions The alternative of amending the Subdivision Map Act to require cities and counties to adopt ordinances "regulating and controlling" the design, improvement and soil bearing qualities of subdivisions[21] would tend to be uneven in its application The Subdivision Map Act applies only to subdivisions and control over expansive soil is necessary in the case of all new residential construction, not just that in new subdivisions In addition, such an amendment would provide only a casual injunction to local government to "regulate and control" the soil bearing qualities in subdivisions This kind of open-ended discretion already exists and has not proved effective

Secondly the alternative of relying on the Uniform Building Code to protect the homebuyer would be ineffective and unrealistic The Uniform Building Code may or may not be adopted by local governments as they see fit, once adopted it may or may not be regularly updated In addition it is a proprietary code outside the regularized control of governmental bodies and can be amended at any time by its authors It is subject to extraordinary pressure and influence by producers of building materials and cannot guarantee that the most inexpensive and progressive techniques will be employed to safeguard the homebuyer In short, the Uniform Building Code has not provided in the past uniform, satisfactory protection to the builder and the consumer Even if it were incorporated by reference into the State Housing Law, it would be unlikely to have that effect in the future.

[21] See proposal submitted by Charles Christensen, California Council of Civil Engineers and Land Surveyors *Transcript*, Volume 2, pp 35–36

APPENDIX

Model Legislation

An act to add Sections 17953 and 17954 to the Health and Safety Code, relating to housing.

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

SECTION 1 Section 17953 is added to the Health and Safety Code, to read:

17953. Each city, county, and city and county shall enact an ordinance which requires a preliminary soil analysis, based upon adequate test borings or excavations, of every subdivision, as defined in Sections 11535 and 11535 1 of the Business and Professions Code, and of each lot not within a subdivision upon which it is proposed to construct a dwelling

The preliminary soil analysis may be waived if the building department of the city, county or city and county, or other enforcement agency charged with the administration and enforcement of the provisions of this part, shall determine that, due to the knowledge such department has as to the soil qualities of the soil of the subdivision or lot, no preliminary analysis is necessary.

If such analysis indicates the presence of critically expansive soils or other soil problems which, if not corrected, would lead to structural defects, such ordinance shall require a soil analysis of each lot in the subdivision, or of the lot not included within a subdivision, as the case may be

SEC 2 Section 17954 is added to said code, to read

17954 The building department of each city, county, or city and county, or other enforcement agency charged with the administration and enforcement of the provisions of this part, shall determine what corrective action is required to assure that dwellings will not suffer structural damage because of the soil conditions indicated by the analyses required by Section 17953 Appeal from such determination shall be to the local appeals board

(See recommendation 4 (a) p 10)

An act to amend Section 11567 of the Business and Professions Code, relating to subdivision maps.

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

SECTION 1. Section 11567 of the Business and Professions Code is amended to read

11567. The final map shall conform to all of the following provisions:

(a) It shall be clearly and legibly drawn in black waterproof india ink upon good tracing cloth, including affidavits, certificates and acknowledgments, except that such certificates, affidavits and acknowledgements may be legibly stamped or printed upon the map with opaque ink when recommended by the county recorder and authorized by the local governing body by ordinance

(b) The size of each sheet shall be 18 by 26 inches A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown.

(c) It shall show all survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon, including bearings and distances of straight lines, and radii and arc length or chord bearings and length for all curves, and such information as may be necessary to determine the location of the centers of curves

(d) Each lot shall be numbered and each block may be numbered or lettered. Each street shall be named.

(e) The exterior boundary of the land included within the subdivision shall be indicated by colored border. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys.

(f) It shall show the type or types of soil, whether expansive soil conditions are present, and indicate the nature of adverse effects, if any, that will develop as a result of change in moisture content or the addition of water to the soil

(g) It shall also satisfy any additional survey and map requirements of the local ordinance.

(See recommendation 4 (d) p. 10.)

An act to amend Sections 11010, 11018 and 11018.1 of the Business and Professions Code, relating to subdivided lands.

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

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. Prior to the time when subdivided lands are to be offered for sale or lease, the owner, his agent or subdivider shall notify the commissioner in writing of his intention to sell or lease such offering

The notice of intention shall contain the following information:

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands

(d) A true statement of the condition of the title to the land, particularly including all encumbrances thereon

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(f) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities

(g) A true statement of the use or uses for which the proposed subdivision will be offered

(h) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(i) A true statement of the amount of fill used, or proposed to be used on each lot, and a true statement on each lot, and a true statement on the soil conditions in the subdivision supported by engineering reports showing the soil has been, or will be, prepared in such a manner that structural damage will not result.

(j) Such other information as the owner, his agent, or subdivider, may desire to present

SEC. 2. Section 11018 of said code is amended to read:

11018. The Real Estate Commissioner shall make an examination of any subdivision, and shall, unless there are grounds for denial, issue to the subdivider a public report authorizing the sale or lease in this state of the lots or parcels within the subdivision The commissioner may publish the report

The grounds for denial are

(a) Failure to comply with any of the provisions in this chapter or the regulations of the commissioner pertaining thereto.

(b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.
(c) Inability to deliver title or other interest contracted for.
(d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering
(e) Inability to demonstrate that adequate financial arrangements have been made for any community recreational or other facilities included in the offering
(f) Failure to make a showing that the parcels can be used for the purpose for which they are offered
(g) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto
(h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the commissioner
(i) Failure to demonstrate that the soil on each lot has been prepared in such a manner that structural damage will not result.

SEC 3 Section 11018 1 of said code is amended to read

11018 1 A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision *The requirement of this section extends to lots or parcels offered by the subdivider after repossession.*

(See recommendation 4 (c) p 10)

An act to add Section 17955 to the Health and Safety Code, relating to housing.

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

SECTION 1 Section 17955 is added to the Health and Safety Code, to read.

17955. Each city, county, and city and county shall, by ordinance, require that one copy of approved plans and specifications for dwellings constructed in a subdivision, as that term is defined in Sections 11535 and 11535 1 of the Business and Professions Code, shall be filed with the building department for retention by such department for at least one year

(See recommendation 4 (d) p 10)

PART II

REPORT ON NEIGHBORHOOD PARKS IN NEW SUBDIVISIONS

FINDINGS

1 Population pressures have created a clear need for more neighborhood recreation and park space in the subdivisions of California

2. There are many methods which are available to local governments to aid in the provision of such neighborhood recreation areas, but all involve substantial increases in bonded debt or property tax burdens.

3. In the past, the preferred technique for acquiring land and/or funds to provide park or recreation space in subdivisions was to assess the subdivider fees or to demand dedication of land as a condition to subdivision plat approval

4. Since 1957, the authority of local government to impose such requirements has been clouded by a series of court decisions which indicate that these requirements may be illegal if not specifically authorized by a state enabling statute and if fees collected are not used to benefit the residents of the affected subdivision.

5. Developers and subdividers maintain that fee and land dedication requirements have frequently been imposed in an unreasonable fashion and that land has been acquired in a haphazard and wasteful manner.

CONCLUSIONS

In order to provide cities and counties with appropriate tools for providing neighborhood park and recreation areas in new subdivisions and, at the same time, to protect subdividers from unreasonable, arbitrary or haphazard regulation, the committee makes the following recommendations for amendments to the Subdivision Map Act

1 The Subdivision Map Act should be amended to authorize local ordinances which would require a subdivider to dedicate land for neighborhood parks and related use,

2. The Subdivision Map Act should be amended to authorize local ordinances which would require payment of fees by subdividers in lieu of land dedication, said fees to be used to acquire land for the benefit of the inhabitants of the subdivision,

3 The Subdivision Map Act should be amended further to require any ordinances which authorize fee assessments or land dedication requirements as prerequisite to plat approval to establish definite planning standards for determining where, and how much, land is needed to fulfill community demands for park and recreation areas,

4 The Subdivision Map Act should be amended to require ordinances which authorize fee or land assessment as a prerequisite to plat approval to insure that there be a reasonable relationship between the amount and location of land or fees extracted from the subdivider, and the use of such land or fees by the future residents of the subdivision

I. INTRODUCTION

Concern is being expressed statewide in California that we may be in danger of " . building ourselves into a cement-lumber jungle "[1] Land pressures have been building steadily and the rising market price of each available scrap of urban land has made land the focus of competitive interests and competitive values Recreation experts, planning commissions and conservationists have long insisted that the provision of recreation areas in subdivisions is a necessity. They argue that healthful, productive community life depends in part on the availability of recreation and park space

Population congestion magnifies the need for urban open space It is perhaps the visual impact of thousands upon thousands of houses built row on row without relief of open space which has been most responsible for stimulating burgeoning citizen interest in the problem of providing for recreation areas in subdivision developments House Resolution 239, authorizing a study of the need for parks in subdivisions is but one symptom of this general and increasing citizen concern.

Pursuant to H R 239, a special subcommittee of the Assembly Committee on Municipal and County Government convened in public hearing on April 24, 1964, to receive testimony The hearing produced a balanced view of the issues and the committee discovered that at least three occasionally overlapping but still quite distinct groupings of interests could be identified as significantly involved

First, there are local community planners and recreation directors and their legal aides who clearly believe in the value of subdivision parks, but who are plagued by the financial and legal difficulties of providing them in the desired number Second, there are builders and developers of subdivisions who are caught between the pressures for good, reasonably priced housing and the seemingly incompatible demands for recreation areas in land-scarce urban areas Finally, there are the taxpaying citizens who desire adequate recreation space for their families but who, at the same time, wish to avoid any increase in already burdensome property taxes

It was the goal of the subcommittee to study all relevant aspects of the problem and to determine what, if any, action the Legislature should take to the end of providing adequate neighborhood recreation space in the multiplying subdivisions of the state

[1] See transcript of hearing on the subject of *Neighborhood Parks and Open Space in Subdivisions*, Assembly Interim Subcommittee on Municipal and County Government, meeting in Montclair, California, April 24, 1964, p 40 (hereafter referred to as *Transcript*)

II. THE PROBLEM OF PROVIDING FOR NEIGHBORHOOD OPEN SPACE AND RECREATION AREAS IN SUBDIVISIONS

A. As Viewed by Local Officials

Neighborhood parks are a necessary component of community life. The committee has not encountered one local official who would deny the value of the neighborhood park Elected officials, particularly, have found themselves besieged by demands for more park space.[2] Families who have moved to suburbia in the hope of finding escape from urban congestion have found instead that their children may there too be forced into the streets in their natural pursuit of recreation space These people turn to the community as a whole for aid in providing the desired parks.

The guardians of the community's general fund, however, inevitably find themselves and the fund hard pressed to provide for even the more obvious basic needs of the community and those who demand the new space will often balk at increases in already high property taxes.[3] Desirous of avoiding reliance on state or federal agencies in providing for such a clearly local need, local authorities generally feel that they would be capable of handling the problem if given adequate tools with which to proceed.[4]

Specifically, they insist that it is legitimate to assess the subdivision developer a percentage of his land or a fee for the privilege of developing the land—such land and/or fees to be used for park purposes. They accept the rationale of the "direct benefit theory" which holds that the developer, through private profit-seeking activity, creates a need for public action and expenditure. Just as the developer may legitimately be required to provide for drainage, streets, and walks as a prerequisite to plat approval, so may he be required to dedicate land or be assessed fees for park purposes Thus, he and the subsequent homeowner, rather than the public or general taxpayer, are made to bear the burden of this private act of development for their own benefit. Ultimately, this kind of control of subdivision development

[2] State of California Recreation Commission 8th Annual Report, 1954–55, pp 15–18
Marion Clawson, "A Positive Approach to Open Space Preservation" *Journal of American Institute of Planners*, Vol 28, May 1962, pp 124–129
Dr Frances W Herring, Institute of Governmental Studies, University of California, Berkeley, *Transcript*, p 5
George Hjelte, former Director, Department of Parks and Recreation, City of Los Angeles, *Transcript*, pp 41–43
Ross Cunningham, Assistant Director, Park and Recreation Department, City of Los Angeles, *Transcript*, pp 44–45
Elwin Alder, City Manager, Upland, *Transcript*, pp 58–59
George Musso, Director of Planning, City of Livermore, *Transcript*, pp 85, 163–165

[3] Dr. Frances W Herring, *Transcript*, p. 9.
Jay Michael, Assistant to Director, League of California Cities, *Transcript*, pp 33–34
Ross Cunningham, *Transcript*, p 45.
Elwin Alder, *Transcript*, pp 59–62

[4] Elwin Alder, *Transcript*, p 61
Charles A DeTurk, Director State Department of Parks and Recreation, *Transcript*, p 90
George R Musso, *Transcript*, p 168
Lester E Earnest, Park and Recreation Director and Harry Haelsig, Planning Director, City of San Diego, *Transcript*, p 145

derives from the state's police power and must be exercised in a reasonable fashion.[5]

Case law indicates that local authorities may constitutionally require land dedication or fee assessment for park purposes as a condition for plat approval.[6] However, the courts have inferred that such requirements which are not specifically provided for in state enabling statutes may be struck down as invalid.

In California, the Subdivision Map Act provides that developers must submit a tentative map of proposed subdivisions to local authorities for approval. Local governments may pass ordinances regulating the "design and improvement" of subdivisions, as defined in the Map Act, and the subdivider must comply with the provisions of the ordinances as a condition to map or plat approval.[7] The Subdivision Map Act does not specifically include neighborhood parks or recreation areas within its definition of the "design and improvements" which may be required by local authorities as a prerequisite to plat approval.

A key 1957 case, *Upland* v. *Kelber*, suggested that assessment of fees for park purposes as a prerequisite for plat approval would be held invalid in California if the fees were to be used to subsidize parks for the benefit of the community as a whole and not for the benefit of the affected subdivisions. Moreover, the court indicated that *any* land dedication or fee requirements might be held invalid as long as specific authority for such action remained absent from the Subdivision Map Act.[8]

These legal complications have caused hesitancy to act on the part of many planning authorities and the repeal of numerous ordinances requiring dedication or fee payments. Thus, local authorities suggest revision of the Subdivision Map Act to provide *specific* authority for

[5] Allison Dunham, "A Legal and Economic Basis for City Planning," *Columbia Law Review*, Vol 58, March 1958, pp 650–671
Thomas D Zilavy, "Subdivision Regulation Requiring Dedication of Park Land or Payment of Fees as a Condition Precedent to Plat Approval," *Wisconsin Law Review*, Vol 1961, pp 311–312, and 320
John W Reps and Jerry L Smith "Control of Urban Land Subdivision," *Syracuse Law Review*, Vol 14, Spring 1963, pp 405–412.
Dr. Frances W Herring, *Transcript*, pp 103–107
Lester Earnest, *Transcript*, pp 62–63
George R Musso, *Transcript*, p 87

[6] Report of Harold W Kennedy, County Counsel, Los Angeles County, Chairman of Subcommittee on Use of Public Facilities For Governor's Advisory Committee on Children and Youth, June 20, 1958
American Society of Planning Officials, Planning Advisory Service, Information Report No 46 *Public Open Space in Subdivisions*, January 1958
Chester James Antieau *Municipal Corporation Law*, San Francisco Mathew Bender and Company, Inc, 1963, Vol I, pp 509–511
Richard W Cutler, "Legal and Illegal Methods for Controlling Community Growth on the Urban Fringe," *Wisconsin Law Review*, May, 1961, pp 371–402
John W Reps and Jerry L Smith, *op cit*, p 411

[7] Business and Professions Code Chpt 2 Subdivision Maps see particularly Sections 11510, 11511, 11542, 11543 5, 11514
For discussion of provisions of California Subdivision Map Act, see testimony of Dr Frances W Herring, *Transcript*, pp 3–4, 101–3
Ronald Bevins, City Attorney for City of Buena Park, *Transcript*, pp 72, 147

[8] For review of case law dealing with problems, see testimony of
Dr Frances W Herring, *Transcript*, pp 4–7, 103–108
Stanley Tomlinson, City Attorney, Buena Park, *Transcript*, pp 35–36 (Mr Tomlinson's excellently written statement to the committee was inadvertently omitted from the transcript, but may be obtained from the commitee office upon request See particularly, pp 1–6.)
Elwin Alder, *Transcript*, pp 58–60, and 137–138
Ronald Bevins, *Transcript*, pp 72–75 and 147–150
Daniel Curtin, Deputy City Attorney, Richmond, *Transcript*, pp 78–79 and 153–155
D R Von Raesfeld, City Manager, Santa Clara, *Transcript*, pp 81–82.

requiring park dedication and/or fee assessment as a prerequisite to plat approval [9]

B. As Viewed by the Developers

Urban land is both extremely scarce and extremely expensive The developer and builder are under enormous pressures to provide housing for a rapidly growing population Yet, local authorities make impossible demands upon them through a multiplicity of overlapping, sometimes contradictory ordinances, codes, regulations, and requirements [10] These, plus demands for the valuable land itself or in-lieu fees threaten to make many developments of much needed housing economically unfeasible [11]

Far too often, planners demand valuable land from the developers which is unsuitable or inadequate in size for park purposes, while other land is wasted through the imposition of outdated large lot zoning requirements Local governments have a tendency to acquire land in a haphazard fashion at the expense of the developer and ultimately the homeowner, and such land may never find its way to use as recreation space When land is developed for park purposes, it may become available to the community at large and not just to subdivision residents When this occurs, the fee and land dedication requirements amount to unequal taxation [12]

Developers claim that few communities have felt restrained by the implications of the *Kelber* v *Upland* case and have continued to extract or extort land or money from subdividers, who are too committed to their developments to protest through expensive, lengthy, and delaying litigation.[13]

Finally, some remain unconvinced that park space is always a benefit or is needed where local planners or recreation experts say that it is In any case, the subdividers insist that more study is required to determine the real need of Californians for neighborhood parks [14]

Rather than recommending a revision of the Subdivision Map Act to explicitly permit assessment of land or fees for park purposes, the developers would recommend explicit prohibition of such procedures [15]

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[9] See testimony of
Carl Ourston, City Planning Department, City of Los Angeles, *Transcript*, p 48
Elwin Alder *Transcript* pp 60, 141
Ronald Bevins, *Transcript*, pp 77, 151–152
Joseph Redman, City Attorney, Santa Clara, *Transcript*, p 84
D R Van Raesfeld, *Transcript*, p 84 and Resolution of City of Santa Clara April 23, 1964, *Transcript*, pp 161–162

[10] See testimony of
Herbert D Tobin, Member of the Board, Home Builders Council of California, *Transcript*, pp 21–23

[11] See testimony of
Herbert Tobin, *Transcript*, p 23
Walter Keusder, Past President Home Builders Council of California, *Transcript*, pp 29–30

[12] See testimony of
Herbert Tobin, *Transcript*, p 24
Walter Keusder, *Transcript*, pp. 29–30

[13] See testimony of
Walter Keusder, *Transcript*, p 31

[14] Jane Jacobs, *The Death and Life of Great American Cities*, New York Vintage Books, 1963, Ch 6
See testimony of
Herbert Tobin, *Transcript*, p 24
Walter Keusder, *Transcript*, pp. 31–32

[15] Ray Cherry, Home Builders Association and Home Builders Council of California, Transcript of November 3, 1963 hearing, Assembly Interim Committee on Governmental Efficiency and Economy, *Subdivision Map Act and Recording of Plans*, pp 9–10
Walter Keusder, *Transcript*, p 31

III. TECHNIQUES AVAILABLE TO FACILITATE THE CREATION OF NEIGHBORHOOD PARKS

Cluster Zoning

Local ordinances may state that a developer will be allowed to reduce previously required lot sizes by certain percentages provided that the land "saved" is retained as open space for parks The density of the subdivision as a whole remains unchanged, but the developer reduces his cost for streets, sewers and other items, by virtue of the lot size reduction This approach, of course, requires the voluntary participation of the developer.[16]

Fee and Land Dedication Requirements as Condition to Plat Approval

This procedure was discussed at length in Part II of this report The major objection to it is that land may be acquired in a haphazard, even whimsical fashion, by local authorities in possession of powerful weapons *However, this shortcoming may be remedied through a statutory requirement similar to that which applies to fees required for drainage purposes. That is, local authorities may be required to formulate a plan for park acquisition before they may embark on acquisition forays* They may be required to establish standards and any requirements imposed upon the developer could be made to bear a reasonable relationship to the needs of the plan and to the needs of the subdivision [17]

County Service Areas: Community Service Districts

The County Service Area Law and the Community Services District Law can be activated respectively by a resolution of supervisors or a petition of citizens residing in the affected area The residents can be directly taxed or bonds floated under these instruments to the end of providing recreation space in unincorporated areas County officers and residents, however, tend to be reluctant to use these procedures for park purposes, when the needs for basic sanitation and water facilities are often more immediately pressing and also very expensive [18]

[16] See FHA Land Planning Bulletin No 6—*Planned Unit Development With a Homes Association*, 12/63
FHA Land Planning Bulletin No 7—*Land Use-Intensity Rating*, 9/63
Santa Clara County *Residential Planned Development* (RPD) District, Article 13 of Zoning Ordinance
County of Santa Clara Planning Department *Residential Planned Development, Process and Administrative Procedures*, June 1, 1964 (mimeo).
see testimony of
Dr Frances W Herring, *Transcript*, p 8
Stanley Tomlinson, *Transcript*, p 40
George Musso, *Transcript*, pp 87 and 167

[17] See testimony of
Dr Frances W Herring, *Transcript*, p 8
Walter Keusder, *Transcript*, p 33
Stanley Tomlinson, *Transcript*, pp 36–37 (see also written statement submitted to committee staff by Mr Tomlinson, but omitted from transcript, pp 3–6)
Lester E Earnest, *Transcript*, pp 65, 145
Daniel Curtin, *Transcript*, pp 79–81, 156–60

[18] See testimony of
Dr Frances W Herring, *Transcript*, pp 9–10, 111–112
Walter Keusler, *Transcript*, p 30
Final Report of the Assembly Interim Committee on Municipal and County Government, 1961–63 *Use of Special Assessment Procedures and Independent Special Districts to Aid Land Development*, Vol 6, No 20

Improvement Acts

The Improvement Acts of 1911 and 1913 may possibly be adapted to provide parks and recreation areas in subdivisions However, as committee investigation has indicated, the use of these legal instruments, designed to facilitate improvement in already developed areas, may be subject to misuse when employed to provide improvements in new subdivisions.[19]

Open Space Maintenance Districts

This technique provides for the creation of a maintenance district which can acquire property and maintain it for park purposes The district would be administered and supervised by the city or county within which it exists A special property assessment could be levied upon residents of the district to pay for open space or park maintenance. Assurance could be had through the use of the open space maintenance district that acquired land would not deteriorate into overgrown, unused, unsightly, empty space At present, state enabling legislation does not allow for the creation of open space maintenance districts, although such an ordinance has been adopted by Los Angeles under its authority as a charter city [20]

Zoning

Large lot zoning does not create parks Restrictive zoning never guarantees that land will be held as parkland in perpetuity, particularly when new pressures upon it become severe [21]

Private Ownership

Joint ownership and control of green areas or open space in subdivisions through the medium of condominiums or incorporation will generally work well in high-priced housing developments However, the technique poses problems of continuity, maintenance, and enforcement in lower or middle income areas where residents are more transient and may balk at group standards and assessments [22]

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[19] Opinion of Legislative Counsel, No 1695, *Use of Improvement Acts for Parks in Subdivisions*, January 22 1964
Final Report of the Assembly Interim Committee on Municipal and County Government, 1961–1963 *Use of Special Assessment Procedures and Independent Special Districts to Aid Land Development*, Vol 6, No 20
See testimony of
Dr Frances W Herring, *Transcript*, p 10 and p 112
Walter Keusder, *Transcript*, p 30
Harry Haelsig and Mr L E Earnest, *Transcript*, p 144
Robert E McCabe, Regional Director, Urban Renewal Administration, HHFA, Region VI, *Transcript*, p 97

[20] See testimony of
Richard S Volpert, Attorney, O'Melveny & Myers, Los Angeles, *Transcript*, pp 49–57 and 119–136
See *California Builder*, July 1963, pp 16, 18

[21] See testimony of
Richard S Volpert, *Transcript*, pp 49-50, 121–123

[22] See FHA *Planned-Unit Development With a Home Association*, Planning Bulletin No 6, 12/63, p 4 ff
See testimony of
John Bentley, Deputy Chief Underwriter, Federal Housing Administration, Santa Ana, *Transcript*, pp 18–19
Richard S Volpert, Attorney, O'Melveny & Myers, Los Angeles, *Transcript*, pp 50–51, 57–58, 120–121

Annexation

A city may impose a fee or land dedication requirement upon a developer as a condition to desired annexation. Obviously, this technique will apply only to those cities surrounded by developing and unincorporated areas.[23]

Business and Building License Fees

Local authorities have imposed fees or "bedroom taxes" on home builders for license or privilege to build, such fees to be used for park purposes. The legality of this procedure appears to be still in question.[24]

Federal Aid

The Open Space Land Program, under Title VII of the Housing Act of 1961 provides for direct grants to eligible public units to assist in the acquisition of open space in urban areas. Grants generally equal 20 percent of acquisition cost, but under certain circumstances, they may amount to 30 percent.[25]

Correlate Procedures: Reservation of Land and Tax Write-Offs

State enabling legislation may allow ordinances to require that land be reserved within subdivisions for public use. This land could remain undeveloped until the local unit of government had the time and opportunity to develop a comprehensive recreation or park plan. For the protection of the developer, limitations on the length of time that land could be reserved may be established, and taxes could be suspended on land, whether dedicated or reserved, which was not available for development.[26]

IV. CONCLUSIONS

It is recommended that the Subdivision Map Act be amended to include dedication of land for neighborhood parks and related open space or fees in lieu of such dedication as among items which may be required as a condition of subdivision plat approval.

It is further recommended that any ordinance imposing such requirements as condition for plat approval be required to establish standards which will prohibit acquisition of land in an arbitrary manner and will guarantee that the fees assessed or land taken will benefit the residents of the affected subdivision.

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[23] See testimony of
George Musso, *Transcript*, pp. 86, 165–66, 169–172

[24] See testimony of
Ronald Bevins, *Transcript*, pp. 75–6, 150–151
George Musso, *Transcript*, p. 167

[25] See testimony of
Walter Keusder, *Transcript*, p. 30
George Musso, *Transcript*, pp. 87, 167
Robert E. McCabe, Regional Director, Urban Renewal Administration, HHFA, Region VI, *Transcript*, pp. 94–99
Note: Public Law 560, signed 9–24–64, increases the amount of federal money available for Open Space Grants to 25 million dollars.

[26] See Provisions of the *Maryland-Washington Regional District Act Concerning Reservations of Land in Subdivisions for Public Use, Including Parks*, mimeo, February 20, 1956. Available State of California, Recreation Commission, 721 Capitol, Room 609, Sacramento.
See testimony of Dr. Frances W. Herring, *Transcript*, pp. 15, 109–10, 118.

In Defense of These Recommendations

The committee feels that any action taken by the state government which will allow local authorities to deal more effectively with local problems is action well taken Such an amendment to the Subdivision Map Act will strengthen the prerogatives of local government. It will also safeguard arbitrary imposition of such requirements to the disadvantage of subdividers by establishing the general standards under which such requirements may be invoked.

If a specific situation develops in which developers or builders wish to protest the implementation of the Map Act, they will have recourse to local legislative bodies, and finally to the courts Just as subdividers and builders generally prefer home rule in the regulation of the building industry, we assume they will prefer to deal here, too, with locally based governmental agencies

The committee also recommends that serious consideration and further study be given to the following proposals, especially in light of present studies of existing tax structure currently being conducted by other legislative committees

(1) Authorize reservation of land within subdivisions for a limited period, when a master plan indicates that some public use may require its later condemnation This procedure will allow retention of land in an undeveloped state until decisions can be made as to its future use To insure fairness to the developer, reserved land should be exempt from taxation for the period of reservation.

(2) Amend the Revenue and Taxation Code to provide explicitly that taxes on property from which development rights have been dedicated or sold shall be based solely on the uses to which the property may still be put This exemption would remove a serious obstacle to gift or sale of land development rights for public use

APPENDIX

Model Legislation

An act to amend Sections 11510 and 11511 of, and to add Sections 11525.1, 11546, and 11547 to, the Business and Professions Code, relating to the Subdivision Map Act.

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

SECTION 1. Section 11510 of the Business and Professions Code is amended to read:

11510 "Design" refers to street alignment, grades and widths, alignment and widths of easements and ~~right~~ *rights* of ~~ways~~ *way* for drainage and sanitary sewers and minimum lot area and width. *"Design" also includes land to be dedicated for parks and related public use.*

SEC. 2. Section 11511 of said code is amended to read:

11511. "Improvement" refers to only such street work and utilities to be installed, or agreed to be installed by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof *"Improvement" also includes any work to be done by the subdivider on land to be dedicated for parks and related public use as a condition precedent to the approval and acceptance of the final map of the subdivision.*

SEC. 3. Section 11525.1 is added to said code, to read:

11525.1. Whenever a local ordinance requires that a subdivider shall dedicate land for parks and related public use, the ordinance shall include definite standards for determining what proportion of a subdivision shall be so dedicated. There shall be a reasonable relationship between the quantity and location of the land to be dedicated, and the use of such land by the future inhabitants of the subdivision and the anticipated number of such inhabitants.

SEC. 4. Section 11546 is added to said code, to read:

11546. In lieu of the dedication of land for parks and related public use as provided in Section 11525.1, a local ordinance may require the payment of a fee, to be used solely for the purchase and improvement of park and open space facilities for the direct benefit of, and reasonably accessible to, the inhabitants of the subdivision.

SEC. 5. Section 11547 is added to said code, to read:

11547. A local ordinance may require the payment of a fee as a condition of approval of a final subdivision map for pur-

poses of defraying the actual or estimated costs of purchasing and improving land for parks and related public use

Such local ordinances may require payment of fees pursuant to this section if:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of any subdivision for which payment of a fee is required

(2) The ordinance refers to a recreation element of a general plan adopted pursuant to Section 65465 of the Government Code, which contains an estimate of the total costs of purchasing and improving land for parks and related public use required by the plan.

(3) The park plan, in the case of a city, situated in a county having a countywide general park plan, has been determined by resolution of the governing body of the county to be in conformity with the county park plan or, in the case of a city situated in a county not having a countywide general park plan but in a district having a general park plan, has been determined by resolution of the governing body of the district to be in conformity with the district general plan or, in the case of a city situated in a county having a countywide general park plan and in a district having a general park plan, has been determined by resolution of the governing body of the county to be in conformity with the county park plan and by resolution of the governing body of the district to be in conformity with the district general plan

(4) The costs, whether actual or estimated, are based upon findings by the governing body that subdivision and development of property within the planned local park area will require purchasing and improving of the facilities described in the park plan, and that the fees are fairly apportioned within the local park area either on the basis of benefits conferred on property proposed for subdivision or on the need for local park and related public use facilities created by the proposed subdivision and development of other property within the local park area

(5) The fee as to any property proposed for subdivision within a local park area does not exceed the pro rata share of the amount of the total actual or estimated costs of all facilities within the local park area which would be assessable on such property if such costs were apportioned uniformly on a per acre basis

(6) The park and related public use facilities planned are in addition to existing local park and related public use facilities serving the area at the time of the adoption of the park plan for the area

Fees required by an ordinance adopted pursuant to this section shall be paid into a "planned local park facilities fund" A separate fund shall be established for each local park area.

Moneys in such fund shall be expended solely for the purchasing and improving of land for local park and related public use facilities within the planned local park area from which the fees comprising the fund were collected An ordinance adopted pursuant to this section may provide for the acceptance of cash or other consideration in lieu of the payment of fees

A county or city imposing fees pursuant to this section may advance money from its general fund to pay the costs of constructing park and related public use facilities within a local park area and reimburse the general fund for such advances from the planned local park facilities fund for the local park area in which the park and related public use facilities were constructed

A county or city imposing fees pursuant to this section may incur an indebtedness for purchasing and improving of local park and related public use facilities within a local park area, provided that the sole security for repayment of such indebtedness shall be moneys in the planned local park facilities fund

PART III

Report on the Adequacy of the Current Formula for Apportioning Fine and Forfeiture Revenue (Penal Code Sec. 1463)

FINDINGS

1. Currently, the fines, forfeitures and penalties assessed by California's inferior courts provide an annual sum in excess of $65 million which is returned to the cities and counties The total amount collected in each county is distributed according to a detailed formula prescribed by Section 1463 of the Penal Code, and provisions found in the Vehicle, Fish and Game, and Business and Professions Codes

2. The necessity for some formula by which these moneys would be distributed was occasioned by the court reorganization of 1950.

(a) Prior to reorganization cities had operated their own courts and had retained all revenues from such courts Traditionally these moneys exceeded the amounts necessary to offset costs and in effect became a source of revenue for the city general fund

(b) Court reorganization eliminated all city courts and transferred the operation of all inferior courts to the county. Since the county was assuming an additional cost in providing these court services, a spirit of fairness required that it be compensated for the actual costs of these additional services

(c) Although acceding to the principle that counties should be compensated for the additional court costs they were assuming, the cities had no wish to give up entirely the additional general fund revenues which had formerly been provided by the city courts

(d) Thus, the reorganization plan originally required that moneys from fines, forfeitures and penalties for non-Vehicle Code arrests, be apportioned on the basis of 25 percent to the county and 75 percent to the cities

3 The counties were dissatisfied with the 75 percent–25 percent apportionment, and sought to effect some change which would provide additional revenues for counties In 1953 these efforts resulted in an enactment of the formulas currently contained in Penal Code Section 1463 In an effort to insure that the counties would remain in the same relative financial position which existed prior to court reorganization, a comparison was made of costs and revenues for each city court during the years immediately preceding reorganization The formula of Penal Code Section 1463 sought to insure that future apportionment of court revenues would preserve this same cost-revenue ratio Thus, in theory the county would receive that fraction of court revenues which represented court costs and the cities would receive the balance.

CONCLUSIONS

1. Because city-operated courts no longer exist, it is impossible to obtain the data which would be necessary to test the adequacy of the 1953 apportionment formula or to up-date it. Under present circumstances, therefore, the formula of Penal Code Section 1463 has become an arbitrary formula.

2. Since a court system is necessary to the general welfare of a community, it is questionable to argue that there should be any necessary relationship between the source of a court's finances and the revenue which it generates.

3. There are at least three major alternatives to the present formula contained in Penal Code 1463.

(a) Revise the apportionment ratios in the present formula (Since the present formula has become arbitrary, however, any revision would also be a fairly arbitrary one and would require assent by the individual cities and counties affected)

(b) Establish a single percentage governing the apportionment of fines and forfeiture moneys (This could be a single statewide percentage or countywide percentage which might vary from county to county)

(c) Payment of all court costs from fines and forfeitures moneys with any remainder either returned to the cities or split on some mutually agreeable basis between the cities and the counties

4 The data established by the committee studies do not in themselves justify any sweeping changes in the existing formula Penal Code 1463 could be equitably revised by any of the three methods outlined above or by some variation of them. Such revisions however must await some consensus between the cities and counties of the state both on the necessity for revision and on the manner in which such a revision should proceed.

I. INTRODUCTION

Currently the fines, forfeitures and penalties assessed by California's inferior courts provide an annual sum in excess of $65 million which is returned to cities and counties The total amount collected in each county is distributed according to a detailed formula as prescribed by Section 1463 of the Penal Code together with other provisions found in the Vehicle, Fish and Game, and Business and Professions Code [1] Virtually all of this money is generated as a consequence of arrests made by city officials within city limits

Prior to the court reorganization of 1950 cities kept all of the fine and forfeiture revenue which resulted from arrests by city officials. Part of this sum was used to offset the operating costs of the city courts The balance was transferred to the city general fund. After the 1950 court reorganization, when counties took over the responsibility for all inferior courts, a method of sharing city receipts was sought which would alleviate the county's additional financial burden A formula was devised for each city which has been in effect, with some minor modifications, for the past 10 years At the present time, counties, facing increasing costs, seek a larger share of the revenue, while cities have opposed such a move because of their own need for additional funds

H R. 572 adopted by the 1963 Legislature directed the Interim Committee on Municipal and County Government to study the formula for apportioning fine and forfeiture revenue which is currently provided in Penal Code Section 1463 Initial hearings were held in Sacramento on October 8–9, 1963 As a result of these hearings, Chairman John Knox established an advisory committee to gather and evaluate data on the current apportionment formula Assemblyman Charles Warren was designated to serve as chairman of this committee, which included Assemblyman John Veneman, Mr Richard Carpenter, Executive Director and General Counsel of the League of California Cities, Mr William R MacDougal, General Counsel and Manager of the County Supervisors Association, Councilman James Harvey Brown of the City of Los Angeles, John R Leach, Assistant Chief Administrative Officer, County of Los Angeles; and Mrs Winifred L Hepperly, representing the Judicial Council Staff assistance was provided both by the Municipal and County Government Committee and by the Legislative Analyst's office After considerable discussion and extensive staff work, the advisory committee submitted its recommendations to the full Municipal and County Government Committee. These constitute the basis for the committee recommendations on his subject

[1] California State Controller *Annual Report of Financial Transactions Concerning Counties of California*, fiscal year 1962–63, p vii *Annual Report of Transactions Concerning Cities of California*, fiscal year 1962–63, p v
This amount represents a significant but not major, source of revenue to both cities and counties For example, in fiscal 1962–63 county revenues from fines, forfeitures and penalties were $25 3 million, or 1 51 percent of total revenues of $1 68 billion During the same period cities received $40 7 million from fines and forfeitures, 3 4 percent of total city revenues of $1,98 billion

The balance of this report outlines briefly the origins of the city-county dispute over the distribution of fine and forfeiture revenue, describes the current status of this dispute, and suggests the appropriate role of the Legislature in the controversy

II. BACKGROUND OF THE DISPUTE

Although the distribution of fines and forfeiture moneys among various governmental agencies is affected by provisions in the Vehicle, Fish and Game, and Business and Professions Codes, the basic provisions governing its distribution are found in Section 1463 of the Penal Code Among its various provisions, this section requires that fines and forfeitures resulting from arrests by city officers within cities be divided on a schedule basis as set forth therein A percentage of the money is paid to the county with the balance being paid to the city in which the arrest occurred [2] It is this category of fine and forfeiture—those resulting from arrests by city officers within cities—that is now the subject of controversy between city and county officials

The basis for the controversy dates back to the Court Reorganization Plan of 1950 The Judicial Council, after an extensive study of court organization and court costs, recommended a comprehensive reorganization plan to the 1949 Legislature The plan was adopted, and a constitutional amendment, needed to implement the plan, was approved by the voters in 1950 The reorganization plan became generally effective throughout the state on January 5, 1953

Before the 1950 court reorganization several different types of local courts were maintained by cities Fines and forfeitures produced by these courts supplied an additional source of income for the cities On the other hand their variety and number also produced overlapping jurisdictions and confusion in court structure Court reorganization reduced the types of inferior courts to two—municipal courts, which serve city areas, and justice courts which serve rural and unincorporated areas—and gave responsibility for operating these courts to the counties [3]

In transferring the operation of inferior courts to the counties, reorganization threatened to eliminate court-produced revenue as a source of city funds This concern was finally resolved, however, when cities agreed to support reorganization on the condition that they would "not be hurt financially and that the status quo would be maintained"

[2] For a general outline of the manner in which fines, forfeitures and penalties are distributed under Penal Code Section 1463, see transcript of hearing on the subject of *Fines and Forfeitures*, Assembly Interim Committee on Municipal and County Government, meeting in Sacramento, October 8–9, 1953 (hereafter referred to as *Transcript*)
Statement of Gilbert Lentz, Assistant Legislative Analyst, pp 4–8, 111–114

[3] For a thorough explanation of the background and proposed results of the Court Reorganization Plan of 1950, see *Fourteenth Biennial Report of the Judicial Council of California to the Governor and the Legislature* January 14, 1953

Because the counties were to assume the full burden of court costs, it was considered reasonable to apportion part of the fine and forfeiture revenues to the counties to compensate them for these additional costs The 1949 law had provided that 25 percent of the fines and forfeitures collected as a result of non-Vehicle Code arrests by city officials would be paid to the county The city would retain 75 percent of non-Vehicle Code fines and forfeitures and 100 percent of the fines and forfeitures collected under the Vehicle Code

In 1951, although court reorganization had not yet gone into effect throughout the state, the counties realized that in many cases their share of fine and forfeiture revenue under this plan would be less than the new court costs which would have to be incurred by them Accordingly several unsuccessful attempts were made by both cities and counties to have the 75–25 percent formula changed at the 1951 session of the Legislature Finally the situation was referred to the Senate Interim Committee on State and Local Taxation for further study.

After a lengthy deliberation on the matter, the Senate Committee recommended in part to the 1953 Legislature

> That legislation be adopted which would provide that from the total fines and forfeitures collected there should be deducted and paid to the county an amount sufficient to defray the costs of maintaining the court, exclusive of capital outlay The remainder of the fines and forfeitures should be divided equally between the cities and the county [4]

This report, which generally supported the county position, was not fully accepted by the Legislature, a fact which may be attributed to strong city opposition to giving up a significant source of revenue Extensive city-county negotiations ensued, the result of which was the basic formula presently contained in Penal Code Section 1463 Using data reported to the State Controller during the years immediately prior to court reorganization (fiscal 1948 through fiscal 1951) the Legislative Analyst's office compared the operating costs of the courts of each city to the revenues produced by such courts The results for each city were expressed in percentages For example, the operating costs of city courts in city "X" might have averaged 20 percent of court revenues The percentage for each city was then extended to the reorganized court system Thus the county would receive 20 percent of the fine and forfeiture revenue generated by arrests within city "X"

The object of this approach was to leave the cities and counties in the same relative financial positions they had occupied prior to reorganization Presumably the counties would thus be compensated for the actual cost of operating the courts under the reorganization plan The cities on the other hand would not be deprived of a revenue source that had become traditional to them This compromise proved agree-

[4] California State Senate *The Disposition of Inferior Court Fine and Forfeitures Under the Court Reorganization Plan Adopted in 1950* Senate Interim Committee on State and Local Taxation 1953, p 9

able to both cities and counties, and the percentages as determined by the Analyst's office were incorporated into Penal Code Section 1463 [5]

III. CURRENT STATUS OF THE PROBLEM

In recent years a number of counties have complained that this statutory formula has failed to reimburse them for their court expenses

1 In fiscal 1962–63, for example, Contra Costa County listed receipts of $420,073 01 as the county share of municipal court revenues At the same time it listed expenditures of $585,725 76 for court purposes The cities received $386,490 16 during this period as their share of the court revenues [6]

2 In fiscal 1961–62 the municipal court serving the City of San Diego listed operating costs of $1,522,212 County revenue from this court was $680,223 The City of San Diego received $2,522,630 as its share of court revenue [7]

3 In fiscal 1962–63 Santa Clara County listed operating costs for its municipal courts of $1,188,370 County revenue from municipal courts was listed at $1,035,047; city revenues at $1,729,353 [8]

Such examples provide the basis for the county argument that court costs should be deducted from court revenues prior to returning any portion of fines and forfeitures to the cities, instead of using a fixed percentage figure to determine the county share In retrospect it does seem likely that some costs that were used as the basis for determining the 1953 percentages may have been understated and that cost figures in general may have varied somewhat from city to city because of different items which were listed as court costs In addition counties now argue that court costs have risen faster than has their share of the fine and forfeiture revenues Thus they allege that the statutory formula is further out of line in comparison with actual costs than it was when it was first developed in 1953 Counties also point out that it is difficult for them to control court costs because the Legislature fixes the number and salaries of judges and officers and attachés of each municipal court.

The present position of the counties still relies heavily upon the recommendations of the 1953 Senate Interim Committee on State and

[5] For an extended discussion of the circumstances surrounding the 1950 plan for court reorganization, the setting of the initial apportionment formula and the compromise formula now contained in Penal Code 1463, together with current arguments for changing this formula, see testimony of
Gilbert Lentz, *Transcript*, pp 8–14, 115–117
Richard Carpenter, Executive Director and General Counsel, League of California Cities *Transcript*, pp 15–36 118–124
William R MacDougal, General Counsel and Manager, County Supervisors Association of California *Transcript*, pp 40–55, 125–133

[6] Robert Brunsell, Deputy District Attorney, Contra Costa County *Transcript*, pp 156–157

[7] Robert L Small, Senior Administrative Analyst, San Diego County, *Transcript*, p 143

[8] William R. Siegel, Deputy County Counsel, Santa Clara County *Transcript*, p 135

Local Taxation Thus the counties can point to evidence which indicates that it was the intent of both the Judicial Council and the State Senate that the financial support of the courts be a primary consideration in determining the distribution of fines and forfeitures between cities and counties. Because municipal courts usually produce revenues in excess of their operating expenses, these fines and forfeitures appear as an obvious source of funds for support of the courts

The cities likewise rely on prior circumstances to justify their present position. They view any increase in the county share as a breach of faith by those who nearly 15 years ago received city support for reorganization in exchange for a guarantee against financial loss to the cities. In addition the cities have argued that other aspects of law enforcement are rising and that they need their share of fines and forfeitures to help support these activities There was no indication at the time the distribution percentages were being worked out, however, that the cities' share was intended to be in any way related to city law inforcement programs.

IV. ROLE OF THE LEGISLATURE

Because of the lack of any clear standard to judge the adequacy of the present apportionment formula, the advisory committee suggested that no compelling case for change could be made on the merits of the situation. Thus, it concluded that any broad revision of the existing formula should hinge upon some mutual agreement between cities and counties in regard to a method of approaching this problem [9]

In this connection there appear to be three basic alternatives to the existing system.

1. By using the same approach employed in deriving the original formula, the existing formula might be revised to compensate for any changes which might have taken place since 1953.

(At first glance this approach appears to be a reasonable one. Because cities have not been operating their own courts for over 10 years, however, it is impossible to arrive at a meaningful figure to represent city court costs. It must be recognized that many county-operated municipal courts differ drastically from previous city-operated courts Implicit in the court reorganization plan was the concept that the standards of the courts would be raised Thus, citizens may not now be paying for services that are identical to those they received prior to court reorganization Moreover, although court revenues are easily determined, cities and counties differ sharply over what constitutes a "court cost" in today's circumstances)

2. A second alternative would be to equalize the relative amounts received by cities by returning a single percentage of fines and for-

[9] Correspondence between Assemblyman Charles Warren, Chairman of Advisory Committee on Fines and Forfeitures and Thomas Willoughby, Committee Consultant, July 8, 1964

feitures to all cities throughout the state or to all cities within a given county

(Any such percentage, however, is bound to be arbitrary in its effect on some cities and counties For this reason the decision to proceed with such an alternative should come initially from the cities and counties themselves)

3 As a third alternative the Legislature could enumerate certain allowable court costs and have the county treasurer reimburse the county for these costs prior to turning any of the fine and forfeiture moneys over to the cities

(The facts of the situation appear to lend some support to this alternative because the counties do have a specific financial outlay which is directly connected to court operation Prior to any legislative action, however, cities and counties will need to arrive at some agreement in regard to the specific costs which would be considered reimbursable)

CONCLUSION

Essential to the implementation of any of these alternatives is the support of both cities and counties There is little justification for putting the Legislature in the role of mediator between these two groups, especially when the approach to resolving the conflict must be initially assented to by the parties involved This committee therefore recommends that no specific action be taken by the Legislature until cities and counties indicate a mutually acceptable approach to revising Penal Code Section 1463.

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1963–1965

VOLUME 6 NUMBER 22

FINAL REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

House Resolution No. 500

1. **Control of Special District Securities**
2. **District Reorganization Law**
3. **Operations of Local Agency Formation Commissions**

MEMBERS OF COMMITTEE

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LETTER OF TRANSMITTAL

January 11, 1965

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Your Interim Committee on Municipal and County Government in accordance with HR 500 of the 1963 Regular Session submits herewith its final report to the 1965 Legislature The report covers six different subjects and is contained in two parts

Part I contains the findings, recommendations and conclusions of the committee on the subjects of

1. Problems of Construction on Expansive Soil
2. Neighborhood Parks in New Subdivisions
3 The Adequacy of the Current Formula for Apportioning Fines and Forfeiture Revenue (Penal Code Section 1463)

Part II contains similar materials on the subject of.

1. Control of Special District Securities
2. A District Reorganization Law
3. Review of the Operations of the Local Agency Formation Commission.

In this connection, Assemblyman George Zenovich has indicated that he does not wish to concur in the recommendations of the committee on the subject of "Control of Special District Securities "

Assemblyman Frank Lanterman does not concur in the recommendations of the committee on the subjects of:

Local Agency Formation Commission.
District Reorganization Law.
Neighborhood Parks in New Subdivisions

Mr Lanterman has succinctly explained the reasons for his dissent in a letter which I have attached to this letter of transmittal.

Respectfully submitted.

JOHN T KNOX, *Chairman*

John P Quimby, Vice Chairman	Frank Lanterman
Don A Allen, Sr	Leo J Ryan
Alfred E Alquist	Alfred H Song
Anthony Beilenson	Philip L Soto
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2—L-1895

ASSEMBLY
CALIFORNIA LEGISLATURE

January 7, 1965

HON. JOHN T KNOX
Chairman, Interim Committee
Municipal and County Government
State Capitol
Sacramento, California

Dear John

The following are my comments of dissent relating to the committee's recommendations for change in the Local Agency Formation Commission, the District Reorganization Law and the Neighborhood Parks in New Subdivisions Proposal

1 *Local Agency Formation Commission*

Mr Lanterman dissents with most of the proposed committee recommendations in this section relating to Local Agency Formation Commissions He especially points out the lack of control checks under (B) and (C) of paragraph 2, and the loss of local government control of the functioning of the commission if outside assistance grants may be accepted in designing a master plan for consolidation of local government He basically disapproves of any broadening of the authority of the commission unless there is provision for an appeal by the people affected, other than resort to the courts He earnestly recommends that an appeal procedure be established on the order of a four-fifths vote of the elected legislative body of jurisdiction to which the appeal has been made by the persons affected.

2. *District Reorganization Law*

Assemblyman Lanterman dissents with the committee recommendation contained in the last sentence of the final paragraph because it would tend to extend the authority of the commission to become, in fact, a master planning agency for the entire county with no provision for appeal to an elected body by the people affected and could ultimately provide for the dissolution of all district forms of government regardless of the will of the electorate of the district in question

3. *Neighborhood Parks in New Subdivisions*

Mr. Lanterman dissents with the proposed amendments to the Subdivision Map Act as unenforceable and potentially confiscatory without sufficient protections in either paragraphs 3 or 4

Cordially yours,

FRANK LANTERMAN

PART I

CONTROL OF SPECIAL DISTRICT SECURITIES

FINDINGS

1 The use of special districts to provide a significant source of financing for private, promotional projects—primarily land development projects—is on the increase throughout California

2 With boundary lines artfully drawn to include only a developer's land, a new district or a so-called improvement zone within an existing district, can be formed and controlled by a land promoter and his agents

3 Under such circumstances a special district becomes a tightly controlled operating division of the promoter's organization—an operating division which can use its bonding powers to raise risk capital independent of the subdivider's own credit resources or capital reserves

4 Such "promotional" districts often incur extensive indebtedness in the absence of any resident population or demonstrated ability to repay debt Under such circumstances the security behind district bonds is extremely tenuous Risk of eventual bond default, after a period of initial subdivision development, is correspondingly high

5 The decision to incur such indebtedness is made by the developer or his agents Although the developer typically has the advice of a bond attorney and a financial consultant, the fees of the latter are usually contingent upon the sale of bonds Thus no disinterested party is called upon to make a general judgment on the feasibility of the project

6 Subsequent purchasers of subdivision lots are largely unaware of the existence of the district or of the amount of indebtedness which they will be called upon to repay.

7 Purchasers of district bonds, moreover, are unknowingly placed in a position of high risk Such bonds are usually not purchased by large and sophisticated investors They are purchased by brokers for resale to relatively unsophisticated individual investors who are not in a position to see the property in question and who lack the expertise to evaluate such bonds

8 This type of special district indebtedness may have a direct and debilitating effect on the cost of debt which may be incurred by other local agencies In some instances, for example, school districts have had to sell their bonds at higher interest rates because of this type of special district indebtedness In addition default on a number of these issues might eventually force up interest rates on State of California bonds

9 Aside from the foregoing implications, the use of special districts for subdivision financing encourages urban sprawl Special district financing makes it profitable for developers to utilize marginal land which would not otherwise have been developed until it became economically sound to do so Thus, it short circuits efforts to achieve orderly growth and encourages a "leapfrogging" pattern of development

CONCLUSIONS

1 The unrestricted use of special district financing—especially special district general obligation bonds—for promotional purposes poses a potential threat to the credit of various local agencies and eventually to that of the state In addition it subjects unsuspecting homebuyers and bondbuyers to unwarranted risks on their investments

2 Reasonable review of such promotional projects and bond issues is necessary to preserve the continued good standing of California municipal securities and to insure that the credit of public agencies is not used frivolously or for proprietary purposes

3 The Districts Securities Commission already performs this review function for the bonds of a limited number of special districts The jurisdiction of the Districts Securities Commission should be broadened to include review of the bonds of special districts which are associated with promotional projects In this connection the State Treasurer should be added to the membership of the Districts Securities Commission because of his interest in protecting the general good standing of all California municipals

4 The State Division of Real Estate has recently adopted a policy of acknowledging the existence of promotional special districts and the possible implications thereof in its public report on new subdivisions. The Division of Real Estate deserves commendation for inaugurating this policy and should be urged by resolution of the Assembly to maintain and broaden its application In addition, the following specific recommendations are made for the purpose of eliminating provisions in existing law which operate to encourage the use of special district financing for private promotional projects

(a) Municipal Utility District Law Chapter 1403 of the Statutes of 1963 which amended the Municipal Utility District Law should be repealed This legislation was designed to assist a specific real estate development near Loomis, California. For various reasons these provisions were never used and there is little likelihood of their use in the future To retain them in the law is an open invitation to additional promoters in other districts to incur district debt to further their own projects (Public Resources Code—Sections 13000–13233)

(b) Resort Improvement District Law Use of this statute should be discontinued with appropriate savings clauses for the new districts which have been formed under its authorization This measure was enacted in 1961 ostensibly to provide a vehicle by which nonresident property owners could form a district to construct and maintain roads, drainage facilities, etc , at vacation homesites At this writing the enabling legislation has been used only to assist promotional land development projects, principally those undertaken by corporate developers and landowners. Moreover, representatives of various development interests actively sought in 1963 to amend the act to expand the powers of such districts for land development purposes

The California Resort District Law (Public Resources—Sections 10000-12164) provides an adequate procedure by which individual homeowners may improve resort and vacation properties The fundamental hazard in the Resort Improvement District Law is that this statute was designed for, and has been employed by, corporate landowners to finance speculative projects for their own profit without attendant safeguards to protect general public or community interests

(c) Mount San Jacinto Winter Park Authority This agency operates the Palm Springs Aerial Tramway which is experiencing significant financial difficulty In order to insure the orderly conduct of the business of this public agency, the following amendments are recommended to the enabling statute

1. Public bidding should be required in the sale of all authority bonds.
2 All bonds should be reviewed by the Districts Securities Commission before issuance
3 The Authority should be made subject to the provisions of the Ralph M Brown Acts

(d) County Water District Act Legislation enacted in 1963 (Water Code Sections 31703 2, 31703 3) modify the usual provisions of the County Water District Act so that the Sierra Lakes District in Placer County and the Circle Oaks District in Napa County could operate to assist land development projects Although these provisions represent outright special privilege legislation, repeal of them at this time may injure both the bondholders and the purchasers of property within the district These provisions, therefore, should be left intact, but the Legislature is urged to avoid any such legislation in the future

I. INTRODUCTION

California codes are replete with enabling statutes authorizing a seemingly limitless variety of independent public agencies or special districts [1] The general principle undergirding all of these statutes has been that when general purpose government (cities or counties) cannot provide a necessary service to an area, it is appropriate to form a specialized agency to do the job Whatever capital expenditures may be necessary are financed by issuance of district bonds, which enjoy the general tax-exempt status and market advantages of "municipal securities"

Recently however a significant number of special districts have been created which cannot be justified or explained by this principle These latter districts have been created by land developers, well in advance of any resident population within the district Their purpose is to provide an agency which can finance the utilities, the various public improvements, the recreational facilities, etc , which are necessary and helpful for converting raw land into marketable subdivision property The advantage of this procedure is that construction monies are obtained by a public agency With district boundary lines artfully drawn to include only a developer's land, however, the district loses its public characteristics and becomes in effect a tightly controlled operating division of the developer's organization—an operating division which can use its bonding powers to raise risk capital independent of a subdivider's own credit resources or capital reserves

Although the special district approach to land development originated in the early 1960's with the creation of tailormade districts by special acts of the Legislature,[2] unfortunate experiences with some of these tailormade districts [3] led representatives of developers together with bond attorneys to sponsor more subtle changes in the general enabling statutes which govern a number of widely used types of special districts Several 1961 amendments to the Community Services District Law, for example, changed this statute from one which could be used by residents in relatively settled communities to one which could be, and was, used by both corporate and individual land developers [4] Also in 1961 the same interests secured the enactment of the Resort Improvement District Law [5] which developers, especially corporate developers,

[1] For a complete listing of the number of special districts in California and the financial status of each, see State Controller, *Annual Report of Financial Transactions Concerning Special Districts of California*

[2] See "Embarcadero Municipal Improvement District Act," Stats 1960, 1st Ex Session, Ch 81, "Estero Municipal Improvement District Act," Stats 1960, 1st Ex Session, Ch 82 See also AB 1854, 1961 Regular Session of the Legislature—an unsuccessful attempt to create "Sunset Municipal Improvement District" in Placer County

[3] For a summary of the difficulties of the Embarcadero Municipal Improvement District, together with collateral references to additional source material, see, Assembly, California Legislature, Final Report to the 1963 Legislature by the Interim Committee on Municipal and County Government, Vol 6, No 20, pp 24–36

[4] See the 1961 changes in Government Code Sections 61103 and 61114 For a further discussion of the implications of these changes see *ibid* , pp 28–32

[5] Public Resources Code, Sections 13000–13233

have used to provide financial subsidies for speculative subdivisions in resort areas

At the 1963 session of the Legislature, developer-oriented interests offered a series of measures to further expand the use of special districts and special assessment procedures to finance subdivision improvements Many of these proposals would have effected an expansion in the concept of "reclamation" They would have redefined "reclamation" to include not only the traditional idea of dewatering marshy land, but also the additional concept of excavating, filling, or otherwise preparing almost any type of terrain for subdivision Under such a broad definition developers could use public agencies to finance basic site preparation costs in virtually any situation (Appendix I lists the principal bills involved in this 1963 effort together with a brief description of each)

Most of these measures were referred to interim study because of the concern of the Attorney General and others who cautioned against broad changes in special district laws which would have the effect of placing the credit resources of public agencies behind private proprietary projects, many of which might be highly speculative

To insure a full review of this entire subject, Committee Chairman John T. Knox introduced HR 135 at the first extraordinary session of the 1963 Legislature This resolution authorized a broad study of the use of special district financing in association with land development projects and called for an evaluation of the implications of this type of financing for the potential homebuyer, the bond purchaser and the local community Under this authorization the committee held two major hearings, one in Los Angeles on January 17, 1964 and a second in Richmond on September 15, 1964 With the assistance of the Attorney General's office, the committee and its staff made detailed case studies of a number of so-called "promotional" special districts and the effects of unsupervised incurrence of debt by them Finally several conferences were held with leaders of the state's financial community in an effort to define the areas in which legislative action was required and to insure that remedial legislation would be both reasonable and effective

In general the committee found that there is a serious need for some disinterested agency to review bonds proposed to be issued by so-called promotional districts Such review is needed to protect both the potential bond buyer and the potential purchaser of property in a new subdivision Collaterally, such review would also help to preserve the general integrity of municipal securities issued by other governmental agencies and even help to reduce one significant cause of urban sprawl. The remainder of this report sets forth a number of case studies which illustrate some of the problems associated with promotional districts, describes the characteristics of promotional district bonds and their impact on both subsequent bond buyers and home purchasers, indicates the impact of such securities on the marketability of bonds of other public agencies, and finally suggests the effects of this type of district financing on the general problem of urban sprawl

II. THE USE OF SPECIAL DISTRICTS TO ASSIST PROMOTIONAL PROJECTS—CASE STUDIES

Rio Ramaza Community Services District

The Rio Ramaza Community Services District, situated on the Sacramento River in Sutter County, was formed in the spring of 1963 by vote of a single farmer and his family for the purpose of subdividing a 170-acre ranch Immediately upon formation, the district's three-member board of directors authorized the creation of an assessment district coterminous with the boundaries of the community services districts (and incidentally of the ranch) together with the issuance of $555,000 of 1915-type assessment bonds.[6] The money was used to finance streets, roads and various other subdivision improvements and also to construct a riverfront marina adjacent to the subdivision The assessed value of the farm property at the time of the bond sale was $23,150

Because the state owns the river bottom over which the floating docks of the marina were to be erected, a lease from the State Lands Commission was fundamental to the project Under the circumstances, such a lease should have been concluded or at least authorized before bonds were sold to finance construction of the marina In the Rio Ramaza situation, however, bonds were approved for sale by the district's bond attorney, were purchased by bond underwriters and sold to the public, and a contract was signed for construction of the marina—all approximately six months prior to the time at which the State Lands Commission authorized its executive officer to conclude a lease with the district After the marina had been completed the district leased it to the landowner-subdivider on very favorable terms for the latter

Construction difficulties in the subdivision portion of the district delayed possible land sales with the result that there were no new property owners in the district to make initial bond payments when they fell due The farmer-subdivider was without funds and thus there was a 100-percent default on bond payments Largely because of the large debt burden, subsequent land sales have been unsuccessful and the district has defaulted on all subsequent bond payments Under the provisions of the Improvement Bond Act of 1915, the district must initiate foreclosure proceedings in cases of bond default The district board, composed of the subdivider's immediate family and friends, has steadfastly refused to take this step, and the bondholders are now faced with the additional expense of litigation to force the district board of directors to take action Additional complications include a mortgage on the entire farm acreage held by an eastern insurance company, which was unaware of the formation of the district and now finds itself in a secondary financial position behind the bondholders

In connection with the marketing and sale of these bonds it should be noted that they found their way into the offerings of a large and prestigious brokerage firm and were sold to individual investors without question The committee has on file, for example, a complaint from a resident of Hawaii who purchased some Rio Ramaza Bonds from the firm of Walston and Company When the district's financial troubles began, the broker was apparently as surprised as his client to learn

[6] Improvement Bond Act of 1915, Streets and Highways Code, Sections 8500–8851

that these bonds did not represent conservative investments The role of the bond attorney in this situation is also somewhat of an anomaly In a letter to the committee describing the Rio Ramaza project, the bond attorney specifically declined all responsibility for anything other than his review of the procedural steps taken by the district in authorizing the bonds At the same time, however, he readily admitted that the management of the Rio Ramaza project has been "weak, unwise, and even stupid" [7] Thus neither the operation of the bond market nor the procedural review provided by the district's bond counsel offered any safeguard against the irresponsible use of tax-exempt bonds in a highly speculative situation

Sierra Lakes County Water District

The Sierra Lakes County Water District is composed of approximately 2,600 acres near Soda Springs in Placer County. It was formed in 1961 by petition of the developer, his wife and four employees The developer had little equity in his land, having purchased it by paying $5,000 cash and executing notes for an additional $195,000 After an initial few years of unspectacular lot sales the developer organized and immediately became president of the Sierra Lakes Water District The district called a special bond election at which seven voters authorized the issuance of $4 million in general obligation bonds to finance water and sewer facilities Approximately $800,000 of these bonds have already been issued together with $700,000 of special assessment bonds At the same time the developer transferred his interest in the subdivision property to a corporation of which he was president and controlling stockholder The district subsequently hired this corporation to complete various construction projects without benefit of public bidding This close relationship between the developer as a district officer and his development corporation has apparently been carried on in spite of Water Code provisions which appear to classify such conduct as a misdemeanor [8]

In addition the district has been operating in open violation of Water Code provisions which require its rates and charges to be sufficient to pay operating expenses, depreciation on equipment, bond interest, and to establish a sinking fund for the bond principal [9] The district budget does not include any amounts to pay interest on bonded indebtedness, to provide funds for repayment of debt principal as it becomes due, or to establish reserves for the depreciation of the revenue-producing facilities In fact the district has been using general obligation bond proceeds to pay current interest on its bonded indebtedness

The district has failed to develop as projected by its financial consultant These projections grossly overestimated the sales of land within the district, and grossly underestimated the district tax rate Instead of the projected tax rate of $3 43 for fiscal 1964–65, the actual district tax rate is $29 14 This sharp rise in taxes has critically affected several owners of vacation property in the area who were included in the dis-

[7] Eugene K Sturgis, Sturgis, Den-Dulk, Douglas and Anderson, Attorneys at Law, Oakland Letter to committee dated May 18, 1964
For a complete report on the Rio Ramaza situation, see unpublished report of Investment Frauds Unit, Attorney General's Office to Assembly Municipal and County Government Committee, April 1, 1964
[8] Water Code, Section 30584
[9] Water Code, Section 31047.

trict without notice and now have to bear their share of district debt. The current tax delinquency rate in the district is 33 percent One owner of a small 600-square-foot summer cabin who first learned of the existence of the district when his annual taxes rose abruptly from $78 to $360 is now faced with the necessity of trying to sell property he cannot afford to maintain

An additional indication of the lengths to which proprietary interests may go to alter the laws to further their own projects is provided by a 1963 amendment to the County Water District Law on behalf of the Sierra Lakes District The normal provisions of the County Water District Law require district taxes to be assessed on land, improvements and personal property A tax imposed in compliance with these provisions, however, would have meant that initial home builders within the district would pay higher taxes than the owners of unimproved land Because such a tax policy would deter land sales and would impose added burdens on purchasers, the attorneys for the district successfully sponsored legislation which specifically permitted the Sierra Lakes district to deviate from the general provisions of the law and to levy taxes on land only Both the developer and his attorneys readily admitted to the committee that without this special legislation the normal tax provisions of the County Water District Law would have forced a "complete curtailment of any further development" [10]

Alpine Springs County Water District

The Alpine Springs County Water District was formed in the spring of 1963 in order to provide water and sewer services to a 2,500-acre recreation subdivision in the valley adjacent to Squaw Valley The district was formed by a vote of five persons who elected themselves as the board of directors, then authorized and subsequently sold $1 2 million of general obligation bonds together with an additional $135 000 of special assessment bonds

In its operation the district has disregarded the requirements of the Water Code that its rates be sufficient to cover expenses, provide for bond interest and principal payments, and to establish depreciation reserves for replacement of equipment [11] In fact the district has been using bond proceeds to meet its operating expenses Although the district has had the services of both a bond attorney and a financial consultant, it had neither adopted nor used a budget The current district tax rate is $14 The district has also experienced some difficulty in marketing its special assessment bonds which have been sold at discounts as high as 12 percent [12]

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[10] For a complete discussion and further evaluation of the Sierra Lakes County Water District, see Assembly Committee on Municipal and County Government, *Transcript of Hearing*, September 15 1964 Richmond California (This hearing will hereafter be referred to as *September transcript*, the committee hearing of January 17, 1964, will hereafter be referred to as *January transcript*) In particular see the statements of
Herbert E Wenig Assistant Attorney General, pp 23–25
Marshall S Mayer, Deputy Attorney General, pp 25–30, 78–82
Mrs Thomas Robertson, property owner in Sierra Lakes County Water District, pp 31–32
Charles Osberg, property owner in Sierra Lakes County Water District, pp 32–34
Kenneth I Jones, Wilson, Harzfeld, Jones & Morton, Bond Attorney for Sierra Lakes County Water District, pp 36–50
Frank Allen, President Sierra Lakes County Water District, pp 63–70

[11] Water Code, Section 31007

[12] Marshall S Mayer, *September Transcript*, pp 27–29, 83–85

Brooktrails Resort Improvement District

The Brooktrails Resort Improvement District was formed in December 1962 to develop recreation and subdivision facilities on 7,700 acres near Willits in Mendocino County The land in question is principally owned by a single development corporation The petition to form the district was signed by two residents of the district who were business associates of the president of the development corporation. General obligation bonds have been authorized in the amount of $4,250,000 [13]

The Resort Improvement District Act,[14] under which the Brooktrails district was formed, was enacted in 1961, ostensibly to provide a vehicle by which nonresident property owners could form a district to construct and maintain roads, drainage facilities, etc., at their vacation homesites In this respect the aims of the statute were virtually identical with those of the California Resort District Law which has been in effect since 1931 [15] The Resort Improvement District Law, however, gives corporate land owners as well as individuals the power to create districts It thus has an immediate appeal to corporate land developers who desire a convenient financing vehicle.

The potential for danger in using resort improvement districts for land development is succinctly summarized in the current subdivision report on the Brooktrails tract issued by the Division of Real Estate

> "The developer . . is at present the sole owner of the land contained within the district This may mean that the developer will be in complete control of the district, services afforded, planning and construction of recreational and other facilities, management of the district, financing by issuance of district bonds, and otherwise for many years into the future Purchasers may have no control over indebtedness incurred on their behalf In case the management and operation of the district is not to their satisfaction, they may have no recourse . .
>
> "The district intends to pay the cost of the bonds from revenues of the water and sewer system and from recreational facilities *However the bonds are primarily secured by the power of the district to levy taxes on the property There apparently is no maximum limit to the tax rate which may be levied to pay the principal and interest on the district general obligation bonds* In the event that the area does not develop as anticipated by the developer and revenue from water and sewer systems, recreational and other facilities and activities are insufficient, the necessary tax rate could become excessive In the event of default in payment of the district taxes each lot purchaser would be subject to the sale of his property to the district " (Emphasis in original)[16]

Protection Districts—1907 Act

Beginning in the fall of 1963 land developers in Ventura County formed several protection districts under the Protection District Act of 1907 [17] to provide financing for subdivision projects Originally

[13] *Ibid*, p 30, p 86
[14] Public Resources Code, Sections 13000–13333
[15] Public Resources Code, Sections 10000–13164
[16] State Division of Real Estate, "Final Subdivision Report No 7791," September 7, 1964
[17] Water Code, Uncodified Acts, Act 6175

devised to provide for the organization of a district to protect farm lands and communities from overflows from streams and water courses, this enabling statute was designed for use in different situations and in answer to different needs from present efforts to adapt it to subdivision development. It had been little used prior to its employment in Ventura County and in fact has never been codified

The operation of these districts in Ventura County caused the county executive to conclude that their use for promotional purposes provided a substantial windfall to developers at vastly inflated tax costs to eventual homeowners and at the expense of orderly development for the county's urban areas The supervisors reacted by declaring a moratorium on the further formation of protection districts According to the county executive's report, the following questionable features accompany the use of protection districts for land development purposes

(1) Gerrymandering of district boundaries to include only land belonging to developers, while excluding inhabited areas which might have voted down bond proposals

(2) Authorization of large amounts of indebtedness by a few developer-landowners Future homeowners would have no voice in this debt incurrence but would be obligated to pay it off

(3) District financing of facilities which are usually considered an appropriate and proper cost to the developer

(4) Conflicts of interest Engineers for the subdividers became engineers for the district

(5) Balloon bond payment The archaic method of financing required by the 1907 statute would result in repayment of nearly 60 percent more in interest charges than current loan rates

(6) Excessive debt ratios In some instances the ratio of debt to assessed valuation became as high as 405 percent

(7) Excessive tax rate In some instances the 1964–65 tax rate will be $28, in marked contrast to the $4 75 projected by the district financial consultant [18]

Other Agencies

A number of other agencies, formed in association with promotional projects, should also be mentioned for illustrative purposes The California City Community Services District, for example, was formed by petition of nine persons in order to develop a golf course, swimming pool, artificial lake, recreation facilities, utilities and streets for a large subdivision in the Mojave Desert [19] The district, controlled by interests favorable to the developer, has already issued almost $1 million in general obligation bonds and has sponsored the creation of a number of special assessment districts on which an aggregate of $2 6 million of special assessment bonds will be issued Since the development

[18] *September Transcript*, pp 20–23

[19] For a further discussion of the California City Development and together with references to collateral materials, see Assembly, California Legislature, *Final Report to the 1963 Legislature by the Interim Committee on Municipal and County Government*, vol 6, No 20, pp 30–32

consists "mainly of lots with very little structural development in proportion to the number of lots recorded" and sold,[20] the district has been consistently unable to generate sufficient revenues to meet current expenses It has managed to avoid deficit only through annual subsidies from the developer

Two developments in Fresno County reflect the ability of subdividers to establish "zones" within existing districts to finance their projects Fresno County Water Works District No 27, Annex No 1 was formed to develop a 10 acre tract The area has experienced tax delinquencies of 18 percent, a district tax rate of $21 46 and has defaulted on its general obligation bonds Fresno County Water Works District No 32, Annex No 1 was formed to subdivide uninhabited land It has experienced a 32-percent delinquency in taxes, a district tax rate of $24 61 and has defaulted on its general obligation bonds Finally, Fresno County Water Works District No 29, also formed to assist land development, has experienced a 31-percent delinquency on its taxes, a district tax rate of $8 31, and its bonds are also in default[21]

Attention is also directed to the Mount San Jacinto Winter Park Authority This special purpose agency was formed at the instigation of business interests in the City of Palm Springs in order to construct and operate an aerial tramway on neighboring Mount San Jacinto The enabling statute[22] allows the authority to avoid evaluation of its projects or its bonds by any disinterested third party The result of this broad discretion is that the authority has issued over $8 million worth of revenue bonds without recourse to public bidding procedures A thorough staff study of the operation of the authority indicates that it appears headed toward a financial crises after only one year of tramway operation; that the studies of the tramway's financial consultants, on which bond sales were based, were grossly inaccurate, and that the tramway operations are barely generating sufficient revenues to pay operating expenses and are clearly insufficient to repay the bonds or to provide a depreciation reserve for replacement of equipment In addition the authority, although a public agency, does not presently come under the provisions of the Ralph M Brown Acts and has had a record of closing its meetings and records to the public[23]

III. CHARACTERISTICS OF PROMOTIONAL DISTRICT BONDS

As the above case studies amply illustrate, an essential feature of the "promotional district" is complete control by the developer The developer in effect causes district bonds to be authorized and issued in order to finance his subdivision improvements Leaving aside the question of whether it is appropriate to employ a public agency to achieve specific and immediate proprietary objectives, it is possible to make some judgments about this type of indebtedness In the first place this type of district debt need not necessarily constitute a financial hazard to the bond holder or to the subsequent purchaser of subdivision property If there is ample security behind the district

[20] State Division of Real Estate, "Final Subdivision Report No 23384," June 15, 1964
[21] Marshall S Mayer, *September Transcript* pp 79–70, 87–89
[22] General Laws, Act 6385 (Chapter 1040, stats 1945)
[23] *September Transcript*, pp 3–19

bonds and if the project itself demonstrates a reasonable expectation of success, neither the bond buyer nor the property owner will face untoward financial risks

The source of financial difficulty in a promotional district situation is that there is no disinterested party who can make an independent judgment about the feasibility of the project or the ability of the area to repay its indebtedness The developer obviously cannot be expected to make such a decision In most instances the district also has the advice of a bond attorney and a financial consultant As the case studies demonstrate, however, advice from these sources is not always disinterested or particularly accurate The fees both of bond attorneys and of financial consultants, are based on a percentage of the face amount of the subsequent bond issue Thus if no funds are issued, there is no money to pay fees [24] Under such circumstances, it is not unduly surprising that in a number of the case studies, the projections and predictions of the financial consultant, on the basis of which district bonds were sold, were grossly erroneous It is not uncommon, moreover, for a financial consultant to agree to purchase district bonds as part of his contract of employment Characteristically such a negotiated sale is made at a significant discount to the financial consultant so that the latter may have some cushion in selling the bonds to other brokers or to the public [25]

In short, the difference between financing promotional projects by district bonds and by conventional financing is that the conventional lender is not associated with the project The conventional lender, moreover, is usually well qualified to evaluate the risks involved in lending his money In the case of promotional districts, however, the developer or his agents make a single, one-sided decision that the project is feasible and ought to be financed with tax-exempt bonds

As has been illustrated, the operation of the bond market in itself does not provide adequate protection to the potential buyer of special district bonds High risk bonds can be, and are, sold under the guise of conservative tax-exempt securities This is possible, as members of the state's investment community have admitted, because bond underwriting is essentially a merchandising operation To compound the situation, most of these so-called lower grade bonds, of both the general obligation and special assessment type, are sold to individuals who are unable to evaluate the situation with the same sophistication as an institutional investor might [26] In this respect such securities are quite similar to commercial securities which are issued in connection with the operation and development of various business and commercial ventures The California Corporate Securities Law, however, requires the State Corporation Commissioner, for the protection of the investing public, to determine that the latter type of securities are issued under a "fair, just and equitable" standard.[27] There are

[24] See the remarks of Kenneth I Jones, *September Transcript*, pp 42–43
[25] See the remarks of Frank Allen, *September Transcript*, pp 68–69
[26] For a thorough discussion of these points see the remarks of Allen Bartlett, Assistant Vice President, Bank of America, *January Transcript*, pp 10–15
[27] Charles E Rickershauser, Jr, State Corporations Commissioner, *September Transcript*, pp 70–73

no such safeguards which are applicable to bonds issued by promotional special districts [28]

Some mention should also be made of the protection afforded to the purchaser of property in such a district Many promotional districts arrange bond repayment periods so that the full effect of district indebtedness will not be reflected in the district tax rate until after the initial period of subdivision promotion and land sale. In addition the purchaser in most instances is unaware of the existence of a special district; of his inability to have a voice in the management policies of the district, including those of debt incurrence; and of the effect of district debt on subsequent district tax rates. This situation has been obviated to some extent by a recent policy of the State Division of Real Estate of including relevant information in regard to special districts in the Subdivision Public Report which must be presented to all prospective purchasers of subdivision property Although some developers have protested this policy, it presents an easy and reliable method by which a buyer may be informed of the conditions and circumstances which may have a significant effect on the property he purchases The Division of Real Estate should be commended for adopting such a policy and should be encouraged to expand its use to all situations involving promotional special districts.

IV. IMPACT OF PROMOTIONAL DISTRICT BONDS ON OTHER SECURITIES

In addition to their immediate implications for the investor and the property purchaser, the bonds of promotional special districts may have significant and deleterious effects on securities issued by other public agencies The existence of special district debt, for example, adds to the overlapping debt of other agencies One situation was described to the committee in which the bonded debt of a development-type district increased the amount of overlapping debt within a school district. The result was that the school district was forced to pay significantly higher interest rates on its general obligation bonds. People within the school district moreover were described as "not benefitted whatsoever" by the development project [29] Promotional district indebtedness can have the same type effect on the overlapping debt of cities and counties as well as that of other districts.

Representatives of the state's financial community also contend that this type of district financing can have a more subtle and more far-

[28] Some attorneys for land developers have advanced the novel argument that if district bonds are used to finance construction, for example, of $1 million of improvements on a given tract of land, the value of that property is automatically secured While such arguments obviously promote the interests of developers they appear to have no basis in fact Established practices of real estate evaluation unanimously affirm that the market value of a piece of property is only that price for which it might be sold Thus improvements added to basically undesirable or unmarketable property would not increase the price for which it might be sold For a further discussion on this point, see the exchange between Assemblyman Houston Flournoy and Kenneth I Jones, *September Transcript*, pp 43–48 For a representative discussion of the basic real estate evaluation theory see, F M Babcock, *The Valuation of Real Estate*, McGraw Book Company, New York, 1932, pp 7–40, and James C. Bonbright *Evaluation of Property*, McGraw Book Company, New York, 1937, pp 10–100

[29] Allen Bartlett, *January Transcript*, pp 15–18

reaching influence on the borrowing ability of all public agencies and even that of the state itself. The investment community has acknowledged that post-World War II demands on the state and its political subdivisions have required the investment of large amounts of capital from the eastern part of the United States The demands of the state's current and future growth, moreover, will continue to require large amounts of eastern capital to finance water projects, educational facilities, rapid transit, and a host of other vitally needed public improvements—in spite of substantial amounts of capital which are being supplied by in-state financial institutions The willingness of eastern capital to move to California, however, rests very strongly on the state's heretofore conservative public financing procedures, which are as favorable to investors as any in the nation and more stringent than those in the vast majority of states [30] These procedures have heretofore served to insure investors that tax-exempt financing is undertaken only for proper purposes, and once undertaken is assured of being repaid within its terms As a result eastern investors have placed a larger portion of funds in California securities than would be normal under general principles of investment diversification [31]

Within this context the traditional practice of eastern lenders has been to consider their investment in the bonds of the state and its subdivisions as a single investment package, making allowances through the yield mechanism for bonds less adequately secured, but taking confidence in their overall investment commitment from the general record of conservative borrowing practices and prompt repayment Speculative special district bonds have been depicted as a "rotten apple" which could undermine the general confidence of eastern investors in the entire "package" of California municipal securities In fact there is serious apprehension among the members of the state's financial community that default on a small number of speculative-type special district bonds has signaled the beginning of erosion

If these trends are permitted to continue, they will have serious consequences for the state and all other political subdivisions Any withdrawal of confidence in California municipals will mean that necessary eastern capital can no longer be attracted to California at current interest rates Thus the taxpayers of the state will face the dilemma of curtailing necessary public projects or of paying literally millions of extra tax dollars in increased interest costs To remedy this situation the major financial interests of the state, together with the State Treasurer, have strongly endorsed reasonable state controls over the arbitrary incurrence of debt by speculative-types of special districts [32]

[30] For a comparison of the financial control imposed by other states on the issuance of municipal securities, see report of Legislative Counsel on "Financial Supervision of Public Agencies" No 1778, January 15 and January 30, 1964

[31] For a detailed statement of the viewpoint of California's investment community, see Robert Cathcart, representing Investment Bankers Association, California Group, *January Transcript*, pp 25–27

[32] For a complete discussion on the general effect of this type of special district indebtedness on California municipals, see the statements of
Robert Cathcart, *January Transcript*, pp 25–27
Allen Bartlett, *January Transcript*, pp 20–25, letter to committee dated January 29, 1964
Honorable Bert A. Betts, State Treasurer, *January Transcript*, pp 5–6

V. IMPLICATIONS FOR URBAN SPRAWL

In addition to the direct financial implications described above, the use of special districts to encourage subdivision projects may also involve substantial community costs From a community viewpoint the use of the special district approach to subdivision financing permits the development of marginal land which would not otherwise be developed until it became economically feasible to do so Close-in land which may be more suitable for subdivision purposes and which consequently carries a high price, is bypassed in favor of less desirable land which because of "credit subsidies" from a special district can be developed by the subdivider with less capital investment Such a standard of land use encourages the leapfrogging and crazy quilt pattern of development associated with urban sprawl and leaves a dubious legacy of uncoordinated and disjointed communities In most instances, it also means that the residents of such areas will be faced with increased costs in their daily lives for utility services, communication facilities, roads and transportation, and other adjuncts of urban life.[33]

VI. CONCLUSIONS

Fortunately, the machinery for exercising reasonable review and control over speculative special district bonds already exists The California Districts Securities Commission [34] was created in 1931 as a result of widespread defaults on bond payments by irrigation and water districts throughout the state [35] Composed of five members—the Superintendent of Banks, the Director of Water Resources, the Attorney General, and two public members with prior experience in the management of water district affairs appointed by the Governor—the commission is charged with conducting a disinterested feasibility study of special district projects which will be financed by district bonds and with approving or disapproving the bond issue Bonds approved by the commission are certified by the State Controller and become legal investments for banks, trust funds, etc [36] The commission's review procedures are designed to evaluate each proposed bond issue both from the viewpoint of the district and from that of the potential investor in district bonds In practice this review involves, a study of the project plans and cost estimates to determine if it is in fact feasible; an analysis of the financial condition and of the direct and overlapping debt of the district, an evaluation of the repayment capacity of the district, confirmation of the valuations of property which will provide security for the bonds, a close review of the proposed maturity schedule; provision for the reserve funds and other conditions of the sale of bonds,

[33] For further discussion of this point, see *September Transcript*, pp 20–25
[34] Water Code, Sections 20000-20107
[35] For a review of the circumstances surrounding the creation of the Districts Securities Commission by the 1931 Legislature, see California Irrigation and Reclamation Financing and Refinancing Commission, "Report to the Governor of California," December 1, 1930
[36] Water Code, Sections 20040–20066

including in land development situations, an examination of the developer's plans for a project and the amount of his own capital investment in it.

Although review of special district securities by the Districts Securities Commission is available on request to *any* district providing utility-type services, California water districts[37] and irrigation districts[38] are the *only* major types of districts required by law to submit their securities to the commission before issuance[39] In practice virtually no other districts have chosen to exercise the option of submitting their bonds to the commission for review Thus the development, or promotional, type of district has had little difficulty in avoiding any review of its securities.

The commission, however, has had considerable experience in evaluating land development projects In recent years California water districts have been used increasingly to provide water and sewer services for large land developments One notable example is the Irvine Ranch Water District which was formed in connection with the development of the huge Irvine Ranch in Orange County Another, the Moulton-Niguel Water District, is also in Orange County. In fact the latter district incurred an indebtedness of $6 7 million at a time when its total assessed valuation was approximately $600,000 Employing its regular evaluation procedures, the Districts Securities Commission determined that such an indebtedness would be economically sound and that the proposed project would be feasible Accordingly, the Moulton-Niguel district was able to market its bonds at a good price, investors were assured of conservative municipal securities, and future homeowners were protected from the effects of arbitrarily incurred indebtedness[40]

In its 34 years of operation the Districts Securities Commission has compiled an enviable record—no district which has had its bonds approved by the commission has subsequently defaulted on those bonds Commission review has usually benefited the district by increasing the confidence of investors in such bonds and significantly lower bond interest rates have resulted on many occasions In a number of cases where the commission has questioned the soundness of a district plan, it has worked with the district to effect a modification of the original district program which might proceed under more conservative financial conditions There has been no known instances where supervision by the commission has prevented a district from accomplishing its aims within the context of generally conservative investment principles Moreover, during the course of the committee study, there has been widespread and general agreement among bond attorneys, special district officials, financial consultants, representatives of this state's in-

[37] Water Code, Sections 34000–38501
[38] Water Code, Sections 20500–29978
[39] Water Code, Sections 20002 and 36151
[40] For a complete discussion of the activities of the Moulton-Niguel Water District in addition to a description of similar financing activities undertaken by the El Toro and Los Alisos Water Districts see Eugene Bell, Secretary-Treasurer, Moulton-Niguel Water District, *September Transcript*, pp 59–63, 91–95

vestment community, and concerned state officials, that any regulation or review of special district securities which might be deemed necessary by the Legislature should be performed by the Districts Securities Commission [41]

Accordingly, the committee recommends that a new chapter be added to the Government Code requiring review by the Districts Securities Commission of the securities of *all* so-called promotional districts The standards prescribed by such legislation should clearly confine commission review to those situations in which the ratio of proposed indebtedness to the value of the property and/or improvements securing that indebtedness is significantly disparate to warrant a separate review of a proposed bond issue by a disinterested third party Commission review should also extend to special assessment indebtedness incurred under such circumstances as well as general obligation bonds After commission approval of such securities, bond certification should not be required but should be left to the discretion of the district and its directors Appropriate penalties should also be provided for failure of any district to comply with these requirements

In addition, the membership of the commission should be expanded to include the State Treasurer, in view of the latter's official interest in any circumstances which might adversely affect bond interest rates of the State of California and its political subdivisions

Specific legislation should also be enacted

To remedy the deficiencies which have been noted above in the Mount San Jacinto Winter Park Authority Act,

To prohibit the formation of new districts under the Resort Improvement District Act, a statute which was promoted by land development interests, which is particularly attractive to the speculative type of subdivisions, and which is filled with hazard for subsequent property purchasers and bond buyers, and finally

To repeal the provisions of the Municipal Utility District Act which were enacted by Chapter 1345 of the Statutes of 1963 at the request of land development interests and which presently operate to encourage the use of that statute by speculative interests

[41] See the statements of
Daniel M Luevano, Chief Deputy Director, State Department of Finance, *January Transcript* p 4
Bert A Betts, State Treasurer, *ibid*, pp 5–6
Herbert E Wenig, Assistant Attorney General, *ibid*, pp 28–31, *September Transcript*, pp 23–25
Milton G Gordon, Administrator, Business and Commerce Agency, Chairman, State Board of Investment, *January Transcript*, pp 33–35
T P Stivers, Executive Secretary, Districts Securities Commission, *ibid*, pp 36–37
Don Davis, Stone & Youngberg, Municipal Financial Consultants, San Francisco, *September Transcript*, pp 100–103
Peggy L McElligott, Wilson, Harzfeld, Jones & Morton, Attorneys at Law, San Mateo, *January Transcript*, pp 62–63
Eugene Bell, Secretary-Treasurer, Moulton-Niguel Water District, *September Transcript*, pp 61–62
Fritz R Stradling, Rutan & Tucker, Attorneys at Law, Santa Ana, *ibid*, pp 74–75
Charles E Rickershauser, State Corporations Commissioner, *ibid*, pp 71–73

APPENDIX I

1963 Legislation Sponsored by Land Development Interests

1963 MEASURES TO EXPAND THE USE OF TAX-EXEMPT BONDS TO ASSIST LAND DEVELOPMENT

1. AB 2696 (Chapter 1345, Statutes of 1963)—This measure permits developers to establish "zones" within municipal utility districts. Such a zone would be authorized to issue bonds and to finance a wide range of recreational and other improvements The statutory debt limitation restricting the bonded indebtedness of the district would not be applicable to such zones.

2 AB 2276 (passage refused by Assembly Municipal and County Government Committee)—In effect this measure would have permitted developers to use the Municipal Improvement Act of 1913 to finance basic site preparation costs (i e, grading, fill, etc)

3 AB 2329 (passage refused by Assembly Municipal and County Government Committee)—This measure would have permitted developers to establish "zones" within community services districts Such a developer-controlled zone would possess the same powers and authority, including the ability to incur debt, as the "parent" district

4 AB 2420 (passage refused by Assembly Municipal and County Government Committee)—This measure would have permitted developers to utilize county water districts to finance "reclamation" activities (i e basic site preparation) Such projects would have been specifically exempted from statutory provisions requiring them to be self-liquidating.

5. AB 2594 (passage refused by Assembly Municipal and County Government Committee)—Identical to AB 2420

6 AB 2991 (passage refused by Assembly Municipal and County Government Committee)—This measure would have permitted developers to utilize harbor districts to "reclaim" land and to provide utility services to it.

7. AB 2994 (land promotion features deleted by Assembly Municipal and County Government Committee, final measure pocket-vetoed by Governor)—Represented by bond attorneys as a simple procedural revision of the Resort Improvement District Law, this measure contained a new section granting to such districts broad "reclamation" powers. In effect, this change would have allowed a developer to use the district's bonding authority to finance virtually all of his site preparation costs

8 SB 867 (Chapter 1763, Stats 1963)—As introduced, this measure would have permitted developers to utilize reclamation districts to finance basic site improvement work on all types of terrain (deserts, hillside, flatlands, etc) This provision was subsequently amended out of the legislation by the Assembly Municipal and County Government Committee The final measure represented only technical change.

9 SB 907 (passage refused by Assembly Municipal and County Government Committee)—In connection with the original provisions of SB 867 (above), this measure would have permitted a developer to use the Municipal Improvement Act of 1913 to finance basic site preparation work within a reclamation district

10 SB 979 (Chapter 2045, Statutes 1963)—This measure specifically permitted the Sierra Lakes County Water District in Placer County and the Circle Oaks County Water District in Napa County—both of which were land development districts formed exclusively by developers and their associates—to levy a tax on land only, instead of land and improvements as would have otherwise been required by the enabling statute Bond counsel associated with these projects subsequently acknowledged that neither project would have been economically feasible if the districts had been required to levy a tax on both land and improvements

APPENDIX II

Model Legislation

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 364

Introduced by Assemblyman Knox

January 18, 1965

REFERRED TO COMMITTEE ON RULES

An act to add Chapter 2 5 (commencing with Section 58750) to Division 1 of Title 6 of the Government Code, relating to district securities

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

SECTION 1. Chapter 2 5 (commencing with Section 58750) is added to Division 1 of Title 6 of the Government Code, to read

CHAPTER 2 5 DISTRICT SECURITIES APPROVAL

58750 This chapter may be cited as the District Securities Approval Law of 1965

58751 This chapter applies to all districts, other than school districts, unless the governing body of the district is entirely composed of members of a county board of supervisors or a city council

LEGISLATIVE COUNSEL'S DIGEST

AB 364, as introduced, Knox (Rls) District securities

Adds Ch 2 5, Div 1, Title 6, Gov C

Requires certain districts to obtain approval of the California Districts Securities Commission before debt obligations may be issued increasing district debt obligation to an excess of 40 percent of the aggregate value of the property to be acquired or constructed with the proceeds of the bonds proposed to be issued by the district and the reasonable value of the land within the district

Subjects district receiving such approval of the commissioner for debt obligations to regulation of financial affairs until the district indebtedness is less than twice the assessed valuation and there are one or more registered voters for each two acres of land in the districts

Directs commission to establish a fee schedule to collect funds for the support of commission activities carried on pursuant to this chapter

58752 As used in this chapter, unless the context otherwise requires

(a) "District" means any public entity with a legislative body, other than a city or county, organized under the laws of California which has the power to incur indebtedness payable from property taxes, assessments, or revenue producing facilities constructed, operated, or owned by the district

(b) "Commission" means the California Districts Securities Commission.

(c) "Assessed value" means the monetary amount shown on the last equalized assessment roll of the county

(d) "Debt obligations" means bonds, warrants, notes, or other evidence of indebtedness, including obligations incurred under the following acts Street Opening Act of 1903, Improvement Act of 1911, Municipal Improvement Act of 1913, Street Improvement Act of 1913, and Refunding Assessment Bond Act of 1935, except

(1) Obligations payable in installments over a period of less than five years

(2) Obligations payable to the State of California, to the United States of America, or to any city, city and county, county, or public entity

(e) "Reasonable value" means four times the assessed value

58753 No district may issue debt obligations without first obtaining the approval of the commission if the proposed debt obligations, or the proposed debt obligations together with any other outstanding debt obligations and debt obligations authorized but not issued, of the district exceed 40 percent of the aggregate value of the property to be acquired or constructed with the proceeds of the bonds proposed to be issued by the district and the reasonable value of the land within the district

58754 The commission shall render its decision as to approval or disapproval under the same standards as govern the approval for certification of bonds pursuant to Article 3 (commencing with Section 20040) of Chapter 1 of Division 10 of the Water Code The decision shall be rendered within 60 days from submission, unless the applicant agrees in writing to an extension of time

58755 The financial affairs of a district receiving approval of the commission for its debt obligations shall be subject to the supervision of the commission in the same manner as provided in Article 5 (commencing with Section 20080) of Chapter 1 of Division 10 of the Water Code for districts whose bonds have been certified until such time as the indebtedness is less than twice the assessed valuation of all land in the district and there are one or more registered voters for each two acres of land in the district.

58756 The California Districts Securities Commission shall establish a fee schedule which shall result in the collection of annual amounts sufficient to cover the annual estimated cost incurred by the commission in performing its functions pursuant to this chapter The commission may adjust the fees as to any particular district to meet special circumstances in relation to that district The commission shall charge and collect fees from districts and other local agencies for whom such services are performed in accordance with the schedule All funds collected by the commission shall be deposited in the General Fund All funds for support of the commission shall come from the General Fund

58757. The directors of any district who authorize any act in any manner not in compliance with the requirements of this chapter are in violation of Section 424 of the Penal Code In addition to other punishment provided by law, such directors are subject to a fine of not more than twenty-five thousand dollars ($25,000).

SEC 2 This act is intended to implement the recommendations of the Assembly Interim Committee on Municipal and County Government as set forth in Volume 6, Number 22 of the Assembly Interim Committee Reports to the 1965 Legislature

O

PART II

DISTRICT REORGANIZATION LAW

FINDINGS

1. There are over 3,500 special districts in California (school districts excluded), organized under a total of 175 general and special enabling statutes

2 These districts have a substantial impact both on the people residing in them and upon the communities of which they are a part For example, in 1962–63 their total revenues exceeded $547 million; their general purpose expenditures exceeded $522 million, and their long-term indebtedness exceeded $1 9 billion In addition, to the extent that unnecessary and obsolete districts encouraged urban sprawl, they generated added costs to the community for roads, utilities, community services, etc

3 A number of these districts, especially those supplying various services to urban areas, were organized as interim governmental agencies to provide needed services until general purpose government might assume these responsibilities

4 Unfortunately, the existing special district enabling statutes do not provide uniform or simple methods by which such districts may be dissolved, consolidated, etc , when it may be appropriate to do so. In addition, there are virtually no provisions which would allow different types of districts to consolidate (e g water district with a sewer district or even two adjacent water districts which were organized under different statutes)

5 In addition to preventing adjacent districts from merging or otherwise reorganizing to meet community problems, existing special district laws also operate to perpetuate obsolete or inefficient districts In some cases statutory anachronisms have prevented dissolution of inoperative districts, in others they have provided residents and taxpayers with no effective means to overcome the reluctance of vested interests to relinquish favored sinecures

6 Public awareness of special districts is low The average citizen is generally aware of the districts in which he may live or of the alternatives which may be available to him for securing needed services

CONCLUSIONS

1. The majority of special districts in California are functioning well and are providing high levels of service to the taxpayers at low cost. Unfortunately, the ability of these districts to adapt to meet the pressures of population growth and community expansion are severely limited
2. The bewildering maze of separate and often conflicting statutory provisions presently applicable to districts is a permanent bar to any efforts to adapt district organization to the needs of growing communities Not only do statutory complexities prevent consolidation or dissolution of unnecessary or obsolete districts, much more important they also inhibit districts which are currently functioning well from making any organizational changes in response to future community needs
3. A proposed District Reorganization Law has been developed to provide a uniform method of effecting organizational change for virtually all types of districts The proposed District Reorganization Law has been drafted in such a way that special districts may be kept responsive to the needs of the voters, the taxpayers and the community In this respect it represents another tool by which local citizens may apply home rule principles to the complexities of the state's growing urban communities
4. It is therefore recommended that the 1965 Legislature enact a District Reorganization Law which would achieve the above mentioned objectives.
5. In addition, in order to provide local citizens and local governmental agencies with appropriate and accurate information about the governmental organization within each county and the implications of any proposed changes in that organization, it is recommended that the Local Agency Formation Commissions be encouraged to gather data and to make studies in regard to the various governmental organizations within the county. It is recommended further that the LAFC's be specifically encouraged to recommend changes in governmental organization as a result of its studies, provided that such change would encourage orderly community growth and would achieve tax savings.

I. INTRODUCTION

The *raison d'être* for virtually all of California's special district government is that when general purpose governments (cities or counties) are unable to provide necessary services to an area, it is appropriate for a specialized agency to do the job This is particularly true in unincorporated, urbanized areas where special districts provide services ranging from water, sanitation, fire and police protection to building hospitals and maintaining libraries or street lights [1] Most of these special districts are separate legal entities with their own governing boards and taxing authority

The Assembly Municipal and County Government Committee has had a continuing interest in the operation of local government generally and has sought to provide new tools by which districts and other local agencies could adapt to the community pressures and to the need for additional community services generated by the state's great surge in population Chairman John T Knox sponsored successful legislation in 1963, for example, which established "local agency formation commissions" in each county The 1963 law enjoined these commissions to review and approve all proposals for incorporating cities or forming districts, or for annexing territory thereto [2] Although the local agency formation commissions have operated with a significant degree of success,[3] additional growth-related problems remain which have particular relevance for special districts These are new problems, deriving principally from the rapid urbanization of California In general, existing district laws are inappropriate to solve them

Relatively few of California's special districts are "problem" districts, which place unwarranted and unnecessary burdens on their taxpayers; i e, only a relative few are obsolete, overlapping, or poorly administered Most districts provide good services to their residents and are a vital part of local government Ironically, however, these latter districts are now confronted with their greatest problem and challenge, viz, the principal impact of the population growth which will double California's population during the two decades between 1960 and 1980 The bulk of this projected growth will occur in the metropolitan areas, particularly the unincorporated areas surrounding major cities, which presently receive most of their public services from special districts [4] To be adequate to the demands of this population thrust, special districts must possess the tools to adapt themselves to changing demands and to continue their tradition of high-level services

Concern about archaic and limiting statutory provisions which would prevent special districts from adapting to such demands prompted Chairman John T Knox to introduce HR 136 in the 1963 First Extraordinary Session of the Legislature The resolution provided the authorization for a broad committee study of the need for uniform

[1] The districts discussed in this report are restricted to the so-called "service type" districts. School districts are specifically excluded from consideration

[2] AB 1662 (Chapter 1808) and SB 861 (Chapter 1810), 1963 Statutes

[3] The operations of the local agency formation commissions are discussed in another section of this report See pp 51–69

[4] Governor's Advisory Commission on Housing Problems, *Report on Housing in California*, January 1963, p 1 For more detailed background on population and housing trends in California, see Foley, Smith, and Wurster, "Housing Trends and Related Problems in California," in *Appendix to the Report on Housing in California*, pp 35–220, April, 1963

procedures for special district consolidation, dissolution, detachments, annexations, etc.

As a background for the committee study, the Legislative Counsel prepared a *Draft of Working Material on Dissolution, Consolidation, and Withdrawal (Exclusion) of California District Laws* in December 1963. This compilation enumerated the wide variety of different procedures for effecting changes in district organization and pointed out the complete lack of dissolution or consolidation procedures for a number of districts

In an effort to determine what types of reforms might be appropriate, the committee held two major hearings. The first, on January 16, 1964, in Los Angeles, explored the general feasibility of uniform dissolution, consolidation, and detachment procedures for special districts [5] The second, on September 16, 1964, in Richmond, reviewed the feasibility of specific new procedures which the committee had devised after its initial hearings [6] The committee also conducted a questionnaire survey to obtain further general information about the special district operations.

After careful consideration of the information presented at its hearings, the committee determined that there is a general need for uniform procedures governing reorganization of special districts In addition, it decided that legislation to effect this goal would be feasible. In arriving at these conclusions the committee was significantly influenced by widespread support for the principle of a single district reorganization statute, in spite of the obvious technical difficulties in drafting it The balance of this report discusses the committee recommendations and the general considerations supporting these recommendations.

II. PERSPECTIVES

The California codes abound with enabling statutes authorizing a seemingly limitless variety of special districts—airport districts, fire protection districts, water districts, cemetery districts, irrigation districts, etc. The fundamental principle undergirding all of these statutes is that when general purpose governments (cities or counties) cannot provide a necessary service, it is appropriate for a specialized agency to do the job.

Today, 175 general and special enabling statutes have provided the means to create over 3,500 special districts The 3,500 districts are found throughout the state but are primarily concentrated in growing urban or urbanizing counties with large areas of unincorporated territory. There are, for example, approximately 300 special districts in Los Angeles County and over 100 special districts each in Contra Costa, Fresno, Kern, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, and Sonoma Counties [7] Most of these districts

[5] See *Transcript of Hearing on the Subject of "Uniform Consolidation, Dissolution and Withdrawal Procedures for Special Districts,"* Los Angeles, California, January 16, 1964 (hereinafter referred to as *January Transcript*)

[6] See *Transcript of Hearing on the Subject of District Reorganization Act of 1965*, Richmond, California, September 16, 1964 (hereinafter cited as *September Transcript*)

[7] State Controller, *Annual Report on Financial Transactions Concerning Special Districts of California*, fiscal year 1962–63, p 3, and State Controller, *Annual Report of Financial Transactions Concerning Irrigation Districts*, calendar year 1963, p 21

provide urban services to unincorporated areas which are expected to experience heavy population growth in the next two decades [8]

Collectively, these special districts represent big government in terms of the land area they serve, the services they render, the money which they collect and spend In fiscal 1962–63, for example, special districts collected more than $479 million in service charges and taxes for general district purposes Expenditures by districts for general purposes during the same period exceeded $522 million, and the total long term special district debt outstanding at the end of fiscal 1963 approached $2 billion [9] Over the past decade, furthermore, these levels of revenue and expenditure have shown significant annual increases, principally in response to the demands of growth Total district revenues for general purposes increased 11 percent during fiscal 1962, for example, and an additional 12 percent during fiscal 1963 District general purpose expenditures rose by 12 percent during fiscal 1962 and by nearly 8 percent in fiscal 1963 Long-term debt outstanding at the end of fiscal 1963 had increased by 17 percent over the amount of fiscal 1962, which, in turn, had been a 17 percent increase over the preceding year [10] Undoubtedly special district expenditures and revenues will continue to rise as districts provide more and better services to more people At the same time however, taxpayers must have assurances that this money is not spent for inefficient or ineffective agencies

III. DANGERS OF DISTRICT "ISOLATIONISM"

Recently, several studies have aimed at evaluating the performances of special districts as governmental agencies While these studies have been critical of some aspects of district government, they unanimously indicate that most special districts are serving the public well For example, the Advisory Commission on Intergovernmental Relations, a U S commission established in 1959 to study and to advise the President on various governmental problems throughout the nation, concludes a lengthy report on special districts with the observation,

> "In general, the public appears to be satisfied with services received from special districts and, by and large, the districts have resolved the problems which spawned them and have met the demands for public services in an adequate fashion "[11]

At the same time, such studies indicate a genuine need to insure that special districts will have the resources available to continue their high level of services and to be responsive to changing demands of their clientele

Of broad concern is the public's awareness of special districts and of the adequacy of the services they provide A number of indicators suggest that few taxpayers are aware of the districts to which they pay

[8] See Governor's Advisory Commission on Housing Problems, *op cit*, *Appendix*, pp 69–121, "Shifting Metropolitan Spatial Patterns"

[9] State Controller, *Annual Report Concerning Special Districts*, fiscal year 1962–63, pp xi–xix, and *Annual Report Concerning Irrigation Districts*, calendar year 1963, pp 5–6

[10] See State Controller, *Annual Report Concerning Special Districts*, for fiscal years 1960–61, 1961–62, and 1962–63, Introductions, and *Annual Report Concerning Irrigation Districts*, calendar years 1961, 1962, and 1963, introductions

[11] Advisory Commission on Intergovernmental Relations Commission Report A–22, *The Problem of Special Districts in American Government*, Washington, U S Government Printing Office, May 1964, p 61

taxes, and that fewer still are aware of the adequacy of district services or limitations thereon

The Association of Bay Area Governments (ABAG) commissioned an extensive study of special districts in the San Francisco Bay area, which indicated a general lack of awareness of district activity. In regard to district elections, for example, the report indicated

> " The election date varies, depending on the type of district . The elections are seldom given wide publicity, the local papers may or may not carry the returns Unless a controversy has arisen in a district, the voters are not likely to be aware of the identity of either the incumbent directors or the opposing candidates, if any
>
> "The result is very low voter participation A sample revealed a medium turnout at special district elections to be 27 percent, significantly lower than for either county elections (76 percent), or city elections (45 percent).
>
> "Low voter participation, is however, only part of the story of limited voter interest and awareness District elections are often canceled because there are no contests, and the county board of supervisors simply reappoints the unopposed incumbents."[12]

In addition to the ABAG study this committee circulated questionnaires to over 2,000 autonomous special districts in an attempt to get a broad picture of district activity Data from the committee questionnaire corroborated the ABAG conclusions about district elections Relatively few districts held regular elections because district offices were often uncontested. Thus either incumbent officers were reappointed, or district boards of directors hand-picked replacements When elections were held, voter turnout was uniformly low

The committee questionnaire also indicated that much district information, e g , population, number of registered voters, land area within the district, district financial information, is not always readily available from the districts. Interested voters and taxpayers might have to contact several sources, including various county offices, for information In addition, because districts themselves do not have easy access to general information about the activities, service areas, or capacities of adjoining districts, they lack the information necessary to coordinate their activities.

Public awareness of districts is further inhibited by the county's role as tax collector The ABAG report concluded:

> "With few exceptions, the autonomous special districts have their taxes collected by the county The districts submit a budget to the county government, which levies the necessary tax rate to raise the amount required The county's role is ministerial: The board of supervisors has no effective power to review and adjust tax requests submitted by the autonomous districts. Because the tax bill comes from the county, however, most voters assume that the county is in some way finally responsible for district levies " [13]

[12] Scott, Stanley and John Corzine, *Special Districts in the San Francisco Bay Area, Some Problems and Issues*, Institute of Governmental Studies, University of California, Berkeley, 1963, pp 2–3

[13] *Ibid* , p 4

Testimony presented at the two committee hearings supplied some further indications of the difficulty in keeping informed of district operations and thus of coordinating them The Los Angeles County Local Agency Formation Commission, for example, found numerous special districts which lacked such basic information as the extent of district boundaries or the amount of district budgets [14]

These indicators highlight two major concerns about special districts First, although the vast majority of the state's 3,500 special districts are well run, there are a significant minority which are relatively unsupervised by taxpayers, or poorly administered and which provide inadequate or excessively costly services Some examples derived from the committee survey will be illustrative

1 One water district with an annual budget of over $700,000 (greater than the general expenditures of over half of California's cities)[15] has not had an election since its formation in 1941 Incumbent office holders have been the only ones filing for election and have routinely been reappointed to their positions

2. One fire district reported voter participation at 20 percent in 1960 and 10 percent in 1962 Since 1960 it has cancelled three elections for lack of contest Another fire district reported a 4-percent voter turnout in 1964 and three elections cancelled since 1960 for lack of contest

3 A recreation and park district reported the following election returns· in 1960, 13,534 eligible registered voters and a voter turnout of 22,093; in 1964, 18,605 eligible registered voters and a turnout of 26,860. Another recreation and park district reported a 1964 election with 14,000 eligible registered voters and a voter turnout of 29,424

One explanation for these seemingly startling variations may lie in the fact that these district elections were consolidated with general elections It may be possible that district boundaries did not coincide with general election precincts, and thus county officials found it difficult to control participation in the district elections Ironically, in a number of these elections, a large number of candidates were running for office and an accurate vote count was particularly important

4 A county water district collected $18,000 in service charges in fiscal 1964. In addition it has a $1 tax rate Yet it has no authorized budget

5. A fire protection district which covers one quarter of a square mile contracts with a neighboring city for its fire services The district does not know its population and has had no election since 1953

6 A number of county water districts acknowledge that they ignore with impunity the provisions of the Water Code requiring their rates and charges to be sufficient to pay operating expenses, to

[14] Testimony of Gordon Nesvig in *September Transcript*, p 75
[15] State Controller, *Annual Report of Financial Transactions Concerning Cities of California*, fiscal year 1962–63, pp 18–25

depreciate district equipment, to pay bond interest, and to establish a sinking fund for repayment of bond principal.[16]

7. Another water district, in response to a question about district elections, indicated that "All officers have been appointed . . and reappointed because the residents to date have insufficient voting power to offset the developer's votes

Much more important than the relatively few inefficient or administratively lax districts illustrated in the above examples, is the situation confronting those districts which currently operate well and provide good, low cost services to the public In regard to this latter situation, the committee studies of district operations together with other data and research, all indicate a combination of circumstances which inhibit a district's ability to view itself as part of a community in flux. Most districts, for example, give little attention to evaluating their place in the overall governmental framework of their community Few have developed any "master plans" for their service areas or have sought to coordinate their activities with those of various neighboring districts.

Some studies have indicated that groups associated with district activities tend to perpetuate an attitude of district isolationism The Advisory Commission on Intergovernmental Relations identifies two such groups—as a result of its study of districts—the "functional professional" and the economic groups which sell services and material to the district The "functional professionals" are persons with professional training for a particular type of service, such as sanitary engineering or recreation By operating in a special district rather than in a general purpose government, these persons can free the program in which they are interested from budgetary competition with other governmental programs and from supervision by administrators lacking similar dedication to a *single* program Under a special district government, they can develop a high level of services in their particular area with a large degree of political and financial autonomy. The commission concludes:

> "The influence of the functional professional (specialist in a particular service) probably is present in most programs where all three levels of government have a responsibility for the service involved . . the special district device permits the functional professional to bypass the normal governmental processes of at least one, if not two or three, levels of government [17]

Of the second group—those who sell materials or services to districts —the commission concludes.

> "The second type of special interest group influencing the use of special districts consists of various individuals and enterprises which stand to benefit economically not only from creation of a special district but from its perpetuation This group includes attorneys, bond counsels, equipment makers, engineers, public accountants, and others." [18]

[16] Water Code, Sec 31007
[17] Advisory Commission on Intergovernmental Relations, *op cit*, p 74.
[18] *Ibid*

Few persons have the opportunity or the capacity to become knowledgeable about the many, predominantly technical, services provided by special districts or to take any active part in district politics Left to themselves, the governing boards of single-purpose special districts tend to identify with clients who are especially interested in the particular services which the district provides and with various groups which benefit from district operations The result is a tendency for district activities to be carried out in a manner which promotes these particular interests rather than the interests of the community as a whole Because the special district rarely has to confront the entire community, it does not see itself in relationship to the entire community of which it is a part Instead, it tends to view clientele with which it has frequent contact as its "community" and directs its services toward them.

This is not to say that districts behaving in this way are providing inadequate or unsatisfactory services On the contrary, a special district dominated by professional interests and with a firm source of revenue may provide excellent and very elaborate services But, in so doing, it may prevent the development of other services which must rely on the same source of revenue In short the special district device tends to prevent competing claims for tax revenue from being considered together and weighed against one another Winston Crouch, in his study of the Los Angeles Metropolitan area, alludes to this type of situation

> "A mechanism is lacking to evaluate the various claims upon the property tax and to apportion the resources among the several units of government A governing board of a general-purpose government, such as a city or county, is able to allocate its revenue among competing claimants by means of the annual budget When several governments compete for the same source of revenue, however, the responsibility to allocate rests with the voters and they have only a very crude method available to express their choice.
>
> The number of special districts existing in the metropolitan area tends to add to the difficulties of the voter in expressing his will upon public policies He is often less aware of special districts than of general-function governments, and is less clear about the channels by which he may transmit complaints or register a choice on district policies [19]

In short, lack of public knowledge and the tendency for districts to overemphasize their own functions obviate the greatest original advantage of the district—its flexibility as a governmental device for providing a variety of solutions to local problems at a low tax cost.

Since a general increase in public awareness of and concern for special district government would be most unlikely, some alternative method should be found to insure that district activities keep pace with the changing communities they serve In this regard it is wholly preferable to place new and current responsibilities on existing local gov-

[19] Crouch, Winston W., and Beatrice Dinerman, *Southern California Metropolis*, 443 pp, University of California Press, Berkeley and Los Angeles, 1963, pp 395–6 (Winston W Crouch is Professor of Political Science at the University of California, Los Angeles Beatrice Dinerman, coauthor of the study, is Project Director of the Welfare Planning Council in Los Angeles)

ernments, rather than to wait until circumstances force some type of state action Thus an appropriate local agency, such as the local agency formation commission, could well be delegated the authority to take an overview of governmental agencies within each county and to suggest appropriate changes.

A statutory procedure which would permit a relatively small number of interested district electors—or even other agencies of local government—to initiate action for effecting needed changes in district organization would considerably revive the element of district flexibility, which today's operating exigencies have caused to atrophy. Such a procedure, however, should reserve the final decision to the voters and taxpayers involved. In addition it should provide adequate safeguards to protect districts against harrassment or arbitrary proposals The adequacy of existing statutory provisions to these goals is a separate, and collateral, question It is discussed briefly in the following section

IV. NEED FOR A UNIFORM REORGANIZATION STATUTE

Perhaps the most significant barrier to district flexibility is a procedural one Statutory provisions governing the conditions for altering special districts are narrow in application and cumbersome in operation. Legislative Counsel's compilation of the array of separate provisions for district consolidation, dissolution, or withdrawal is self-illustrative There are over 50 different types of general law statutes and well over 100 so-called "special act" statutes (i e special acts of the Legislature creating specific agencies) These enabling statutes provide no uniform or simple methods for effecting changes in special districts Provisions for any type of district alteration vary from act to act The percentage of voters or landowners which must petition for change, the governing body which must handle the petitions, the means for disposing of district property etc, vary markedly Moreover it is virtually impossible for districts organized under different enabling statutes to consolidate, even if they are engaged in providing similar services There is no way, for example, in which a county water district might consolidate with a California water district or a community services district [20]

Yet, as has been pointed out, population pressures will be heaviest on special districts and will bring with them a concurrent need for more flexibility in district organization Demographic forecasts indicate that California's population will double itself during the decades 1960–1980, reaching nearly 29 million persons by the end of that period Ninety percent of these people will live in metropolitan areas. In turn, most of this metropolitan growth will take place outside of the central cities, following a trend established during the 1950–1960 decade, during which some 61 percent of all new homes were built in the metropolitan suburbs [21] Today's special districts will be called upon to serve this population flood, but the problem of providing service may well raise collateral questions about the adequacy of a district As population fills in the surburban areas, for example, the service

[20] Legislative Counsel, *Tentative Draft of Working Materials on Dissolution, Consolidation, and Withdrawal (Exclusion) of California District Laws*, December 1963

[21] Governor's Advisory Commission on Housing Problems, *op cit Appendix*, p 58, section on "The Market for New Housing Recent Trends"

areas of similar districts may approach one another Land which may formerly have separated two water districts will be subdivided Then the question will arise of the best way to provide water to the entire area by the two existing districts, by creating a third district or by consolidating everything into one district Because of the difficulty of consolidation under present law, or the impossibility of such a move if the districts are not identical types, the full range of alternatives cannot be explored Instead, the inflexible provisions of existing district law may, by default, limit the taxpayers' choice to an admittedly inferior one

Although such rigidity may protect the limited interests of a few districts who seek only their own self preservation, it has unwholesome implications for traditional goals of local home rule If an inflexible local government structure prevents, or prolongs indefinitely, the solution of important problems in local areas, especially in metropolitan areas, the state is constrained to superimpose other organizational structures which will bypass local agencies Experience indicates that this method will be employed more frequently as citizens and communities are frustrated in attempts to bring about needed changes through the adaption of local institutions. Thus the districts themselves have a vested interest in laws which permit greater flexibility in reorganization

Significantly, the committee hearings revealed broad support among representatives of special districts for the principle of a uniform reorganization statute [22] Although conceding that drafting such a measure would involve a major technical effort, they agreed that it would constitute a new and valuable tool for local government.

[22] Witnesses who indicated support for the general concept of district reorganization act in whole or in part include
Mr Robert Angle, Goleta Sanitary District, *September Transcript*, pp 45–48
Mr Frederick Bold, attorney, Carson, Collins, Gordon, and Bold, *September Transcript*, pp 40–43
Mr James Carl, Department of Water Resources, *January Transcript*, pp 52–56
Mr Charles A DeTurk, Director, Department of Parks and Recreation, *January Transcript*, pp 134–136
Mrs William Gerhardt, League of Women Voters, *January Transcript*, pp 27–34
Mr Jerome Gilbert, Chairman, County Water District Section of Irrigation Districts Association, *September Transcript*, pp 55–58
Mrs Kurt Hath, League of Women Voters, *September Transcript*, pp 20–22
Mr Sherrill Luke, Secretary for Urban Affairs, Governor's Office, *January Transcript*, pp 3–8
Mr William L McCoy, Legislative Advocate for the City of Los Angeles, Statement, *January Transcript*, pp 137–139
Mr James T McCutcheon, California Taxpayers' Association, statement, *January Transcript*, pp 85–90, 133
Miss Peggy McElligott, Attorney, Wilson, Harzfeld, Jones and Morton, *January Transcript*, pp 74–78, and *September Transcript*, pp 23–26
Mr Jack Merelman, County Supervisors Association, *January Transcript*, pp 34–51, and *September Transcript*, pp 82–86
Mr Gordon Nesvig, Executive Officer, Los Angeles County Local Agency Formation Commission, *September Transcript*, pp 74–78
Mr Robert Small, Executive Officer for the San Diego County Local Agency Formation Commission, *September Transcript* pp 80–82
Mr William Warne, Director of Department of Water Resources, statement, *January Transcript*, pp 52–56
Mr Jack Wickware, Assistant Legal Counsel, League of California Cities, *September Transcript*, pp 18–20

V. RECOMMENDATIONS

After carefully considering the information gathered during the course of its hearings and study, the committee determined, to make the following two recommendations concerning district reorganization to the 1965 Legislature

1 A district reorganization law should be enacted which would provide uniform procedures for handling special district dissolution, consolidation, annexation, detachments, etc

During the legislative interim, the committee has drafted a district reorganization law which would provide such uniform procedures The proposed new procedure has been formulated to keep districts responsive to the needs of the voters, the taxpayers, and the community Under the proposed legislation, the power to initiate a proposal for district reorganization would be given to district voters, to a district board of directors, to a county board of supervisors, to a city council or to a local agency formation commission The proposal would then be reviewed by the local agency formation commission, as are proposals for changes in other governmental agencies Such review would prevent harrassment of districts by minority groups of voters. The final decision on any proposal reorganization would be made by the voters.

2 The local agency formation commissions should be urged to inventory and gather data in regard to special districts and other governmental agencies so that they may recommend changes which would save tax dollars and/or reduce costly sprawl

Such a step would provide local citizens and local governmental agencies with appropriate and accurate information about the general governmental framework within which their agency operates [23] In addition the local agency formation commissions should be encouraged to recommend organizational changes which would achieve significant tax savings and promote orderly community growth

[23] In this connection, Urban Renewal Commissioner William L Slayton has informed Chairman Knox that federal funds would be available for such studies under the Housing Act of 1964, amendment to the 701 Urban Planning Assistance Grant program Details of this program are discussed in the committee report on the local agency formation commissions See p 57

PART III

OPERATIONS OF THE LOCAL AGENCY FORMATION COMMISSIONS

I. INTRODUCTION

The 1963 Legislature created in each county a "local agency formation commission," empowered to review and approve or disapprove all proposals to incorporate cities, to form special districts, or to annex territory to cities or to special districts. The full range of duties assigned to the new local agency formation commissions (hereafter referred to as LAFC's) was provided by two separate legislative measures—AB 1662 and SB 861[1] The Assembly proposal provided for a "local agency formation commission" to review proposals to form new special districts and cities The Senate proposal provided for a "local agency annexation commission" to review proposals to annex territory to cities or to special districts. Provisions in each measure stipulated that if both proposals passed, a single commission would be established in each county to carry on the functions prescribed in both bills[2] Both measures did pass and their combined provisions went into effect September 20, 1963[3]

Each LAFC has five locally chosen members Except in a few smaller counties which contain fewer than two incorporated cities,[4] membership is composed of two county representatives, both of whom must be county officers, two city representatives, selected from elected mayors and councilmen by a selection committee composed of the mayors of each city within the county; and a public member chosen by the initial four LAFC members Staff services for the LAFC are provided by the county, and LAFC expenses are paid from the county general fund

Although the LAFC has jurisdiction over the major problem areas of annexations, incorporations, and district formations, its authority does not currently extend to the more routine, and usually less significant situations which involve exclusion of territory from a city, changes in county boundaries, or corrections of city boundaries Of much greater significance however is the fact that, although the LAFC has authority over special district formations and annexations, it does not presently have similar authority over special district consolidation, dissolution, detachments or reorganizations[5]

Recognizing that some problems and difficulties might occur in the initial operations of the formation commissions which would require modifications or additions to the basic formation commission law, Committee Chairman John T Knox introduced HR 137 in the First

[1] Chs 1808 and 1810, Stats 1963 (Government Code, Sections 54750–54771, 54775–54791)

[2] Stats 1963, Ch 1810, Sec 3, Ch 1808, Sec 2

[3] For a good and accurate account of the legislative history of both measures together with an exposition of the political forces and decisions which shaped their final form, see Wm E Glennon, "Recent Legislation New Control Over Municipal Formation and Annexation," in *Santa Clara Lawyer*, fall 1963, pp 125–135

[4] Government Code, Sections 54776 1 and 54776 2

[5] For more extended summaries of the local agency formation commission laws, see "Local Agency Formation Commission" pamphlet published jointly by the County Supervisors Association of California and the League of California Cities for use at institutes held at Berkeley on December 12, 1963, and at Los Angeles on December 13, 1963, 51 pp mimeo

Extraordinary Session of 1963 The resolution authorized a general interim study of the operations of the formation commissions Pursuant to this resolution, the Assembly Interim Committee on Municipal and County Government undertook a broad study of the LAFC's during the fall of 1964, by which time most of the LAFC's had had a full year of experience To gain as complete a picture as possible of LAFC's operations, the committee determined to make both a qualitative and quantitative evaluation of the various commissions Accordingly, a questionnaire was sent to each LAFC requesting detailed information about the number and types of proceedings which had been handled, the amount of territory involved, final decisions of the commission, etc In addition, the committee scheduled three hearings throughout the state to give local government agencies, citizen groups, and the various formation commissions themselves ample opportunity to present their own assessments and evaluations of LAFC performances, and to suggest changes which might permit the commissions to function more effectively Hearings were held in San Diego on November 10, 1964, and in San Rafael on November 13, 1964 A third hearing, scheduled for Fresno, was cancelled because in spite of ample notification to cities, counties, districts and various community groups of the Central Valley, the committee could find no one seriously dissatisfied with the operations of the formation commissions, or willing to propose significant changes in the basic formation commission statutes

The balance of this report presents a composite and comparative picture of the activities of the formation commissions by summarizing the quantitative information contained in the committee questionnaires In addition, it also lists a series of recommendations for specific changes in the formation commission law which the committee believes will help the commissions function more efficiently and effectively These latter recommendations are the product of careful thought and analysis by committee members after reviewing the committee hearings, after continuing meetings with local officials, and after extended consultation with both the League of California Cities and the County Supervisors Association

II. LAFC'S: A COMPOSITE PICTURE

In October 1964, the committee sent to each LAFC a questionnaire requesting information about its operations and the nature of the proposals which it had been reviewing One part of the questionnaire elicited comparative workload data as well as collateral information about related LAFC policies such as the types of conditions that the various LAFC's had attached to conditional approvals, etc This data is summarized in Table I (See Appendix, p 51)

In addition to the data summarized in Table I, a number of situations were described which illustrate the variety of ways in which the LAFC's have responded to administrative and procedural problems. The more significant of these are described in the following paragraphs Several incidents indicate the need for minor legislative changes to provide for uniformity in administrative policies Others demonstrate the virtues of granting the LAFC's broad discretion to meet the needs of specific local problems.

1 Very few LAFC's require that they be notified of further actions which are taken on proposals which they have approved or approved conditionally There is no statutory requirement that they do so However, several LAFC's request subsequent information from the board of supervisors or the county boundary commission to insure that conditions imposed by the LAFC have been met Other LAFC s have assigned staff personnel to keep track of all active proposals (Committee recommendations for uniform administrative procedures for such situations are discussed in subsequent sections of this report)

2 Only two instances were reported in which LAFC's reviewed proposals affecting land in two or more counties In one case, the LAFC of each county approved the proposal [6] In the second case, the Ventura County LAFC made its approval contingent upon approval by the Los Angeles County LAFC but, at the same time, expressed its willingness to reconsider the proposal on the basis of territory limited to a single county should the Los Angeles LAFC disapprove

3 Conditions which the LAFC's attached to various approvals varied widely Minor boundary alterations were the most frequently mentioned conditions These were usually required in order to smooth initial boundary irregularities or to avoid the creation of strips or islands of unincorporated territory within the larger incorporated area In some instances more complicated and more substantive conditions have also been imposed In order to insure that the one area would receive necessary services, one LAFC required that it annex to two districts, rather than to a single district as had been originally requested Several LAFC's have sought to reduce the patchwork effect of many governmental units serving slightly different areas by requiring, whenever feasible, that the boundaries of newly formed districts coincide with those of existing districts Such a policy has the immediate result of easing the county's burden in administering a multitude of tax zones. It has the added effect of clarifying the relationship between voters and the districts in which they reside And finally, it alleviates many of the problems which might otherwise arise if the area subsequently annexes to a neighboring city

Marin County provided the most illustrative example of the broad authority which the LAFC's have to impose conditions on their approval There, the LAFC approved the formation of one new district only on the condition that the county board of supervisors would fail to create a county service area to serve the petitioning territory

4. In some cases several LAFC's have provided additional protection beyond that required by law to property owners who might be affected by annexation proceedings One LAFC has made it a general requirement that owners of property *adjacent* to the territory to be annexed should be notified of commission hearings, in addition to the property owners within the territory to be annexed In one instance another LAFC required mailed notice of a proposed district annexation rather than the usual newspaper notice, because of the large number of nonresident property owners in the area

Rather than cause taxpayers to contend with many small annexation proceedings, some LAFC's require that adjoining annexations be con-

[6] The LAFC's of Riverside and Imperial Counties approved the annexation of the Salton Sea Water District to the Coachella Valley County Water District

solidated into a single annexation. Other LAFC's have enlarged areas in proposed city annexations to include homogeneous areas rather than small parcels or single lots. Most important, in a number of instances they have enlarged the territory in annexation proposals to include residential areas along with more desirable, revenue producing commercial areas

A second part of the committee questionnaire requested an itemization of all proposals received by each LAFC from the time of its organization through September 30, 1964 This listing showed the type of proposals (inhabited city annexation, uninhabited city annexation, city incorporation, district annexation, and district formation), LAFC action on each proposal (approval, conditional approval, disapproval, withdrawal by the proponents of the proposal prior to a final decision by the LAFC, proposals awaiting final action by the LAFC), and various data about the territory in the proposal (land area, population, and assessed valuation) Collectively this information provides a good composite picture of the variety and scope of LAFC action in addition to indicating generally the way in which the LAFC's have acted to deter actions which may have compounded problems of urban sprawl.

The most significant information from this part of the questionnaire is summarized in Table II (See Appendix pp 65–69)

III. LAFC'S: QUALITATIVE EVALUATION—RECOMMENDATIONS FOR LEGISLATIVE CHANGES

As noted in the introduction to this report, the committee held several hearings in November 1964 to secure from the LAFC's, cities, counties, special districts, and other interested parties, some indication of substantive changes which might be advisable in the LAFC law Testimony presented at the hearings indicated a number of procedural and substantive points on which there was a broad consensus for change. The committee carefully reviewed all suggestions at its executive meeting in December and determined to recommend legislation which would embody the significant points of this consensus The committee recommendations follow

1. *Chapters 6 5 and 6 6 of Title 5, Division 2, Part 1 of the Government Code should be combined into a single chapter*

Together these two chapters provide for the local agency formation commissions Combining the two chapters will involve no substantive changes but will facilitate reading of the law and simplify the process of further amending the law.

2 *Clarify the objectives of the LAFC law with a preamble which would indicate the following:*

The LAFC has the general responsibility for judging the merits of proposed governmental agencies and proposed changes in existing governmental agencies. In so doing, the LAFC is expected to guide governmental changes in a manner which will facilitate reasonable and logical development of the community and of the county, especially in rapidly expanding and changing urban areas.

The LAFC's should be explicitly authorized, at their own discretion, to make general studies of local agencies (i e determining proposed service areas, service limitations, etc) to assist it in making sound judgments Especially in urban counties, LAFC's have expressed a need to get a "total picture" of the governmental framework within which to make their decisions The Sacramento County Local Agency Formation Commission, for example, has requested all special districts in the county to submit master plans The commission feels that such data is critically needed in order to provide a framework for their decisions Other LAFC's feel that they need explicit statutory authority to allow them to gather data relative to various governmental agencies. Such data or any plan developed from it should be available, upon request, to all governmental agencies within the county or to interested individuals or organizations

To give an added impetus to the LAFC's to gather such data and also to relieve the county general fund from the full cost of such additional activity, LAFC's (or the counties on behalf of this LAFC) should be specifically authorized to accept grants and assistance from federal or state governments or private institutions In this connection, Committee Chairman John Knox recently secured from the Federal Urban Renewal Administration a "clarification" of the federal policy authorized by Section 316 of the Housing Act of 1964 [7] This section generally authorizes the issuance of 701 Urban Planning Assistance Grants to counties for preparing comprehensive county plans As a result of several conferences with Chairman Knox, Urban Renewal Commissioner William L Slayton has ruled that such grants may be given to counties (and to LAFC's) to finance efforts to gather the type of data referred to above, whenever such data gathering is integrated with comprehensive county planning Several counties have already expressed interest in seeking federal aid for their LAFC's under this program To eliminate any impediments to these efforts, the LAFC statute should be amended to authorize LAFC's and counties to utilize such grants

3 *Eliminate the county boundary commission, (Government Code, Sections 58850–58861) and assign its functions, where applicable, to the Local Agency Formation Commission and otherwise to the county surveyor.*

Along with the LAFC in each county, there also exists a county boundary commission normally composed of the chairman of the board of supervisors, the county assessor, the county auditor, the county surveyor, and the county planning engineer [8] The Boundary Commission Law now requires that all proposals which will involve changes in the boundaries of local agencies within a county, such as annexations to cities or special districts, be submitted to the boundary commission for review Although the boundary commission is given broad powers of review, in actual practice its work tends to be chiefly ministerial without the policy aspects inherent in the LAFC operations For example, the boundary commission must consider such factors as the certainty and correctness of the proposed boundaries, the extent to which overlapping or conflicting boundaries may result from the proposal, the

[7] Letter from William L Slayton to Assemblyman John T Knox, Nov 24, 1964
[8] Government Code, Section 58850

nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory " In studying any proposal the boundary commission may hold public hearings In making its own review however, the LAFC must consider all these same factors Thus in practice there are two county agencies searching similar materials and possibly holding duplicate hearings

The boundary commission can be safely eliminated As its functions relate to proposals that are under the jurisdiction of the LAFC—and this would include most proposals—the functions of the boundary commission should be assigned to the county surveyor or some other county officer designated by the board of supervisors

4 *All actions for changes in governmental organization should initiate upon filing with the LAFC (Proponents of annexations to cities, however, should be required to obtain prior consent from the city council)*

Coupled with elimination of the boundary commission, this proposal would mean that all actions for changes in governmental organization would initiate upon filing notice of intention with the LAFC Such a procedure will reduce the delay and confusion which results from the present necessity to file in two places and wait for two reviews

5 *Eliminate the statutory protection periods for proposals in the annexation laws and place provisions in the LAFC law which would provide similar safeguards to proponents of annexation and incorporation*

The existing annexation laws contain provisions for protection periods which begin after an initial filing for annexation during which no other action involving such territory may be filed [10] Proceedings before the LAFC virtually nullify these protection periods, which may end before the LAFC has had its hearing The committee recommends that these protection periods be deleted from the annexation laws and that adequate protection periods be placed in the LAFC law Under the LAFC law, a protection period should be established which would begin with the initial filing of a notice of intention with the LAFC and to continue until the proceedings are either completed or abandoned The committee also recommends that a maximum time period for completing annexations be placed in the LAFC law, after which time proceedings would be considered abandoned if they have not been completed. This period should be long enough to allow proponents of a proposal ample time to circulate their petitions after the LAFC determination has been made This time period is especially necessary when the LAFC imposes conditions on its approval which require further consideration by the proponents of the proposal

6 *Any boundary changes made by the local legislative body after a proposal has been reviewed by the LAFC should be resubmitted to the LAFC for certification of the boundaries*

In some situations the local legislative body may change the boundaries in a proposal after the LAFC has made its determination [11] The committee recommends that the LAFC law expressly require that, if

[9] Government Code, Sections 34303 5 35002, 58856
[10] Government Code Sections 35002, 35113, 35308
[11] Government Code, Sections 35121 5, 35121 6, 35313 5, 35313 6

any such changes are made, the proposal be resubmitted to the LAFC for its approval Such a referral would give the LAFC a chance to check the certainty of the new boundaries, a function now performed by the boundary commission It would also guarantee that the initial decision of the LAFC was not being circumvented by a later boundary change

7 *The LAFC should be given the authority to review withdrawals from cities*

While the LAFC has the authority to review proposals for the annexation of territory to cities, it has no jurisdiction over withdrawals of territory from cities Such proceedings are actually very rare Nevertheless, the committee believes that withdrawals, when they do occur, should receive the same careful attention as that accorded to annexations and recommends that the LAFC be given authority to review such proposals.

8 Existing law provides that when a proposal has been disapproved by the LAFC, new proposals involving the "same or substantially the same territory" may not be filed for a year after LAFC action *This requirement should be changed to allow the filing of proposals involving "any of the same territory" with the consent of the LAFC for the same one-year period.*

In the case of all annexations, special district formations, and city incorporations, once a proposal has been disapproved by the LAFC, no new proposal "composed of the same or substantially the same territory" may be filed with the commission for at least one year after the date of disapproval [12] The phrase "substantially the same territory" has introduced some confusion into LAFC operations because little guidance is given to the LAFC for determining what constitutes "substantially the same territory " In Marin County, for example, after an initial annexation had been rejected by the LAFC a subsequent proposal was filed including part of the area which had been in the rejected proposal The LAFC felt that this was not "substantially the same territory" involved [13] The committee feels that the various LAFC's should be the best judges of proposals presented to them and thus recommends that they be granted full discretion for deciding situations such as that in Marin County

9. *Membership rules of the LAFC should be revised to permit greater use of the alternate members and to restrict county membership to supervisors*

The present LAFC law provides that an alternate city representative sit with the commission only when the LAFC is considering a proposal for the annexation of territory to a city of which one of the regular commission members is an officer [14] If a city member is absent for any other reason, the alternate member may not sit and the commission will have fewer than five members In order to have a full commission acting on proposals as often as possible, the committee

[12] Government Code, Sections 54767 and 54789
[13] See testimony of John Barrows in Transcript of Hearing, San Rafael, November 13, 1964, pp 6–7
[14] Government Code, Section 54759

recommends that the city alternate be permitted to take the place of the city member whenever the latter is absent or may disqualify himself

In addition, provisions should be made for an alternate county representative to take the place of a county member who is absent or disqualifies himself for good cause The latter case may not occur frequently, but it is possible that a supervisor may feel that he has interests in a particular situation which would prevent him from making the unbiased judgments which the LAFC requires At the same time, it is recommended that county representation on the LAFC be restricted to county supervisors rather than to "county officers" This means that the commission will be composed entirely of locally elected officers with the exception of the public representative chosen by the other four members With the exception of two counties, all county members on the various LAFC's have been supervisors, thus this change in law will largely solidify an existing practice

10 *The committee further recommends that the board of supervisors be allowed to authorize per diem for city members and the public member*

This would apply particularly to those city and public members who may be required to take time from other jobs and travel long distances to attend LAFC meetings The present law permits commission members to be reimbursed for their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their offices [15] Provision of per diem payments would standardize and simplify reimbursement for these expenditures County supervisors may be considered salaried and serve with the LAFC as part of their regular duties.

11 *The city selection committee should meet at the call of the LAFC chairman or upon request of the city councils of 60 percent of the cities*

Present law requires the city selection committee of each county to meet on the second Monday in May of each year that it is necessary to make succeeding appointments to the LAFC [16] More flexibility would be provided if the city selection committee were to meet at the call of the LAFC chairman or upon request of the city councils of 60 percent of the cities This would enable the committee to fill vacancies as they arise

[15] Government Code, Sections 54769, 54771, 54791
[16] Government Code, Sections 54755 and 54778

APPENDIX

Table I and Table II

MEETINGS OF THE LAFC's

TABLE I

County	How often does LAFC meet?	Number of meetings held since LAFC was organized	Average number of proposals considered of each meeting
ALAMEDA	2nd and 4th Thursdays of each month and special meetings	11	4
ALPINE	When there is business	1	0
AMADOR	When necessary	4	1
BUTTE	Once a month	12	3
CALAVERAS	On call of executive officer as required	6	1
COLUSA	When called by Executive Officer or Chairman	4	3
CONTRA COSTA	January to June 1964, twice monthly, July to present, once each month	16	6
DEL NORTE	Once a month—as necessary	10	0 (only had 1 proposal to study)
EL DORADO	Committee request unanswered		
FRESNO	Twice each month	21	2
GLENN	When petitions are presented	9	1 or 2
HUMBOLDT	Committee request unanswered		
IMPERIAL	Average of once a month	10	1
INYO	No scheduled meetings	2	0
KERN	2nd and 4th Tuesdays each month	18	1
KINGS	1st and 3rd Wednesdays of each month if LAFC matter is pending	7	1
LAKE	Regular meetings once a month and called meetings when necessary	22	2
LASSEN	When business requires	1	0
LOS ANGELES	2nd and 4th Wednesdays of each month	23	17
MADERA	Once a month	10	1
MARIN	Twice monthly	19	3
MARIPOSA	Twice a year unless more are necessary	2	0
MENDOCINO	1st Monday of each month	9	1
MERCED	Monthly, or at call of chairman	8	2
MODOC	As need arises	0	0
MONO	Committee request unanswered		
MONTEREY	2nd and 4th Wednesdays of month if there is business to be transacted	9	3

Information as of September 30, 1964

MEETINGS OF THE LAFC's—Continued

TABLE I—Continued

County	How often does LAFC meet?	Number of meetings held since LAFC was organized	Average number of proposals considered of each meeting
NAPA	2nd Wednesday each month	12	4–5
NEVADA	2nd Monday each month	11	Less than 1
ORANGE	Once a month	10	27
PLACER	Monthly	10	3
PLUMAS	When called upon	7	1
RIVERSIDE	Once a month	8	9
SACRAMENTO	1st Monday of each month and special meetings	15	3
SAN BENITO	Monthly, or at call of executive officer	12	1
SAN BERNARDINO	Every other week	18	9
SAN JOAQUIN	Monthly—3rd Friday	10	2 to hear and 2 to set
SAN LUIS OBISPO	1st Thursday of each month	10	1
SAN MATEO	3rd Thursday of each month	12	5
SANTA BARBARA	2nd and 4th Thursdays of each month	20	3–½
SANTA CLARA	Once a month	11	18 (including continued hearings) 17 4 new hearings
SANTA CRUZ	3rd Tuesday each month	10	3
SHASTA	Monthly and special meetings	12	4
SIERRA	Committee request unanswered		
SISKIYOU	Once a month, special meetings as necessary	13	1
SOLANO	Once a month	13	2
SONOMA	1st Thursday of month	13	4
STANISLAUS	Once a month	10	3 4
SUTTER	Once each quarter, special meeting if needed	7	½
TEHAMA	2nd Wednesday of each month	15	½
TRINITY	Committee request unanswered		
TULARE	1st and 3rd Thursdays of each month	20	3–4
TUOLUMNE	Upon call of chairman, at least once annually on 4th Tuesday in November	8	1
VENTURA	2nd and 4th Wednesdays	23	10
YOLO	2nd and 4th Tuesdays	15	1
YUBA	Once a month, unless canceled due to absence of proposals	6	1

Information as of September 30, 1964

PROPOSALS REVIEWED BY LAFC's

TABLE II

	Unnhabited city annexations		Inhabited city annexations		City incorporations		District annexations		District formations	
	No	Acreage	No	Acreage	No	Acreage	No	Acreage	No	Acreage
ALAMEDA COUNTY										
Approvals	9	958 4	1	27 0			8	366 4	1	935 0
Conditional approvals	6	790 9	1	80 0			13	577 6		
Disapprovals										
ALPINE COUNTY										
No actions filed										
AMADOR COUNTY										
Approvals	4									
Conditional approvals										
Disapprovals										
BUTTE COUNTY										
Approvals	16	437 0					11	99 4	1	420 0
Conditional Approvals	1	336 0								
Disapprovals										
CALAVERAS COUNTY										
Approvals							4	10,067 8	2	45,000 0
Conditional Approvals										
Disapprovals							1	1 0		
COLUSA COUNTY										
Approvals							5	10,326 0	1	961 0
Conditional Approvals										
Disapprovals										
CONTRA COSTA COUNTY										
Approvals	35	3,400 4	3	312 0			21	17,245 0		
Conditional Approvals	13	3,603 7	3	451 0			4	384,048 8		
Disapprovals										
DEL NORTE COUNTY										
Approvals	1									
Conditional approvals										
Disapprovals										
EL DORADO COUNTY										
Committee request unanswered										
FRESNO COUNTY										
Approvals	19	303 0					9	5,294 0	3	8,770 0
Conditional approvals	2	135 0					3	46,642 0	1	5,000 0
Disapprovals										
GLENN COUNTY										
Approvals	3	29 3					1	946 0	2	2,270 0
Conditional approvals										
Disapprovals										
HUMBOLDT COUNTY										
Committee request unanswered										
IMPERIAL COUNTY										
Approvals	10	110 8					2	4,561 9		
Conditional approvals										
Disapprovals										
INYO COUNTY										
No actions filed										

Information as of September 30, 1964

PROPOSALS REVIEWED BY LAFC's—Continued

TABLE II—Continued

	Uninhabited city annexations		Inhabited city annexations		City incorporations		District annexations		District formations	
	No	Acreage	No	Acreage	No	Acreage	No	Acreage	No	Acreage
KERN COUNTY										
Approvals	2	480 0	1	50 0			8	18,659 5	1	460 800 0
Conditional Approvals	1	10 0	1							
Disapprovals									1	7 0
KINGS COUNTY										
Approvals	3	36 5					2	398 7		
Conditional Approvals										
Disapprovals										
LAKE COUNTY										
Approvals			1	4 2			2	45 0	3	325,202 0
Conditional Approvals										
Disapprovals							1		1	94 0
LASSEN COUNTY										
No actions filed										
LOS ANGELES COUNTY										
Approvals	80	4,184 0	14	595 0			230	40,794 0		
Conditional Approvals	15	2,130 0	4	2,026 0			1	86 0		
Disapprovals	3	11 0	1	28 0						
MADERA COUNTY										
Approvals	1	0 1	1	40 0			3	2,651 0		
Conditional approvals										
Disapprovals										
MARIN COUNTY										
Approvals	7	363 3	1	642 5			52	3,077 0	2	333,064 0
Conditional approvals									1	820 0
Disapprovals	1	259 0								
MARIPOSA COUNTY										0
No actions filed										
MENDOCINO COUNTY										
Approvals							6	857 1	1	18,368 0
Conditional approvals										
Disapprovals										
MERCED COUNTY										
Approvals	10	384 2	2	23 3					1	170 0
Conditional approvals	3	34 3							1	640 0
Disapprovals										
MODOC COUNTY										
No actions filed										
MONO COUNTY										
Committee request unanswered										
MONTEREY COUNTY										
Approvals	10	476 5					1	250 0	2	370 0
Conditional approvals							1	9,600 0	1	500 0
Disapprovals										
NAPA COUNTY										
Approvals	18	141 4			1	807 0	3	4 0		
Conditional approvals	1	2 0								
Disapprovals										

Information as of September 30, 1964

PROPOSALS REVIEWED BY LAFC's—Continued

TABLE II—Continued

	Uninhabited city annexations		Inhabited city annexations		City incorporations		District annexations		District formations	
	No	Acreage	No	Acreage	No	Acreage	No	Acreage	No	Acreage
NEVADA COUNTY										
Approvals	---	---	2	104 8	---	---	1	2 0	---	---
Conditional approvals	---	---	---	---	---	---	---	---	1	---
Disapprovals	---	---	---	---	---	---	---	---	1	---
ORANGE COUNTY										
Approvals	34	710 4	8	710 4	---	---	201	413 0	4	41,156 0
Conditional approvals	2	291 9	1	156 0	---	---	1	---	1	---
Disapprovals	---	---	1	24 3	---	---	---	---	---	---
PLACER COUNTY										
Approvals	---	---	1	600 0	---	---	4	1,469 0	5	1,839 7
Conditional approvals	---	---	---	---	---	---	---	---	---	---
Disapprovals	---	---	---	---	---	---	---	---	1	9,280 0
PLUMAS COUNTY										
Approvals	---	---	---	---	---	---	1	---	2	---
Conditional approvals	---	---	---	---	---	---	---	---	1	---
Disapprovals	---	---	---	---	---	---	---	---	---	---
RIVERSIDE COUNTY										
Approvals	18	2,339 5	1	15,000 0	---	---	37	11,673 2	---	---
Conditional approvals	---	---	1	1,920 0	---	---	---	---	---	---
Disapprovals	1	0,400 0	---	---	---	---	---	---	---	---
SACRAMENTO COUNTY										
Approvals	2	70 3	1	2,365 0	---	---	10	1,095 7	---	---
Conditional approvals	2	9 4	1	11,136 0	---	---	2	404 2	---	---
Disapprovals	---	---	---	---	---	---	---	---	---	---
SAN BENITO COUNTY										
Approvals	6	63 0	---	---	---	---	3	15 8	---	---
Conditional approvals	---	---	---	---	---	---	---	---	---	---
Disapprovals	---	---	---	---	---	---	---	---	---	---
SAN BERNARDINO COUNTY										
Approvals	38	8,025 1	---	---	---	---	68	130,676 9	3	10,880 0
Conditional approvals	12	557 2	---	---	---	---	25	9,681 5	---	---
Disapprovals	2	387 1	---	---	---	---	1	---	---	---
SAN DIEGO COUNTY										
Approvals	11	4,569 6	2	44 2	---	---	45	726 2	---	---
Conditional approvals	28	949 5	14	30,747 3	---	---	47	4,785 0	3	3,827 0
Disapprovals	---	---	---	---	---	---	1	133 0	---	---
SAN JOAQUIN COUNTY										
Approvals	13	570 6	---	---	---	---	4	1 6	1	850 0
Conditional approvals	1	1 6	---	---	---	---	---	---	---	---
Disapprovals	---	---	---	---	---	---	---	---	---	---
SAN LUIS OBISPO COUNTY										
Approvals	3	3 0	1	---	---	---	1	10 0	1	1,389 0
Conditional approvals	2	10 0	---	---	---	---	---	---	---	---
Disapprovals	---	---	---	---	---	---	1	100 0	---	---
SAN MATEO COUNTY										
Approvals	16	543 7	8	264 5	---	---	15	1,198 7	1	395 4
Conditional approvals	6	657 7	---	---	---	---	1	288 0	---	---
Disapprovals	---	---	---	---	---	---	---	---	---	---

Information as of September 30, 1964

PROPOSALS REVIEWED BY LAFC's—Continued

TABLE II—Continued

	Uninhabited city annexations		Inhabited city annexations		City incorporations		District annexations		District formations	
	No	Acreage	No	Acreage	No	Acreage	No	Acreage	No	Acreage
SANTA BARBARA COUNTY										
Approvals	5	123 8	1	2 3	----	----------	65	1,681 2	----	----------
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	1	55 0
SANTA CLARA COUNTY										
Approvals	158	{6,508 1}	----	----------	----	----------	18	{1,887 9}	----	----------
Conditional approvals	14		----	----------	----	----------	1		----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
SANTA CRUZ COUNTY										
Approvals	1	2 3	1	1 4	----	----------	14	911 6	----	----------
Conditional Approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	1	6 0	1	1 2	----	----------	----	----------	----	----------
SHASTA COUNTY										
Approvals	3	127 0	1	65 0	----	----------	8	2,974 0	1	8,900 0
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
SIERRA COUNTY										
Committee request unanswered										
SISKIYOU COUNTY										
Approvals	2	412 0	2	168 0	----	----------	----	----------	1	37,120 0
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
SOLANO COUNTY										
Approvals	7	232 8	----	----------	----	----------	2	1,861 5	----	----------
Conditional approvals	2	47 9	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
SONOMA COUNTY										
Approvals	22	842 5	3	337 0	----	----------	4	2,363 1	3	3,917 0
Conditional approvals	2	311 0	----	----------	----	----------	----	----------	----	----------
Disapprovals	1	533 1	----	----------	----	----------	----	----------	----	----------
STANISLAUS COUNTY										
Approvals	24	337 8	1	12 5	----	----------	1	269 0	5	3,585 2
Conditional approvals	1	4 7	----	----------	----	----------	----	----------	----	----------
Disapprovals	1	36 7	----	----------	----	----------	----	----------	1	149,760 0
SUTTER COUNTY										
Approvals	1	1 2	----	----------	----	----------	1	90 0	1	127 0
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
TEHAMA COUNTY										
Approvals	1	3 0	----	----------	----	----------	----	----------	2	44,520 0
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------
TRINITY COUNTY										
Committee request unanswered										
TULARE COUNTY										
Approvals	29	----------	----	----------	----	----------	11	----------	----	----------
Conditional approvals	----	----------	----	----------	----	----------	----	----------	----	----------
Disapprovals	----	----------	----	----------	----	----------	----	----------	----	----------

Information as of September 30, 1964

PROPOSALS REVIEWED BY LAFC's—Continued

TABLE II—Continued

	Uninhabited city annexations		Inhabited city annexations		City incorporations		District annexations		District formations	
	No	Acreage	No	Acreage	No	Acreage	No	Acreage	No	Acreage
TUOLUMNE COUNTY										
Approvals	1	0 1					1	5,680 0	2	276 0
Conditional approvals										
Disapprovals										
VENTURA COUNTY										
Approvals	40	1,325 4	1	7 0			109	7,290 7	4	14,542 6
Conditional approvals	19	674 9					46	10,536 5	1	
Disapprovals	1						2			
YOLO COUNTY										
Approvals	5	192 8	7	457 4			4	1,026 9		
Conditional approvals										
Disapprovals										
YUBA COUNTY										
Approvals							2	436 5	2	17,765 0
Conditional approvals										
Disapprovals										

Information as of September 30, 1964

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VOLUME 7 NUMBER 8

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON ELECTIONS AND REAPPORTIONMENT

FINAL REPORT

PART I—INTERIM STUDIES AND ACTIVITIES

PART II—CASES ON REAPPORTIONMENT

PRICE: $3.50
(Tax Included)

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. JESSE M. UNRUH
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HON. CARLOS BEE
Speaker pro Tempore
HON. JEROME R. WALDIE
Majority Floor Leader
HON. ROBERT T. MONAGAN
Minority Floor Leader
JAMES D. DRISCOLL
Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
ELECTIONS AND REAPPORTIONMENT
January 11, 1965

HON JESSE M UNRUH
Speaker of the Assembly, and
Members of the Assembly:

Dear Sirs·

Transmitted herewith is the report of the Assembly Interim Committee on Elections and Reapportionment for 1963–64

The report is divided into two parts. Part I contains a description of the committee's interim studies and staff activities from July of 1963 until the convening of the present session Part II contains the full text of the major court decisions bearing on reapportionment which form the background for the present legislative and judicial controversy on this vital and sensitive issue

Part I of the report contains no positive recommendations for legislation The committee looks with approval on the development of the policy within the Assembly Rules Committee of carefully screening subject matters prior to making a definite assignment to an interim committee of any particular legislative proposal For the most part, those subjects which were referred to this committee were of three classes First, an assignment to study a specific incident or subject area. In this class were our studies of vote-tabulating devices and the Imperial County vote fraud controversy The second group consisted of those bills and resolutions of the 1963 and 1964 sessions to which the committee gave careful attention but do not require a specific affirmative or negative recommendation or comment from the committee The third group consisted of those bills and resolutions—a fairly good number—which, despite the Rules Committee's commendable screening efforts, should never have been dignified with interim assignment at all.

Part II contains the complete text of decisions of the United States federal courts leading to the decision in *Reynolds* v *Sims* The dramatic and revolutionary doctrine announced in the *Sims* case was of such monumental significance to the California Legislature that the careful analysis and evaluation of that doctrine and its implications became—and remains—the principal task of this committee

The committee wishes to take this opportunity to express its sincere appreciation to Robert Moretti, committee consultant. His outstanding personal qualities were properly recognized last year when the people of the 42nd district elected him as their assemblyman.

The committee also wishes to thank the 58 county clerks of California. This truly dedicated group of men and women are the unsung heroes of the democratic process of free and fair elections.

Respectfully submitted,

DON A. ALLEN, SR., *Chairman*

GEORGE E DANIELSON, *Vice Chairman*
WILLIAM T. BAGLEY
CHARLES J. CONRAD
ROBERT W. CROWN
GEORGE W. MILIAS
NICHOLAS C. PETRIS
LEO J. RYAN

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PART I

INTERIM STUDIES AND ACTIVITIES

CHAPTER I

STATEWIDE SURVEY

The committee, desirous of developing a closer and more aware relationship with those people immediately concerned with elections and the procedures thereof, directed its consultant to visit as many counties of this state as possible The objective of the tour was to discuss with each county clerk or registrar of voters new developments, procedures and problems in the area of elections The consultant interviewed each of these people extensively, asking what new legislation is needed, what legislation, in their opinions, presently written into law needs to be amended or repealed, what implementation, if any, had been or was being accomplished in the field of electronic data processing, what type of voting machines or vote-tabulating devices would best suit their needs and purposes How were they coping with the problems of voter registration, was the necessary amount of energy being expended to see that as many people as possible were exercising their right to vote. What particular problems did their county have. For each answer given, the reasons were sought The results of the interviews were gathered together, the most prominently mentioned and important comments are listed below.

1 Far and away the legislative request considered most important and primary to the elimination of procedural difficulty is the development of one general elections code that would set up rules by which all types of elections would be governed At the present time there exists an elections code, but its procedures are augmented and superseded by specific laws included in, for example, the Education Code, the Water Code, the Health and Safety Code, etc. The result is that there presently exist approximately 300 different ways to conduct elections. The problems inherent in such a situation are obvious. For example there may be one method of processing absentee ballots in a general election, another method in a school election, and still another method for water elections. The consolidation of all these various laws regarding election method and procedure is the most ardent wish of those who are most closely and immediately affected This objective was expressed unanimously throughout the state

2. Because of its notoriously transient population, California has particularly acute problems with registration. Attempting to keep the registration roles accurate and in keeping with the laws of the state has become a major problem At the present time a person must completely reregister each time he moves, even if it be within the same county. It is felt that it would prove very helpful and less expensive if some method less involved were developed. Several suggestions have been made, one even passed into law and tried but none have provided an adequate solution.

3. The receipt and counting of absentee ballots varies with different types of elections. Recently a school election was held in this state, the outcome was very close and the absentee ballot count was needed before the results could be known. However, provisions of the Education Code did not allow counting of the ballots until the seventh day following the election Under the Elections Code, those ballots could have been counted immediately upon close of the polls
4. Rather than spending the time and cost of gathering the list of precinct board members to publish in the newspapers, the clerks would rather spend the same amount of money publicizing the election or printing the pros and cons of specific issues or explaining the propositions, etc The reason for this is that the list of precinct workers is obsolete by printing time and there exist serious doubts as to the need or value of publishing such lists at all
5. There exists generally a desire on the part of those in charge of elections in the counties that all elections be conducted under the jurisdiction of the county There are basically two reasons for this In many cases the smaller jurisdictions, whether they be cities or library districts, do not have expert people available because of a lack of activity in acquaintance with the field of elections Second, the trend has been for the smaller jurisdictions to arrange on a contract basis for the county to perform the procedures involved When not actually performing the procedures, the counties find themselves continually acting the role of consultant This proves to be a considerable burden. Many counties feel that it might be well for all elections to be conducted entirely by a central, expert office Many times the counties perform only specific functions of a particular election and yet are taken to task when a mishap occurs though it may be in an area over which they have had no control.
6. Notice of school elections must be sent out 30 days prior to the election This has proved unworkable because by the day of election very few electors remember it In addition, the notice of polling place address is sent at the same time, subsequently, those who do vote cannot recall where they must vote. The aim is to reduce the period of notice.
7. The board of supervisors of each county is the body which ultimately places the date of local elections In this capacity the board has traditionally been able to determine when special district elections could be consolidated with other elections This ability of the board to direct elections has in recent years been amended to allow hospital districts to direct the board in consolidation of hospital elections This is viewed as the possible beginning of a new problem area and should be ceased.
8. The matter of volunteer deputy registrars has caused a great deal of comment by the clerks Since there exists no regulatory legislation regarding this, the policy may well, and as a matter of fact, does differ from county to county. How the volunteer registrar program is conducted is actually determined by arbitrary decisions on the part of the clerk himself For example, the payment

per affidavit ranges from nothing to 25 cents The number of deputy registrars in ratio to number of voters varied tremendously from one county to another Many of the clerks would like to see enactment of legislation regulating activities and payment in this area.

9 The 1963 General Session of the Legislature enacted a law requiring polling places to remain open until 8 p m in counties having a population of 300,000 or more. This is opposed by the affected clerks The clerks records in the 1964 general election show that at best the additional hour added negligibly to the voter turnout In addition the extra hour delays counting of the ballots and adds to the physical burden already placed on the polling place officials

The foregoing represent the most prominently mentioned changes desired by the clerks There were many other suggestions, some of which will probably prove very worthy of examination and possibly enactment However, it is at this time the desire of the committee to reflect the comments of the county clerks or registrars of voters as a whole

This committee would be remiss if it did not pay special tribute to the clerks and registrars for their outstanding spirit and cooperation. The committee found the tour of its consultant was welcomed warmly and appreciatively For the first time information, advice and theory was sought from those most vitally working in the field of elections Their response and interest, and the possibility of progressive election legislation will prove to more than justify the committee's inquiry We believe that with the type of people California has conducting its elections we can be sure of honest, progressive and equitable determinations for the people of California In the committee's estimation the county clerks of California should be complimented for their work.

CHAPTER II

ELECTRONIC DATA PROCESSING IN ELECTION DEPARTMENTS

The use of electronic data processing equipment is growing rapidly in election departments throughout the state As experience with this equipment grows its value increases and its possibilities for elections work become more obvious. There are approximately 12 counties presently employing this type of equipment, many other counties will soon initiate the use of it and still others are exploring its possibility. Systems ranging from basic punched card to magnetic tape are in use and proving their practicality.

With this equipment counties are now able to keep on hand and extract at any given moment much greater and more concise information about voters and the particular districts in which they live Methods heretofore employed for filing, printing, tabulating, etc., are becoming obsolete in view of the abilities of data-processing equipment. In addition to internal procedural advantages there is apparently a considerable use for this equipment in connection with several vote-tabulating devices being introduced in California.

While the elections departments of most California counties are not able to justify the cost of this equipment solely for their own use, they have been able to participate in the use of central data-processing systems which are used for many departments within the county governmental structure Though there may seem to be problems inherent in this type of arrangement, a properly scheduled use of equipment time works out very well.

The committee reviews the advent and diversification of electronic data processing as the answer to increasing the speed and accuracy of procedures of election departments.

CHAPTER III

NEW VOTING MACHINES OR VOTE TABULATING USED IN THE 1964 ELECTION

Three new voting or vote-tabulating systems were employed on a countywide basis by five California counties this year. The new systems employed were the Coleman Electronic Vote Tabulating System, the Harris Votomatic System and the Votronics Vote Counter The Coleman was used in Contra Costa and Orange Counties, the Harris was used in San Joaquin County and the Votronic was used in Riverside and San Diego Counties.

Reports on the effectiveness and accuracy of this equipment were received from county clerks and are included in this report. In addition, county district attorneys were requested to advise the committee if grand jury investigations were conducted into the operation of this equipment subsequent to the election as a result of voter complaints Their replies are also included herein

REPORT

on the Comparative Costs

COLEMAN VOTE TALLY SYSTEM

as used in Contra Costa County

GENERAL ELECTION

November 3, 1964

Compiled by
W. T. PAASCH, *County Clerk*
Election and Registration Department

On August 11, 1964, the Board of Supervisors of Contra Costa County authorized the use of the Coleman Electronic Vote Tally System in tabulating the results of the November 3, 1964, general election.

In June 1964, 1,164 voting precincts were used with an average registration of 166 voters Due to growth of the county and the various special elections consolidated, we would have required 1,298 voting precincts with an average registration of 170 voters for the November 1964 general election

With the use of the Coleman system the burdensome task of hand-tallying the ballots was removed In conforming to the various district boundaries 720 voting precincts were established with an average registration of 306 voters Precincts actually varied in size from 76 to 448 voters State law allows up to 600 voters per precinct.

Significant savings in personnel, man-hours and costs were effected by use of the system The following tabulation reflects costs for June 1964 and November 1964 with and without the Coleman system as well as a projection for June 1966

The chart includes only items affected by adoption of procedures for electronic vote tabulation

From the reactions of election board members to the removal of the need for the long hours required to hand-tally ballots, automatic tallying is a necessity When this can be accomplished along with savings in manpower and expense it is apparent we cannot return to manual operation

In California of 7,233,067 ballots cast over 1,800,000 were counted by automatic methods Contra Costa County led the state with a 90 3-percent voter turnout

With the experience gained in this election, we now have a trained work force that would have no trouble in producing well-coordinated elections.

Contra Costa County had 67 different ballots with 43 ballot counts for special districts and 50 ballot counts for county, state and national offices. Fifteen special districts were represented, meaning considerable financial savings to the districts as well as providing $26,570 in revenue to the county

	June 1964 hand tally	*November 1964 using Coleman*	*November 1964 of hand tally*	*New costs*	*Savings*	*June 1966 hand tally*
Registered voters	193,997	220,860	220,860			240,000
Total ballots cast	147,649	199,529	199,529			187,200
Percentage vote	76 11%	90 3%	90 3%			78%
Precincts	1,164	720	1,250		530	1,350
Personnel	7,384	2,880	7,500		4,620	
Election officer payroll						
Inspectors	24,440	19,440	33,750		14,310	36,450
Judges and clerks	86,760	51,840	150,000		98,160	162,000
Night counting boards	10,800					
Messengers	3,492	2,160	3,750		1,590	4,050
Mileage	705	430	762		332	800
Rent of polling places	14,325	8,685	16,125		7,440	17,625
Precinct supplies	13,068	10,440	18,125		7,685	19,575
Election officer digests	886	360	900		540	972
Transportation						24,300
Election equipment and supplies	19,788	18,950	25,000		6,050	
Legal publication	4,772	2,954	5,125		2,171	5,400
Canvass of election returns						
Unofficial canvass	2,170		3,000		3 000	3,300
Absentee canvass	1,100		2,300		2,300	2,100
Official canvass	2,185	450	2,400		1,950	2,500
Tally center labor		3,989		3,989		
Postage for officer appointments	1 431	626	1,540		914	1,625
Labor recruiting election workers	8,709	3,247	9,000		5,753	9,200
Building maintenance material and labor		663		663		
New voting equipment			19,700		19,700	29,700
School unification new precincts 48 @ 196			9,408		9,408	
Data processing programming and equipment	2,119	4,887	2,500	2,387		2,500
Subtotal		129,121			181,303	
Coleman rental		85,000		85,000		
Total cost	199 310	214,121	303,385	92,039	89,264	322,457
Time factor	7 hours × 7,384	1 5 hours × 2,880	7 hours × 7,500			
Manual counting in precincts	51,688 hours	4,320 hours	52,500 hours			
Tally center labor	885 hours	1,551 hours	900 hours			
Man-hours	52,573 hours	5,871 hours	53,400 hours		47,597 hours	

OFFICE OF DISTRICT ATTORNEY
CONTRA COSTA COUNTY
HALL OF RECORDS, ROOM 512

January 29, 1965

DON A ALLEN, SR, *Chairman*
Assembly Committee on
Elections and Reapportionment
California Legislature
State Capitol, Room 4126
Sacramento, California

Dear Mr. Allen:

With reference to your communication of January 25, may I advise that in the official returns for Contra Costa County submitted by the election officer for the November general election, some differences were noted in a small number of precincts between vote casting for various offices and propositions As the differences could not seriously be explained, I obtained a subpoena requiring the presentation of these precinct ballots to the grand jury issued by the presiding judge of the superior court

The meeting of the grand jury was declared opened to the public to avoid problems incident to disclosure. A manual count was made of the two precincts presenting the most serious inconsistencies.

I enclose a copy of the grand jury report on the results for your further information

One contest was filed as to a supervisorial election and a sample canvass showed in that district satisfactory accuracy and the proceedings were dismissed

In order to provide legislation authorizing this type of inquiry which was admittedly questionable, I have proposed amendments to the Elections Code, a copy of which legislation is enclosed

Should it appear that I may be of further service, please advise

Very truly yours,

JOHN A. NEJEDLY
District Attorney

CONTRA COSTA COUNTY
1964–1965 GRAND JURY

December 18, 1964

HONORABLE EDMUND A. LINSCHEID
Chairman of the Board of Supervisors
County of Contra Costa
Martinez, California

Dear Mr Linscheid:

At the request of various individuals and groups, the grand jury has investigated the accuracy, in the November 3, 1964, general election, of the Coleman Vote Tally System

Considered specifically, at a meeting held on December 16, 1964, was information contained in the statement to the Board of Supervi-

sors of Contra Costa County by the Democratic Central Committee. Available to the grand jury at that meeting, upon the order of the Superior Court of Contra Costa County, were ballots cast in the precincts listed on the last page of the above-mentioned report

In a public session, the members of the grand jury reviewed the ballots cast in Pacheco Precinct No 6 pertaining to the total vote on Proposition No 14 It was evident that at least 90 percent of the voters had voted on this proposition, whereas the Coleman tally indicated a 1 percent vote or a total of 3 votes

The grand jury also conducted an actual count of the number of votes cast for President, Proposition No 14 and Proposition No 17 in Concord Precinct No 96 where a total of 251 votes had been cast This tally disclosed the following:

Total votes cast for President—245
Total votes cast for or against Proposition No 14—245
Total votes cast for or against Proposition No 17—241

The totals, as indicated by the Coleman Vote Tally System, were as follows:

Total votes cast for President—120
Total votes cast for or against Proposition No 14—135
Total votes cast for or against Proposition No 17—234

As the result of this survey, gross inaccuracies were apparent, and it is the recommendation of the grand jury that the County of Contra Costa does not purchase the Coleman Vote Tally System machine at this time.

It has been made apparent to the grand jury that there is a need for a review of present legislation establishing procedures for investigation of possible irregularities and inaccuracies in elections Therefore, the grand jury recommends that the board of supervisors take immediate steps to adopt proposed legislation to be presented to our State Legislature for emergency adoption in the immediate next session of the State Legislature providing for more effective means of review of election and canvassing of returns so that the public may have absolute confidence in the final determinations of elections

The grand jury should be pleased to meet with the board of supervisors to define precisely the terms of such proposed legislation which should be authorized by the board of supervisors and requested to be prepared by the district attorney This legislation should be approved by the board of supervisors and the grand jury without delay

Yours very truly,

RALPH HILL
Foreman

An act to amend the Elections Code by adding Section 15416 thereto concerning recounts

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

SECTION 1 Section 15416 is added to Chapter 7 of Division 9 of the Elections Code, to read

15416. Notwithstanding any provision of law to the contrary, in any election in which devices provided for by this chapter are used, recounts of the ballots so tabulated shall be accomplished as provided herein

(a) Within 30 days after every such election, the presiding judge of the superior court of the county shall order the county clerk, chief elections officer or other officer conducting said election to conduct a public manual recount before the court, of the ballots tabulated by such devices cast in six percent (6%) of the precincts, but not less than six precincts or all the precincts whichever is less, selected by the judge

(b) When requested by the board of supervisors or the grand jury, the district attorney may petition the superior court for an order directing a public recount to be made of such ballots in such precincts in the county as it designates for any election occurring not over 90 days before such request Such request and petition shall be made only on one or more of the following grounds, and such order may be issued only with a finding that there exists probable cause to believe that one or more of the grounds exist

(1) Misconduct by anyone sufficient to make it likely that the result of the election was affected as to the successful candidates or propositions or the holders, including any of the conduct specified in Section 20021,

(2) Errors or failures, whether electronic, mechanical or otherwise, in the safekeeping, handling, tallying, counting, recording, or certification of the ballots or votes cast, sufficient to make it likely that the result of the election was affected as to the successful candidates or propositions or the holders, or sufficient to cast substantial doubt on the substantial accuracy of the results without regard to affecting any result.

The petition shall be set for hearing and may be opposed by any interested party

(c) The court may order such further recounts as it may deem proper based on the results of the recounts heretofore provided for, and shall declare the results of all such recounts; and shall adjudge and order corrected the results of any election affected thereby

(d) The court may order payment of the costs of any such recount in whole or in just proportion by any party appearing in the matter and/or any public agency concerning which the election was held, and in the case of public agencies the costs shall be provided for and paid pursuant to Section 15416

COUNTY OF ORANGE

W. E. ST JOHN, *County Clerk*
OFFICE OF THE COUNTY CLERK AND
CLERK OF THE SUPERIOR COURT

HONORABLE BOARD OF SUPERVISORS December 3, 1964
Administration Building
515 North Sycamore
Santa Ana, California

Gentlemen.

Attached is a comparison report of savings gained through the use of the Coleman Vote Tally system The categories shown bear a direct relation to the use of this equipment

The net recurring savings for the November 3, 1964, election is $230,248 This saving will increase in future elections in direct proportion to the increase in voter population

I *Precincts*

The greatest area for savings was through precinct consolidation This is dramatically evident by the comparison of the number which would have been required if hand counting had been continued As it was, just 1,021 precincts were required rather than 2,200; and because centralized voting equipment was used, the Election Code allowed for a four (4) man board rather than five (5). This resulted in a reduced need from 11,000 to just 4,084 election board members The savings in compensation is $128.025 Other benefits are evident as well With less personnel, training was better emphasized, and recruiting, which was becoming a serious problem, has been eased considerably, especially since board members no longer are required to count ballots In this regard, it became increasingly evident during the recruitment program for the June primary election that board members did not desire working until the next morning counting ballots They had knowledge that special counting boards were permitted under the law, and in fact, several counties, including Los Angeles County, were forced to use this system for the last several years

Item No 1 indicates the cost of the extra counting board which would have been necessary under the hand-count system, not only because of the fatigue factor, but also from the more important point of accuracy.

Polling place rental resulted in a savings of $17,685 in direct proportion to precinct consolidations A flat fee of $15 is provided for rent Tables, chairs and lighting are provided by the owner

The overall cost of precinct kits through consolidation was reduced with a saving of $12,392 The kit included all the necessary forms stationery, code books, etc, to set up a polling place

II *Tally Center*

The first large saving of $2,800 in one operation performed at the tally center is the elimination of canvass boards Because electronic vote-counting equipment was used, canvassing procedures were simplified and regular employees effected the reconciliation Orange County therefore, was able to certify the abstract

to the Secretary of State some two weeks earlier than ever before, and became the first large county in California to do so.

Absentee boards were reduced because hand counting of absentee ballots was eliminated In this regard, the use of pressure-sensitive dots, sent to the voter with his ballot, were completely successful, resulting in a saving of $1,280

The need for hand summarization at the center was eliminated, hence comptometer operators and machines were not required, resulting in a saving of $1,800

Tally forms and other peripheral forms needs were eclipsed with a saving of $4,381 However, I B M punch cards used in the new system cost $300

Tally center personnel (Item No 2), represents the one large operational cost of $12,845 for the new system This category represents the large staff of 125 persons who physically operated the equipment, handled ballots, off-loaded trucks, etc, during election night, as well as two prior rehearsals Future plans call for a reanalysis of needs and the probable reduction of this cost

III. *Printing*

Legal publications, based on precinct location notifications were reduced with a saving of $4,630. Because the number of precincts were reduced, the publication costs were proportionally reduced.

GENERAL

Other economies and efficiencies have been enjoyed, however not directly attributed to the Coleman system. Some 5,000 chairs and 700 folding tables are no longer required by this office, and have been declared surplus. In fact, these items are provided by the persons from whom polling places are rented, as part of the contract agreement. A recurring cost for trucks of $2,100 and operating personnel is hereby eliminated.

Therefore, this office hereby returns to the county the Fullerton warehouse as no longer required in its operation.

Electricians were paid $2,465 in the primary election to install lights and extension lines in precinct locations This amount is an additional saving because owners now provide this service through the precinct agreement contract.

Because of consolidation of precincts, some 1,500 old wood voting booths which needed replacement were sold to a neighboring county.

Furthermore, efficiencies in procurement have been enjoyed.

Attached are two invoices indicating a substantial saving in ballot costs. However, it must be pointed out that the June ballot costs represented some premium overtime pay to offset the delays in the Stassen and Yorty ballot changes. In addition, many more ballot groups were produced.

However, the November ballot costs do include a large, more complicated ballot as well as reruns due to an abbreviation commission in a candidate designation. Paper costs of approximately $5,000 should be added to printing costs. Hence, the November cost is approximately $36,000 as against the June cost of $76,844.

Respectfully submitted,

W. E. ST. JOHN, *County Clerk*

COMPARISON REPORT OF COSTS FOR NOVEMBER 3, 1964, GENERAL ELECTION WITH PREVIOUS ELECTION AND PROJECTED COSTS IF COLEMAN VOTE TALLY SYSTEM HAD NOT BEEN USED

Category	*June 2, 1964 (primary) (without Coleman)*	*November 3, 1964 (general) (with Coleman)*	*Projected November 3, 1964 (without Coleman)*	*Savings*
Registered voters	382,342	463,003	463,003	
Total ballots cast (including absentee)	273,756	416,136	416,136	
I. PRECINCTS	1,937	1,021	2,200	
Personnel (five-man boards)	9,685		11,000	
Personnel (four-man boards)		4,084		
Election officer payroll	$180,141	$76,575	$204,600	$128,025
Item No 1 counting boards (four-man boards)			70,400	70,400
Polling place rent	15,970 (340 no cost)	9,975 (356 no cost)	27,660 (356 no cost)	17,685
Precinct kits	23,496 (@ $12 13)	14,294 (@ $14 00)	26,686 (@ $12 13)	12,392
II. TALLY CENTER				
Canvass boards	2,182		2,800	2,800
Absentee boards	1,674	720	2,000	1,280
Calculator rent and pay	1,352		1,800	1,800
Tally forms				
Receiving center, etc.	1,454	300	1,802	1,502
Abstract forms	2,521	121	3,000	2,879
Tab cards		300		(300)
Item No. 2 tally center personnel		12,845		(12,845)
III. PRINTING				
Legal publications	7,079	3,298	7,928	4,630
(Total of only those costs which can be compared with Coleman system)	$235,869	$118,428	$348,676	$230,248 net savings

COUNTY OF ORANGE

RECOMMENDED LEGISLATIVE CHANGES

1 Amend Elections Code Section 14009, and the "procedure applicable in the event of use of the Coleman Vote Tally System," Section II, election procedure, a Precinct polling place, to allow that marking devices shall be issued to the electors for use in marking the ballot, and to be returned to the election official with the voted ballot This would have the effect of discontinuing the requirement that stamps and ink pads are required at all times in the booths and in condition for proper use per Elections Code Section 14008

2 Selective manual counting of ballots as an audit of the electromechanical counting devices should be included as legislation to allow that sometime after the semiofficial tally has been completed and before the abstract is submitted to the Secretary of State, a counting board or boards shall be called to select one (1) precinct of each 100 counted electromechanically Said precincts would be selected by the counting board and at least two offices and two propositions, and two local issues, if any, may be counted at their option.

3 Suggest modification of Section 1603 of the Elections Code, paragraph E to allow for more than four (4) members of a precinct board where ballots are to be counted at a central place, instead of at the precincts It was our experience in Orange County that a fifth member of the election board would have proven very helpful in dealing with large consolidated precincts

4 Request legislation to authorize the use of electromechanical counting machines for any and all elections including schools and special districts.

5 Amend Section 14215 to allow for a combined roster and index as per form attached to make possible automatic purging by use of data processing equipment.

6. Suggest a modification to Section 10018 of the Elections Code to allow judges or clerks of special election boards to receipt for ballots and supplies On a prearranged schedule of delivery, the inability to deliver precisely to the inspector, who may be momentarily away from his or her home, adds to inefficiency and loss of time and greater cost

7. Recommend that Section 1561 be amended to allow for larger precincts for use in consolidations which can be achieved through the use of vote counting equipment

8 Request that the Secretary of State provide ballot paper in a color which will provide suitable contrast to marking ink and that this paper be procured earlier for proper aging and avoid paper shrinkage or expansion.

OFFICE OF
DISTRICT ATTORNEY
ORANGE COUNTY
212 HALL OF RECORDS
P.O BOX 1315

December 24, 1964

Gentlemen·

Herewith is presented our general findings respecting the breakage of the Coleman voting pens occurring on election day, November 3, 1964.

Materials used (1) field investigations, (2) interviews of affected areas and persons, (3) results of the Orange County crime laboratory tests, (4) statistical data received from precinct inspectors, (5) letters from voters as to personal experience, and (6) comparison surveys with Contra Costa County.

We are advised by the Coleman Company that all pens used in Orange County were of common lot with those used in Contra Costa County and Hamilton County, Ohio, employing the same inspection techniques and control procedures We are also advised that there was no opportunity to tamper with the pens while in the custody and control of the Coleman Company Investigation discloses nothing to the contrary.

The location of any precinct in Orange County was not significant Weather conditions were deemed not of significance because of prior experience of similar conditions in Kern County Since every possible type of breakage was committed upon the pen no definitive area was deemed significant.

We are frankly unable to explain the phenomenon of the damaged voting pens in the County of Orange as contrasted with the experience of Contra Costa and Hamilton County, Ohio, where no such unusual damage occurred, unless it can be said that difficulty, frustration and anger can be self-generating and contagious

We herewith attach a summary of the questionnaires sent to the precinct inspectors for such enlightenment and consideration that you may care to give We do not vouch for the accuracy of such data, we merely set forth what we receive

Summary

Investigation discloses no organized sabotage of the voting pens

Very truly yours,

KENNETH WILLIAMS
District Attorney

Name_____ Address of polling place_____

1 Did you have any difficulty with the ballot-marking pens? Yes___ No___

2 From your original supply, did you find any inoperative pens before placing them in the voting booths? Yes___No___ If so, how many?_____ Were they broken in pieces or merely did not print satisfactorily? _____

3. If you had any trouble with the pens, what time of day was it first brought to your attention?_____
4. What was the nature of the trouble?_____
5. During the day, how many pens were marking too light to see?____ Failed to mark?___ Were physically broken in pieces?___
6. Did the pen trouble appear to slack off? Yes___No __ If so, what time?____
7. Did you demonstrate the marking pens to each voter before he received the ballot? Yes___No___ If so, on paper the color of the ballot?___ White?___ Or other?___
8. Did any worker or voter, to your knowledge, attempt to repair pens? Yes___No___ If so, how?_____

If repairs were done at your poll, did you or other workers advise any other precinct how to repair the pens? Yes___No___

9. Do you know of anyone purposely breaking a voting pen? Yes___ No___ How many?_____
10. Did the voters object to the ballot box? Yes____No____ Voting booths? Yes___No___
11. Did you receive replacement pens? Yes___No___ If so, how many? ___ When?_____
12. As voters appeared at your poll, did they express doubt that their ballots would not be counted or that the voting machine would not operate accurately? Yes___No___.
13. Any suggestions on improvements?_____

Please make any additional comments on the back of this form.

SUMMARY OF COLEMAN VOTING PEN QUESTIONNAIRES

1,021	Questionnaires sent to poll inspectors.
895	Answered.
807	Had some difficulty with marking pens.
95	Reported no trouble.
829	Had NO broken or nonprinting pen at time of the opening of the polls (original supply).
72	Had defective pen(s) in original supply.
273	Had pens that were broken
661	Had pens that did not mark satisfactorily.
2,983	Pens reported marking too light to see
1,267	Pens reported failing to mark.
1,207	Pens reported physically broken.
330	Reported pen trouble did not slack off.
861	Reported pens were demonstrated to voters before entering voting booths.
417	Reported some attempt to repair pens.
475	Reported no attempt to repair pens.
874	Reported no knowledge of anyone purposely breaking a voting pen.
21	Reported pens purposely broken.
4,485	Replacement pens reported received.

PRELIMINARY REPORT
on the
VOTRONICS VOTE COUNTER
as used in
RIVERSIDE COUNTY
GENERAL ELECTION
November 3, 1964

DONALD D. SULLIVAN, *County Clerk*

On April 27, 1964, the Board of Supervisors of Riverside County authorized the negotiation for lease, with option to purchase, of 24 Votronics Vote Counters to be delivered for use in the November 3, 1964, general election. The transaction was finalized by lease executed in May, just prior to the primary election.

This new concept required changes in procedures, particularly from manual counting of ballots in the precincts to centralized counting. Because of mileage factors in Riverside County, local interest in city and special district candidates and measures, it was felt that decentralization of counting was desirable, and certainly feasible, with the Votronics Vote Counters The 24 vote counters leased by the county were supplemented with 3 additional machines (at no cost to the county) from Cubic Corporation, the manufacturer.

In the past, ballots, when counted, were delivered to 14 return centers, where the results of votes cast were transmitted by telephone to the counting center located at the county seat. Results, with polls closing at 7 p m, were received from smaller precincts beginning around 9:30 to 10 p m., with no appreciable volume until 11 to 11:30 p.m, and the main bulk being received between 1 a m. and 2:30 a.m. Under central counting procedures, with the polls closing at 8 p m., results of the absentee canvass and some of the smaller precincts were available to the press and radio by 9 p.m.

For the November 3rd general election, seven counting centers were established. These were located in the cities of Banning, Blyth, Corona, Hemet, Indio, Palm Springs and Riverside, with equipment assigned according to the number of precincts to be counted. From the outlying centers, results of votes cast in each precinct were transmitted over the county's microwave system and leased line commercial telephones already in existence to the Riverside counting center.

For the first time, election returns were transmitted to the county's data processing center for tabulation This provided for a faster and more accurate running tally of votes cast during the hours of greatest public interest, reduced costs of abstract forms, and, for the first time, a final count of *all* candidates and measures including those on the ballot through consolidation of city and special district elections. Significant savings in time were effected in completing the official canvass, since the statement of all votes cast was in our hands on Tuesday, November 10th, one week after the election, and only 3½ working days

COMPARISON OF PERSONNEL AND COSTS FOR NOVEMBER 3, 1964 GENERAL ELECTION WITH PREVIOUS ELECTIONS AND PROJECTED FIGURES IF VOTRONICS HAD NOT BEEN USED

	November 6, 1962 (General)	*June 2, 1964 (Primary)*	*November 3, 1964 (General)*	*November 3, 1964 (w/o Votronics)*	*New Costs*	*Savings*
Registered voters	138,563	140,728	166,413	166,413		
Total ballots cast (Includes absentee ballots)	109,305 (5,351)	100,585 (2,711)	146,517 (7,175)	146,517 (7,175)		
Precincts (or double boards)	728	657[1]	395[2]	975[3]		
Personnel—						
Four-man boards	19 × 4 = 76	19 × 4 = 76	395 × 4 = 1,580	19 × 4 = 76		
Eight-man boards	709 × 8 = 5,672	638 × 8 = 5,104		956 × 8 = 7,648		
Total personnel	5,748	5,180		7,724		
Election officials payroll and rent	$85,513	$82,472	$27,845	$94,119		$66,274
Supply sets	8,841	8,338	5,625	12,263		6,998
Election official digests	799	674	205	896		691
Transportation						
Booths, tables, chairs, etc	4,557	4,377	3,606	6,493		2,887
Precinct supplies	690	677	582	1,004		422
Vote counters	--	--	721	--	$721	
Printing						
Ballots	1,974	2,766	2,860[4]	2,860	--	--
Abstract-of-vote-cast forms	1,000	1,352	149	149	--	--
Miscellaneous forms	--	--	600	--	600	--
Legal publication	3,383	3,850	1,245	5,119		3,874
Canvassing						
Regular canvass	5,850	4,192	1,256[5]	6,220		4,964
Absentee canvass	766	1,000	--[6]	2,100		2,100
Counting center costs	--	--	4,263[7]	--	4,263	
					$5,584	$88,210 Savings
Totals	$93,373	$80,698	$48,597	$131,223		5,584 New costs

Time factors				
Manual counting in precincts	7 hours × 5,748 = 40,236 hours	7 hours × 5,180 = 36,260 hours	1 5 hours × 1,580 = 2,370 hours	7 hours × 7,724 = 54,068 hours
Counting in seven centers (268 personnel)			11 75 hours × 268 = 3,149 hours	
			5,519 hours total	48,549 man-hours
Time completed				
Unofficial, to Secretary of State	3 10 p m , Nov 7	5 a m , June 3	9 a m , Nov 4 [8]	
Official canvass	Dec 3 (27 days)	June 22 (20 days)	Nov 16 (13 days)	

[1] Following the 1962 general election at the request of the board of supervisors and in accordance with a recommendation of the grand jury, the entire county was reprecincted Seven hundred twenty-seven precincts were reduced to 591 raising the average of registered voters per precinct from 190 to 239 Registration for the 1964 primary election necessitated the reestablishment of 66 precincts (or double boards), making a total of 657, with an average of 214 voters per precinct This was necessary since we are required to divide or double-board precincts where the voter registration exceeds 250

[2] Use of vote tabulating devices requires establishment of central counting procedures, and if savings are to be effected, the consolidation of precincts within legal limitations not to exceed 600 voters Careful consolidation of precincts planned for the general election resulted in 341 consolidated precincts or double boards, but registration figures at the September 10th closing date required 54 additional precincts or double boards to remain under the 600 limit Average voter registration in the consolidated precincts was 421 Riverside County has 19 precincts, which because of distance and lack of population density, remain under 100 voters, and reduce the overall average considerably The average for the remaining 376 consolidated precincts is 439 registered voters

[3] Section 1570 of the Elections Code requires that precinct boundaries for the general election shall be the same as those established for the primary election, except to the extent necessary to add or subtract precincts as the result of population change or division of precincts containing more than 250 voters, etc Had Riverside County continued with manual counting procedures in the precincts compliance with Section 1570 would have required the establishment of 975 precincts or double boards because of the number of basic precincts with an excess of 250 registered voters This is a rather startling increase but is based on actual records For this reason all projected costs are based upon this figure The restrictions of Section 1570 apply only to the limited period between the primary and general elections, and at any other time, reprecincting under careful study would reduce the total of 975 precincts considerably

[4] Ballot printing costs include all testing, programming and readout sheets required for instruction testing and official counting procedures

[5] $1,256 represents costs of Riverside County Data Processing Department for services in both unofficial tally on election night and the official canvass commenced at 1 p m , November 5th and completed on November 10 1964

[6] Costs of absentee canvass are absorbed in counting center costs as all 7,175 absentee ballots were machine counted between 8 p m and 8 45 p m on election night

[7] Counting center data

	Miles from county seat	Machines	Precincts to count	Counted	Ballots counted	Counting time (hours)	Staff	Cost
Banning	30	2	30	30	10 573	8½	27	$438
Blythe	175	1	11	11	3,905	5	13	204
Corona	14	3	47	47	16 260	9	30	471
Hemet	32	4	57	57	19,757	7½	38	609
Indio	75	2	34	34	10,959	6½	27	438
Palm Springs	52	3	39	28	9 057	8	37	594
Riverside	—	12	177	188	*33,456	11½	96	1,509
		27	395	395	152,967		268	$4,263

* Includes 8,000 special district ballots

[8] Unofficial returns tabulated on election night included only principal candidates and measures as designated by the Secretary of State and the board of supervisors These totals were available at 7 30 a m , Wednesday, November 4, 1964 Complete returns were available for all candidates and measures by 10 30 a m the same date

after the canvass was commenced. A study of unofficial returns compiled on election night against the official returns indicated that human error in transmitting the unofficial returns was reduced from a factor of 0.95 percent in the primary election to 0.19 percent in the general election.

Significant savings in personnel, man-hours and costs were effected through the use of the vote-tabulating devices, and the chart on the following pages provides a comparison with previous elections and estimated costs for the same election had Riverside County not used the Votronics Vote Counters The items shown on the chart include only those which are affected by adoption of procedures for vote-counting machines.

From our experience, we are pleased to report that.

1. The Votronics Vote Counter counts ballots with 100-percent accuracy. To resolve differences in readout figures discovered after the ballots were passed to the manual-counting board, several recounts of entire precincts were made to resolve the differences. In every instance totals for each candidate and measure on the ballot were exactly the same as when first counted, and the difference between the two result of votes-cast sheets were resolved by the second reading.
2. This equipment is simple in operation and little preliminary training is required. Only 25 percent of the machine-counting personnel had even seen the machine before election night, but they rapidly adjusted to the machine, and increased production was apparent as the counting progressed
3. This equipment provides flexibility desirable for decentralized counting as well as in the event of machine failure. While two machines failed and were unable to be restored to service, the ballots can be, and were in this instance, transported to Riverside, where the 11 remaining precincts were counted on 11 machines within 30 minutes after their arrival The manufacturer has now guaranteed modification of all machines to eliminate the particular machine failure mentioned.
4. While the machine will count ballots at the rate of 1,200 per hour, a more practical rate is 1,000 per hour, and a sustained rate allowing for interim accuracy testing and for relief of personnel would be more appropriate at 800
5. Voter reaction is favorable since there is no change in voting habits The only difference is in the mark made on the ballot—a solid black circle instead of a cross.
6. Election officer reaction is favorable since long, tedious hours of counting is eliminated for them. The only unfavorable reaction occurred where there were in excess of 500 voters to be processed in the polling place. Four-man boards, which is the size allowed by law, do not have the opportunity to get away for meals or rest periods as the flow of voters is fairly constant.
7. Central counting procedures require polling places to be open from 7 a.m. to 8 p.m. A sampling of 100 of the 395 precincts in Riverside

County indicates that an average of less than five voters appeared during the extra hour that the polls were open. Many precincts had no voters during that period

8. While there was no significant change in the time when the unofficial totals were available, early returns represented at least twice the number of ballots as would have been reported at the same hour using manual counting, and the early returns represented a better cross section of the county for those who are interested in "trends."
9. In addition to the savings in man-hours, a considerable amount, if not all, of the human error in counting is eliminated.
10. Savings in costs and man-hours well justify the purchase and continued use of this equipment.

OFFICE OF
DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
COURT HOUSE

February 2, 1965

MR. DON A. ALLEN, SR., *Chairman*
Assembly Committee on Elections and Reapportionment
Room 110, 217 West First Street
Los Angeles, California 90012

Dear Sir:

We have your letter of January 25, 1965, asking whether any investigations have been made into the use of experimental vote tabulating devices.

There have been no irregularities reported concerning the use of experimental vote tabulating devices in this county and there have been no investigations that I know of.

I have been informed that our county clerk has made certain recommendations to Gordon Cologne, State Senator from this county and to W. Craig Biddle, our Assemblyman.

If there is any further assistance we can give you, please call upon us.

Yours very truly,

WILLIAM O. MACKEY
District Attorney

COUNTY OF SAN DIEGO

INTERDEPARTMENTAL CORRESPONDENCE

DATE: 16 November 1964

TO. BOARD OF SUPERVISORS

FROM: CHARLES J. SEXTON, *Registrar of Voters*

On November 3, 1964 this office conducted the presidential general election utilizing Cubic Corporation's Votronics Vote Counter The following is a summary of my observations regarding this operation based on the experience gained in this first-time use of the equipment, and an analysis of the documentation of the operation through machine logs, accuracy tests, etc It also includes information given to us from many of the persons who assisted us—machine operators and supervisors, and incorporates many very general observations from many sources This is of necessity a somewhat brief report; however, additional documentation is available and can be provided on request

1 The community of San Diego, including the county, the City of San Diego, the port, and other jurisdictions consolidating special elections, accrued a savings of approximately $255,000 from the use of the equipment Expenditures directly related to the use of the equipment, including the lease price, amounted to $208,000 The net savings from the use of this equipment will amount to about $47,000 In the event your board exercises its option on the lease to purchase of the advanced-type Cubic machines, an additional savings of $125,000 credit toward this purchase will also be realized

2. At 11 p m , Thursday, November 12, this office had final totals for all candidates for all offices, and votes for and against all measures While some printing of the official canvass still remains to be done, this puts us at least 10 days to 2 weeks ahead of any previous major election in point of time in completing the official canvass Results will be certified to your board next Thursday for appropriate action In the conduct of the semiofficial, a greater number of total votes were reported more rapidly than ever before This may be difficult to understand in view of some of the criticisms However, this information can be ascertained through a comparison of total votes reported in this and in previous elections at a comparable time following the close of the polls

3 In entering into this one-time lease contract, we were completely aware that we would be operating under certain difficulties

a The machine which was used is basically a small county machine and we would under no conditions enter into any sort of a permanent arrangement for the use of a device which would not have an automated output such as is contemplated in the advanced model of Cubic's device.

b We knew that we would be operating under a severe space handicap in our election night operation This did present many difficulties.

c This was a first-time use of this machine and we were completely without experience in an actual operation Decisions that were made as far back as July and August looked good at that time but hurt us severely in our election-night operation This included decisions relating to the processing of absentee ballots, and decisions regarding the number of manual tally ballots that would have to be handled in the course of the evening

4. The stamping device for marking the ballot used at this election will need improvement An improved device which can be relied upon to make consistent marks in all cases is considered to be an essential part of any system which the county intends using for the future

5 Cubic Corporation furnished 63 machines for our use on election night Two-thirds of these machines were accuracy checked and operated successfully until noon of the following day The remaining one-third of the machines experienced some difficulty in the course of the 17-hour period until the operation was terminated at noon on Wednesday. Cubic Corporation indicates that future units to be delivered will have a high degree of quality control and reliability that will insure against mechanical and electronic failures Their assurance of being able to provide these guarantees relates to the experience gained in the use of this equipment at this past election Additional requirements of this nature include checking circuitry to insure accuracy and reliability, and immediate knowledge of machine failure

6. Considerable difficulty was encountered on election night with torn and damaged ballots This problem can be reduced by redesign of ballot padding techniques and by better education of precinct workers

San Diego County made a large step forward in a complete conversion to a mechanized voting system at a major election and considerable experience has been gained in new areas of consolidations and central counting Mechanized voting concepts must be utilized in future elections and the experience gained in this operation, as well as the dollar savings, certainly indicate that this pioneering effort was a success There simply can be no reversion to formerly used manual tally systems I believe that we can safely say that Cubic Corporation gained as much by this experience as we did and would provide an acceptable device for the future lease-to-purchase contract

CHARLES J SEXTON
Registrar of Voters

COUNTY OF SAN DIEGO
OFFICE OF
DISTRICT ATTORNEY

January 27, 1965

HON. DON A ALLEN, SR., *Chairman*
Assembly Committee on
Elections and Reapportionment
Room 110
217 West First Street
Los Angeles, California 90012

Dear Mr. Allen:

Mechanical vote-tabulating devices were utilized for the first time in this county in the November 1964 election. Although delay and difficulty sufficient to engender rather substantial public comment occurred during the tabulating process, no complaint regarding irregularity was submitted to this office and to the best of our knowledge, no such complaint was received at any other agency of the county, including the grand jury.

Upon receipt of your letter, we reviewed the Final and Supplemental Reports of the 1964 San Diego County Grand Jury and we find no reference therein to vote-tabulating procedures

We trust that the foregoing is in satisfactory response to your letter of January 25.

Very truly yours,

JAMES DON KELLER
District Attorney

SAN JOAQUIN COUNTY

REPORT

on its use of

HARRIS VOTOMATIC VOTE RECORDER

in the

NOVEMBER 3, 1964

GENERAL ELECTION

prepared by the

REGISTRATION-ELECTION DEPARTMENT

RALPH W. EPPERSON, *County Clerk*

AL FLOR, *Supervisor of Elections*

COUNTY OF SAN JOAQUIN

RALPH W. EPPERSON, *County Clerk*

OFFICE OF THE

REGISTRATION-ELECTION DEPARTMENT

ALBERT FLOR, *Supervisor of Elections*

HON. BOARD OF SUPERVISORS
Courthouse
Stockton, California

Gentlemen:

We respectfully submit this report on the Harris Votomatic Vote Recorder as tested at the November 3, 1964, general election.

The intent of this report was to set forth our experiences, to evaluate our procedures and to recommend future changes. We feel that the test of Votomatic was most successful and that the value of this system is self-evidenced

We respectfully request that the board of supervisors appropriate funds for the purchase of 1,600 Votomatics for use in San Joaquin County. With the purchase of this quantity, we will have sufficient units for precinct demonstrations in the next election year, and they can then be absorbed into regular voting use as our registered voters increase

Very truly yours,

RALPH W EPPERSON
County Clerk

In April 1964, the Board of Supervisors of San Joaquin County appointed a citizens committee to study and finally recommend one of the voting systems available to California counties. This committee was composed of one member from each of the following organizations in San Joaquin County· League of Women Voters, Taxpayers Association, Democratic Central Committee, Republican Central Committee

and the Board of Supervisors The county clerk, county counsel and county administrator were named as ex officio members to the committee After four months of study, this committee recommended by a 4-1 vote, that the board of supervisors test the Harris Votomatic Vote Recorder in the November general election.

Briefly defined, the Harris Votomatic is a single punch-card marking device by which the voter inserts a prescored punch card into the Votomatic and then indicates his vote by "punching out" the candidate of his choice with a small stylus The punched cards are then brought to a central counting center to be counted on the county's existing data-processing equipment

After holding two public hearings on the committee's recommendation, the board of supervisors, on August 27, 1964, voted 5-0 to conduct the November 3, 1964, general election on Votomatic The following consideration lead to the board's November-test decision·

1 Use of Votomatic
   a. The least expensive system available
   b The highest possible savings to taxpayers
   c Apparent speed and accuracy of system
2 The opportunity of being the test county
   a In test runs the manufacturer frequently assumes burdens beyond those normally expected of a vendor
   b Offer of special price consideration
3 Highest possible voters participation
   a To test voters acceptance
   b To obtain maximum benefit from voter education programs
4 The least number of ballot changes
   a For easier computer programming in test election
5 A countywide election
   a To obtain maximum benefit from voter education programs

There were three principal factors to be proven in the test

1 Voters' acceptance
2 Votomatic's speed and accuracy
3 Lower election cost

VOTERS' ACCEPTANCE

Since the Harris system requires a change in voters' habits, from rubber stamping a paper ballot to "punching out" a punchcard, the major test would be voters' acceptance However, the results of the election proved that this was probably the least area of concern. Our total vote cast was 87 8 percent, which compares favorably with our all-time high of 88 7 percent. We have not received one written complaint about the Votomatic from any of the 93,047 voters who used it on election day (absentee ballots were on paper). In fact, the voters' acceptance was most enthusiastic

The various news services were completely satisfied with the test The local newspapers and radio stations gave excellent cooperation in the preelection voters' education program and most of them publicly supported the success of the Votomatic operation after the election.

Both political parties had some prior reservation as to the use of the Votomatic, i e, voters' education, voters' acceptance and election officers' training However, both parties were very satisfied with the conduct of the election and felt that their earlier concerns were satisfactorily resolved

The only complaints received, which warrants consideration, were that in some areas the voters had to stand in line longer than usual This was due to consolidation of precincts and the voters' unfamiliarity with the Votomatic We feel that the situation will resolve itself in part as the voters become more familiar with the use of the Votomatic and by establishing a ratio of 100 registered voters to each Votomatic unit, and also by better selection of polling places We find that a voter will take far less time marking his ballot in a voting booth located in a larger polling place such as a multipurpose room in a school building than they do in a smaller polling place, such as a private residence or a small garage

SPEED AND ACCURACY

The speed of the election's result was most satisfactory We released our first running total at 9 10 p m, and released our last precinct total at 2 08 a m (see Exhibit II attached). This compares most favorably with our last precinct report in the 1962 general election at 8 30 a m the following morning

The first precinct reported in to its receiving center at 8 45 p m, which is 45 minutes after the close of the polls The actual computer time for the 93,047 ballot cards ran that night was 3½ hours

While we cannot precisely state the accuracy of the total election result, it is safe to assume that the accuracy level of the Votomatic is absolute as compared to manual counts This assumption is based on recount records of manually tabulated paper ballot counts and the long history of accuracy on punchcard computers and the accuracy tests made election night However, we feel that we will never be able to make a precise accuracy statement until such time as we are petitioned for recount

ELECTION COSTS

In Exhibit 3 we have listed the cost comparisons between the 1962 general election paper ballot, the 1964 general election conducted on Votomatic and estimated costs of the 1964 general election had it been conducted on paper ballots Please bear in mind some of our expenses in this election could be accounted to some over precautionary measures, because of our first test election

The county rented 1,376 Votomatics (used for voting) from Harris at $25 each The rental fee included the ballot boxes, vote checkers and the ballot assemblies, except for the actual printing cost of the ballot pages In addition, Harris Votomatic furnished 369 demonstration units without charge The total rental charges, including freight, was $34,542 10 The actual unit rental of $34,400 will apply to the $200,000 purchase price if purchase is indicated prior to January 1, 1965

Including the rental fees in the total costs, the election cost the taxpayers $15,787 81 less than it would have on paper ballots Assuming

that the Votomatics were purchased, we would have reduced our cost per registered voter from $1 35 to $0.89 each or a total savings of $50,329 91

At the offer presented San Joaquin County by Harris Votomatic, we could write off the cost in four elections

In addition, we feel we will lower cost of future elections by eliminating the precinct demonstrators, heavier consolidation of precincts, revision of certain forms and in the fact that we have made some nonrecurring purchases (metal container, extension cords, etc)

FUNCTIONAL OPERATION

Almost every function relating to the conduct of elections was directly affected by the use of Votomatic We feel that some comment on these are pertinent to this report.

Voters' Education

Harris Votomatic was very helpful with the voters' education program They assumed what costs were involved, provided personnel to assist and gave many helpful suggestions based on their Georgia experiences There were two major education drives.

1 On election day, there was a paid demonstrator, with a demonstration unit, in each precinct The demonstrators were instructed to be quite insistent that every voter try out the Votomatic before obtaining a ballot from the precinct board.

2 On October 22nd we had paid demonstrators in every elementary school building throughout the county, from the hours of 2 p m. to 8 p m , for public demonstration All school students were given "fliers" to take home announcing the demonstrations and describing the Votomatics (We would like to point out that the county superintendent of schools office, many school administrators and teachers were most cooperative in these demonstrations). In addition to the public demonstrations, we made the Votomatics available to the high schools on the Monday and Tuesday preceding the 22nd for student education On Wednesday, they were made available to the junior high schools and on Thursday, the morning of the 22nd, they were made available to the elementary school teachers for demonstrations to their students.

We feel that the public demonstrations held in the school buildings were only somewhat successful The parent response was greater in the rural areas than in the metropolitan areas, but both were below our expectations However, we do feel that the student demonstrations were most rewarding. Because of the simplicity of the Votomatic operation, the students loved it and seemed to rush home to tell their parents how easy it was to vote.

Supplementing these two main drives, the Votomatics were demonstrated to almost every service club, civic organization, church group, labor unions and P T A organizations. They were loaned to candidates and political party organizations for demonstration The American Legion took the education program on as a unit project and opened a downtown store for Votomatic demonstrations where they gave "I pledge to vote" pins to every person they trained. The League of

Women Voters demonstrated the Votomatic as a part of their nonpartisan program on the ballot propositions

Overall, we feel our voter education program was at least 99+1/100 percent complete, if not pure.

Precincts

We reduced our general election precincts from 510 in the primary election to 295 in the general election on Votomatic. This done by consolidating general election precincts two to one in the heavily populated areas We left the rural area precincts unconsolidated because of distance to polling places We furnished five Votomatics per consolidated precinct and in the unconsolidated precincts, we furnished three This gave a ratio as low as 10 voters per unit to a high of 175 voters per unit. This was done primarily to gain experience as the number of registered voters per unit to determine our ratio in future elections. Under the punchcard system, precincts can range as high as 1,000 registered voters We felt that if Votomatics are purchased, the determining factor in establishing our precincts would be the number of registered voters which a precinct board of four could process during a rush hour We had precincts ranging in size from 29 registered voters to 883 Based on the general election experience, we feel that we can have precincts of about 600 registered voters each

Polling Places

Total rental of polling places was substantially reduced by the consolidation of precincts We use as many free rental locations as possible; i e, schools, firehouses, churches, etc. We pay $10 for those polling places which we must rent (principally private garages) Total cost for rentals were reduced from $3,450 in the 1962 general to $1,720 for the 1964 general

We found one rather interesting psychological fact about voter behavior, i.e., in polling places where the booths are located in a large area (school multipurpose) the voters take less time to mark their ballots than where they are located in smaller area, such as a private living room or small garage

In future elections, if we create precincts of 600 or more registered voters and furnish 8 to 10 Votomatics, we will have to have larger size polling places than some of our present garages and residences

Election Officers

With less precincts, we reduced our election-officer staff from 4,080 in the 1964 primary to 1,180 in the general There were four election officers per precinct—inspector ($21), assistant inspector and two judges ($18 each). Bearing in mind that the board of supervisors appropriated funds for increase of election officers' salaries only if paper ballots were to be used, the use of Votomatic reduced the election officers' salaries account from what would have been $75,990 to an actual expenditure of $24,162.

In training our election officers we established classes throughout the county, restricting attendance to only 10 precincts per class Our school of instructions lasted approximately two hours We assigned each precinct board to a given class period and had three classes per day. We furnished supply kits to each board for the class period and went over

each item that had varied from the paper ballot function In retrospect, we were over-concerned about the Votomatic precinct closeout changes. We do not feel that this restrictive of a class attendance was necessary We could have confined our attendance to inspectors only. However, we could have stressed the write-in canvass more completely

In addition to the school of instructions, we furnished each election officer with a step-by-step instruction sheet Harris Votomatic also furnished a pictorial instruction guide for each precinct board.

Very few precinct boards had any substantial problems in closing out their precincts and getting their voted ballot cards into the receiving centers However, it seems, from questionnaires submitted to inspectors, that the larger precincts (500 or more) had problems processing voters during the rush hours or else getting enough free time to allow the election officers lunch and dinner breaks The average maximum number of voters processed per hour was around 50 The slowest process appears to be the searching of the index to register and the book of official affidavits for the voter's name Therefore, in future elections, it may be necessary to provide for six-member boards in precincts of 500 or more.

Polling Place Equipment

1 *Chairs and tables:* With the reduced number of precincts and election officers, we now have sufficient chairs and tables to handle our future growth for some time to come

2 *Voting booths:* We used all three types of our existing booths without making any alterations for the use of Votomatic The Harris people had recommended that the units be bolted to the booth's shelf However, we felt this was undesirable since in the event Votomatic proved unsuccessful, we would not be left with booths having four holes in the shelves So we simply had the election officers set the Votomatics on the shelves when they set up their polling places. Out of 93,047 times that the Votomatics were used on election day, not once did one fall from the voting shelf Therefore, we feel that all three types of our booths are quite adequate for the Votomatic system. However, we would recommend that we continue our present policy of gradually replacing the old wooden booths with new metal ones—and that the new ones have the shelf built at an angle and recessed to hold the Votomatics

3 *Ballot boxes:* The problem of purchasing ballot boxes would be automatically taken care of with the purchase of Votomatic, since Harris ships each group of four units in a ballot box.

Receiving Centers

The receiving center operation was basically the same as in past elections We had the same four centers established throughout the county The farthest distance from receiving center to counting center was only 21 miles Two election officers were required to bring in the precinct returns to their assigned centers. The receiving centers then had the voted ballot card containers transported, under guard, to the counting center in the courthouse basement The only additional personnel required, due to Votomatic, was the guards.

Counting Center

The counting center was established in the courthouse basement where the data-processing equipment is located The counting-center personnel totaled 62 for election night They comprised the following boards.

1. *Seal and Container Inspecting Board* (Two Boards—Three Members Each)

As set forth in the State Voting Commission procedures, these two boards checked in the metal containers having the voted ballot cards They were required to certify to the condition of seal upon receipt We established a ratio of 150 precincts per board This proved very successful and could probably be increased to 200 or more

2 *Ballot Inspecting Board* (Ten Boards—Three Members Each Plus One Runner Each)

In accordance with the procedures, this board breaks the seal, opens the container and removes the voted ballot cards and the defective ballot cards, has the defective cards reproduced, places the header card on the voted-card stacks, notes the number of cards in the stack and then transfers them to the computer Based on our observations in the Georgia primary election, we felt we would establish a 30-precinct-per-board ratio for the ballot-inspecting board However, based on our operation election night, we feel this could be increased to 40–1 or 50–1 and higher

3 *Data Processing Board* (One Board—Four Members)

This board and its functions are set forth in the commission's procedures Ours was composed of county data-processing people We have no recommendation for change in this board Since this board actually operates the 1,400 family, there must be one for each system used

4 *Accuracy Board* (One Board—Three Members)

The function of this board is also set forth in the procedures Basically this board certifies to the accuracy of the total results For our own protection, we picked top data-processing people from outside county service (Data supervisors from Stanford Data Processing Corp, Diamond Walnut and Sharpes General Depot)

5 *Packaging and Sealing Board* (One Board—Three Members)

This board and its function is also provided in the procedures They package and seal the voted-ballot cards after they have been run through the computer and released by the accuracy board

6 *Header-Card Board* (One Board—2 Members)

Though not specifically provided for in the procedures, we established this board to control the prepunched header cards placed with the stack of voted-ballot cards from each precinct

7 *Duplicating Board* (One Board—Four Members)

Though this board is not specifically established in the procedures, its duties are to duplicate the defective cards received from the precincts We duplicated these cards on an IBM 519 and, upon the advice of the accuracy board, we made photocopies of all defective cards prior to putting them in the 519 One member of the board made the

photocopies, another operated the 519 and the other two compared the reproduced cards for accuracy. We reproduced 81 defective cards on the 519 None of these were mutilated by the 519. Therefore, we feel that photocopies of defective cards would not be necessary in future elections.

We also duplicated 124 defective cards detected in the computer room by the data-processing board. We did not endeavor to reproduce these cards election night, since it would hamper our assembly line functions (the 519 was located in the ballot-inspecting board room). They were reproduced the next day for the official canvass Out of the 93,047 ballot cards read, only 7 defective cards made it to the computer to cause downtime However, downtime was less than two minutes per card and none of the seven cards were mutilated.

Computer Equipment

All voted-ballot cards were read on our 1401 Column Binary Card System, with 4-K storage and a start-read attachment. By using this additional device, we were able to increase our card-read speed from 400 to 800 per minute. In addition, we had standby equipment under contract, in the event our county equipment failed

Our printout showed the precinct totals for each candidate and each measure, plus a countywide running total for each and also showed the percentage of vote received for each, at both precinct and countywide level We had to preprint the candidates and measures on our printout forms since practically all of the 4-K storage was used for the program Much of the storage was used because of the percentage of vote tabulation However, we are concerned about the capacity of 4-K storage in primary elections where we have as many as 36 different ballot types In the November election, we had only four ballot types, but we were able to get by with only one ballot program, and the one program required practically all of the 4-K storage, with the percentage computed It is quite possible that 4-K may be sufficient for more ballot types if we don't compute percentages and if we have some of the program (i e , party affiliation) prepunched in the ballot cards However, we would recommend that our 1401 storage be increased to 8-K.

Ballots and Supplies

The only significant increase in cost, due to the Votomatic operation, was in the ballots and precinct kits. Some of this increase can be accounted to overprecautionary measures, and some of it can be charged to the lack of statewide volume purchase

At the request of the board of supervisors, we used every other hole in the Votomatic assembly This practically doubled our ballot length as far as printing stock is concerned.

Our sample ballot, as opposed to Monterey County, was in booklet form to create a facsimile of the Votomatic's ballot assembly This created additional printing cost because of cutting, stapling and trimming We have not been able to obtain unit cost breakdown from our ballot supplies so we do not know the cost of our sample ballots, nor can we compare prices with the flat sheet sample used by Monterey At the present time we feel we will use the same sample ballot layout for future elections.

Absentee ballots were conducted on the old paper ballot form. Again, we do not have a unit price, however, we are sure that this was quite expensive since it required a separate ballot makeup for the paper ballot form Monterey County used a ballot similar to their sample ballot for absentee voting This saved a separate composition cost We would recommend in future elections that our absentee ballot format be the same as the sample ballot format in order to save composition cost.

Our write-in ballot envelope was less expensive than anticipated but we will have to make some modifications to insure that the voter inserts the ballot card properly. In addition, we hope to be able to have the ballot stub numbers removed from the write-in ballot envelopes

Our ballot cards were purchased through Secretary of State from IBM The commission's procedures require the precinct number to be punched or printed on the bottom of the cards We ordered the cards from IBM in reverse number order and had a local printer print the precinct numbers in accordance with our quantity order The local printing was 80¢ per thousand. IBM is in a position to offer the same service at 70¢ per thousand In future elections, we will have IBM do it, if we can anticipate our precinct quantities far enough in advance We purchased approximately 100 extra ballots per precinct in the anticipation of heavy spoilage due to the unfamiliarity of voters with Votomatic However, our spoilage was far below anticipation In fact, it was only slightly higher than normal ballots.

The precinct kits were $15 75 each which was higher than our $11 50 for the paper ballot kits Again, some of this can be accounted to our overprecautions Some of it can be accounted to the additional envelopes and seals required by the procedures However, we feel that most of it can be charged to lack of volume printing by the supplier. With our county using 295 precincts and Monterey County using 37, it doesn't provide for volume printing We feel the price will come down as more counties utilize Harris Votomatics.

Votomatics

1 *Preelection Day*

We found one major area of concern in this election We consolidated a junior college district trustee election with our general. The principal area is in Stanislaus County, but the district includes one of our high schools (seven precincts) There were 24 candidates who filed for election. The Votomatics will accept only 20 names per page Therefore, we were left with the choice of either rotating the names, as provided in the procedures, or furnishing paper ballots for the consolidated portion We decided to use the paper ballots However, if we are again faced with this problem, we will print the candidates' names on the reverse side of the second sheet This way a voter will be able to see all of the candidates' names at one time

The Votomatics and the ballot assemblies were shipped separately, prior to the day of election It was necessary, before delivery to precincts, to check the ballot assemblies; place them in the Votomatics, attach the wire seal; place the precinct number on the Votomatic container and on the ballot box holding the Votomatics for that precinct

It required four people two working days to perform this function on all 1,376 units used for voting.

The Votomatics were delivered to the polling places with the rest of the equipment. Since the procedures require the precinct number to appear on the ballot assemblies, the transfer companies were required to make guaranteed delivery to each polling place The ballot boxes holding four Votomatics were insufficient for convenient delivery within the consolidated precincts where we furnished five units We found it necessary to tie the extra Votomatic to the ballot box for that precinct to insure delivery. We hope to have the commission's procedures changed to allow for ballot-type designations on the ballot assemblies rather than the precinct number. This way, guaranteed precinct delivery would be less of a problem

2 *Election Day*

All the Votomatics performed very well on election day, particularly when one considers that this was the first time that our 93,047 voters used them Out of 61 trouble calls from precincts answered by our radio cars on election day, the following can be attributed to Votomatics·

18 jammed cards
13 request for additional Votomatics
9 new stylus
4 lights
2 damaged ballot assemblies

Most of the jammed card problems occurred early in the morning It was discovered that most of these were due to an old habit developed by the election officers in the use of paper ballots—in that they partially tore the perforation on the ballot card prior to handing it to the voter. Consequently, after the voter had punched his ballot, the perforation would give when the voter tried to remove it from the Votomatic, leaving the ballot card in the unit Since we had wire-sealed the ballot assemblies, it was necessary to send staff to remove the jammed cards and replace the metal seal

The stylus problem was created by the voters breaking the chain Only one of the replaced stylus was due to the bending of the point

Of the two damaged ballot assembly calls, one was due to the voter tearing a page out of the assembly The other was due to the voter punching the stylus through the arrow on the ballot pages

3. *Recommendations*

We have made the following recommendations to Harris Votomatic for changes in their units:

1. That in lieu of the metal hinging of the ballot pages, that a ballot assembly with plastic envelopes be made available to purchasers.

2. That the yellow mask be made for custom punching in convenient installation.

3. That the chain be made either longer or located in the center of the unit rather than on the right-hand side It appears that the present length is not convenient for left-handed voters

The Harris people have assured us that these changes are being provided in the new units.

Vote Checker

In addition to the ballot box furnished with each group of four units, Harris provides a vote checker This is a ballot assembly attached to a small card holder in which a voted ballot card, with the stub detached, can be inserted for checking the vote. We feel that the convenience of the vote checker is not worth the cost of printing the ballot assemblies We feel that a punched ballot card can be easily checked by the numerical comparison of the punched holes against the printed arrows on the ballot assembly Therefore, we feel that we will not furnish vote checkers to the precincts in future elections

EXHIBIT 1

SAN JOAQUIN COUNTY

OPERATIONAL COMPARISON BETWEEN 1962 AND 1964 GENERAL ELECTIONS

Item	*1962 general (paper ballot)*	*1964 general (Votomatic)*
Total registration	108,307	111,041
Total votes cast	88,921	97,515
Percentage of vote cast	88 7%	87 8%
Total precincts	490	295
Smallest precinct	29	29
Largest precinct	338	883
Registered voters per precinct—mean average	221	376
Registered voters per precinct—mode average	200–249	400–449
Number of maximum votes per ballot	44	26
Number of votes for first office on ballot	87,518	95,073
Number of votes for last measure on ballot	72,741	90,920
Drop-off vote	14,777	4,753
Polls closed	7 00 p m	8 00 p m
First precinct checked in at receiving center	10 30 p m	8 45 p m
Last precinct checked in at receiving center	7 15 a m	12 15 a m
Precinct closeout—mean average	2 53 a m	10 03 p m
Precinct closeout—mode average	1 30–1 59 a m	10 00–10 15 p m
Precinct closeout—total man-hours	27,015	2,423
Number of election officers—per precinct	8	4
Number of election officers—total	4,080	1,180
Election officers' salaries—per precinct	$21–$18–$8	$21–$18
Election officers' salaries—total	$52,831 60*	$25,683 50*

* Includes bag fees for return of supplies by election officers

EXHIBIT 2

ELECTION NIGHT PUBLIC—PRESS RELEASES

Time	*Number of precincts out of 295 reported*	*Time*	*Number of precincts out of 295 reported*
9 10 p m	1	11 37 p m	100
9 32 p m	5	11 52 p m	120
9 47 p m	7	12 07 a m	141
9 54 p m	11	12 28 a m	170
10 05 p m	16	12 50 a m	200
10 17 p m	27	1 08 a m	228
10 27 p m	44	1 15 a m	241
10 41 p m	50	1 41 a m	254
10 52 p m	59	1 57 a m	278
11 04 p m	70	2 08 a m	295
11 26 p m	85		

Average time lapse between each individual public report—14 minutes, 10 seconds

EXHIBIT 3

SAN JOAQUIN COUNTY GENERAL ELECTION COST COMPARISON TABLE

	1962 Paper ballot (actual)	*1964 Votomatic (actual)*	*1964 without Votomatic (estimated)*
SALARIES			
Election officers	$52,831 60	$24,162 00	$75,990 00
Precinct demonstrators	--	2,950 00	--
Absentee boards	725 00	2,943 00	2,943 00
Election centers	2,343 50	3,469 25	3,900 00
Seasonal clerks	21,260 61	21,604 05	21,000 00
FORMS AND SUPPLIES			
Ballots	15,954 51	23,468 25	19,500 00
Precinct supply kits	5,912 92	5,776 04	6,000 00
Miscellaneous supplies	4,206 98	5,812 60	5,000 00
POLLING PLACES			
Rental	3,450 00	1,720 00	3,600 00
Delivery of equipment	4,401 00	3,361 00	5,517 00
MISCELLANEOUS			
Publications	1,967 75	1,253 90	3,400 00
Postage for sample ballots	4,007 14	3,057 61	3,057 61
Subtotal	$117,061 01	$99,577 70	$149 907 61
Votomatic rental	--	34,542 10	--
		$134,119 80	
Registration	108,307	111,041	111,041
Cost per registered voter	1 08	1 20	1.35
Cost per registered voter (without rental)	--	89	--
Vote cast	88,921	97,632	97,632
Cost per vote cast	1 31	1 37	1.53
Cost per vote cast (without rental)	--	1 01	--

PART II

CASES ON REAPPORTIONMENT

KENNETH W. COLEGROVE, Peter J. Chamales and Kenneth C Sears, Appellants,

v.

DWIGHT H GREEN, as a Member ex officio of the Primary Certifying Board of the State of Illinois, et al.

(328 U S 549)
June 10, 1946

OPINION OF THE COURT

Mr Justice Frankfurter announced the judgment of the Court and an opinion in which Mr Justice Reed and Mr Justice Burton concur.

This case is appropriately here, under § 266 of the Judicial Code, 28 USCA § 380, 8 FCA title 28, § 380, on direct review of a judgment of the District Court of the Northern District of Illinois, composed of three judges, dismissing the complaint of these appellants Appellants are three qualified voters in Illinois districts which have much larger populations than other Illinois Congressional districts They brought this suit against the Governor, the Secretary of State, and the Auditor of the State of Illinois, as members ex officio of the Illinois Primary Certifying Board, to restrain them, in effect, from taking proceedings for an election in November 1946, under the provisions of Illinois law governing Congressional districts Ill L 1901, p 3 Formally, the appellants asked for a decree, with its incidental relief, § 274(d) Judicial Code, 28 USCA § 400, 8 FCA title 28, § 400, declaring these provisions to be invalid because they violated various provisions of the United States Constitution and § 3 of the Reapportionment Act of August 8, 1911, 37 Stat 13, c 5 as amended, 2 USCA § 2a, 2 FCA title 2, § 2a, in that by reason of subsequent changes in population the Congressional districts for the election of Representatives in the Congress created by the Illinois Laws of 1901 (Ill Rev Stat c 46, 1945, §§ 154–156) lacked compactness of territory and approximate equality of population. The District Court, feeling bound by this Court's opinion in Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, dismissed the complaint (DC) 64 F Supp 632.

The District Court was clearly right in deeming itself bound by Wood v Broom, supra, and we could also dispose of this case on the authority of Wood v Broom The legal merits of this controversy were settled in that case, inasmuch as it held that the Reapportionment Act of June 18, 1929, 46 Stat 21, c 28, as amended, 2 USCA § 2a, 2 FCA title 2, § 2a, has no requirements "as to the compactness, contiguity and equality in population of districts" 287 US at 8, 77 L ed 135, 53 S Ct 1 The Act of 1929 still governs the districting for the election of Representatives It must be remembered that not only was the legislative history of the matter fully considered in Wood v Broom, but the question had been elaborately before the Court in Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397; Koenig v Flynn, 285 US 375 76 L ed 805, 52 S Ct 403, and Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402,

argued a few months before Wood v Broom was decided Nothing has now been adduced to lead us to overrule what this Court found to be the requirements under the Act of 1929, the more so since seven Congressional elections have been held under the Act of 1929 as construed by this Court. No manifestation has been shown by Congress even to question the correctness of that which seemed compelling to this Court in enforcing the will of Congress in Wood v Broom.

But we also agree with the four Justices (Brandeis, Stone, Roberts, and Cardozo, JJ.) who were of opinion that the bill in Wood v. Broom, supra, should be "dismissed for want of equity " To be sure, the present complaint, unlike the bill in Wood v Broom, was brought under the Federal Declaratory Judgment Act which, not having been enacted until 1934, was not available at the time of Wood v. Broom. But that Act merely gave the federal courts competence to make a declaration of rights even though no decree of enforcement be immediately asked It merely permitted a freer movement of the federal courts within the recognized confines of the scope of equity. The Declaratory Judgment Act "only provided a new form of procedure for the adjudication of rights in conformity" with "established equitable principles." Great Lakes Dredge & Dock Co. v Huffman, 319 US 293, 300, 87 L ed 1407, 1412, 63 S Ct 1070. And so, the test for determining whether a federal court has authority to make a declaration such as is here asked, is whether the controversy "would be justiciable in this Court if presented in a suit for injunction " Nashville, C & St L. R Co. v Wallace, 288 US 249, 262, 77 L ed 730, 735, 53 S Ct 345, 87 ALR 1191.

We are of opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies It has refused to do so because due regard for the effective working of our government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination.

This is not an action to recover for damage because of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens. The basis for the suit is not a private wrong, but a wrong suffered by Illinois as a polity Compare Nixon v. Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446, and Lane v Wilson, 307 US 268, 83 L ed 1281, 59 S Ct 872, with Giles v Harris, 189 US 475, 47 L ed 909, 23 S Ct 639. In effect this is an appeal to the federal courts to reconstruct the electoral process of Illinois in order that it may be adequately represented in the councils of the Nation. Because the Illinois Legislature has failed to revise its Congressional Representative districts in order to reflect great changes, during more than a generation, in the distribution of its population, we are asked to do this, as it were, for Illinois.

Of course no court can affirmatively re-map the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois legislature chose not to act, the choice of members for the House of Representatives on a state-wide ticket. The last stage may be worse than the first. The

upshot of judicial action may defeat the vital political principle which led Congress, more than a hundred years ago, to require districting. This requirement, in the language of Chancellor Kent, "was recommended by the wisdom and justice of giving, as far as possible, to the local subdivisions of the people of each state, a due influence in the choice of representatives, so as not to leave the aggregate minority of the people in a state, though approaching perhaps to a majority, to be wholly overpowered by the combined action of the numerical majority, without any voice whatever in the national councils." 1 Kent, Commentaries, 12th ed, 1873, *230–231, note (c) Assuming acquiescence on the part of the authorities of Illinois in the selection of its Represenatives by a mode that defies the direction of Congress for selection by districts, the House of Representatives may not acquiesce In the exercise of its power to judge the qualifications of its own members, the House may reject a delegation of Representatives-at-large Article I, § 5, Cl 1 For the detailed system by which Congress supervises the election of its members, see e g., 2 USCA §§ 201–226, 2 FCA title 2, §§ 201–226; Bartlett, Contested Elections in the House of Representatives (2 vols); Alexander, History of the Procedure of the House of Representatives (1916) c XVI Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests From the determination of such issues this Court has traditionally held aloof It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law.

The petitioners urge with great zeal that the conditions of which they complain are grave evils and offend public morality. The Constitution of the United States gives ample power to provide against these evils But due regard for the Constitution as a viable system precludes judicial correction Authority for dealing with such problems resides elsewhere. Article I, § 4 of the Constitution provides that "The Times, Places and Manner of holding Elections for . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, . ." The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress An aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate.

The one stark fact that emerges from a study of the history of Congressional apportionment is its embroilment in politics, in the sense of party contests and party interests The Constitution enjoins upon Con-

* These years were chosen at random.

gress the duty of apportioning Representatives "among the several States . according to their respective Numbers, . . ." Article 1, § 2 Yet, Congress has at times been heedless of this command and not apportioned according to the requirements of the Census It never occurred to anyone that this Court could issue mandamus to compel Congress to perform its mandatory duty to apportion "What might not be done directly by mandamus, could not be attained indirectly by injunction" Chafee, Congressional Reapportionment (1929) 42 Harvard L Rev 1015, 1019 Until 1842 there was the greatest diversity among the States in the manner of choosing representatives because Congress had made no requirement for districting [June 15, 1836] 5 Stat 49, c 99 Congress then provided for the election of Representatives by districts Strangely enough, the power to do so was seriously questioned, it was still doubted by a Committee of Congress as late as 1901 See e g, Speech of Mr [afterwards Mr Justice] Clifford, Cong Globe, April 28, 1842, 27th Cong, 2d Sess, Appx, p 347; 1 Bartlett, Contested Elections in the House of Representatives (1865) 47, 276, H R Rep No 3000, 56th Cong 2d Sess (1901); H R Doc No 2052, 64th Cong, 2d Sess (1917) 43; United States v Gradwell, 243 US 476, 482, 483, 61 L ed 857, 863, 37 S Ct 407 In 1850 Congress dropped the requirement [May 23, 1850] 9 Stat 428, 432, 433, c 11 The Reapportionment Act of 1862 required that the districts be of contiguous territory [June 14, 1862] 12 Stat 572, c 170 In 1872 Congress added the requirement of substantial equality of inhabitants, [February 2, 1872] 17 Stat 28, c 11 This was reinforced in 1911 [August 8, 1911] 37 Stat 13, 14, c 5, 2 USCA § 2, 2 FCA title 2, § 2 But the 1929 Act, as we have seen, dropped these requirements [June 18, 1929] 46 Stat 21, c 28, 2 USCA § 2a, 2 FCA title 2, § 2a Throughout our history, whatever may have been the controlling Apportionment Act, the most glaring disparities have prevailed as to the contours and the population of districts Appendix I summarizes recent disparities in the various Congressional Representative districts throughout the country and Appendix II gives fair samples of prevailing gerrymanders For other illustrations of glaring inequalities, see 71 Cong Rec 2278–79, 2480 et seq, 86 Cong Rec 4369, 4370–71, 76th Cong, 2d Sess (1940), H R Rep No 1695, 61st Cong, 2d Sess (1910), (1920) 24 Law Notes 124, (October 30, 1902) 75 The Nation 343, and see, generally, Schmeckebier, Congressional Apportionment (1941), and on gerrymandering, see Griffith, The Rise and Development of the Gerrymander (1907)

To sustain this action would cut very deep into the very being of Congress Courts ought not to enter this political thicket The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action Thus, "on demand of the executive authority," Art 4, § 2, of a State it is the duty of a sister State to deliver up a fugitive from justice But the fulfillment of this duty cannot be judicially enforced Kentucky v Dennison, 24 How(US) 66, 16 L ed 717 The duty to see to it that the laws are faithfully executed cannot be brought under legal compulsion, Mississippi v Johnson, 4 Wall (US)

475, 18 L ed 437 Violation of the great guaranty of a republican form of government in States cannot be challenged in the courts Pacific Teleph & Teleg Co v Oregon, 223 US 118, 56 L ed 377, 32 S Ct 224. The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights

Dismissal of the complaint is affirmed.

Mr. Justice Jackson took no part in the consideration or decision of this case

For opinions of Rutledge and Black, JJ , see post, pp 1442, 1443.

Appendix I

DISPARITIES IN APPORTIONMENT SHOWING DISTRICTS IN EACH STATE HAVING LARGEST AND SMALLEST POPULATIONS

	1946		1928*		1897*	
State	*Dist.*	*Population*	*Dist.*	*Population*	*Dist.*	*Population*
ALA	9th	459,930	9th	310,054	2d	188,214
	6th	251,757	6th	170,188	7th	130,451
ARIZ	2 Representatives Elected at large		1 Representative		Not yet admitted	
ARK.	1st	423,152	1st	330,292	1st	220,261
	3d	177,476	3d	180,348	4th	147,806
CALIF	3d	409,404	10th	516,283	5th	228,717
	21st	194,199	2d	129,357	4th	147,642
COLO.	1st	322,412	3d	281,170	2d	207,539
	4th	172,847	4th	140,532	1st	204,659
CONN.	1st	450,189	1st	336,027	2d	248,582
	5th	247,601	5th	224,426	3d	121,792
DEL	1 Representative		1 Representative		1 Representative	
FLA	1st	439,895	4th	315,292	2d	202,792
	6th	186,831	2d	187,474	1st	185,630
GA	5th	487,552	5th	308,364	2d	189,300
	9th	235,420	3d	205,343	11th	155,048
IDAHO	2d	300,357	2d	253,542	1 Representative	
	1st	224,516	1st	178,324		
ILL	7th	914,053	7th	560,434	13th	184,027
	5th	112,116	5th	158,092	22nd	159,186
IND	11th	460,926	7th	348,961	7th	191,472
	9th	241,323	4th	179,737	6th	139,359
IOWA	2d	392,052	11th	295,449	11th	208,470
	4th	268,900	1st	156,594	1st	153,712
KANSAS	4th	382,546	3d	280,045	7th	278,208
	3d	249,574	4th	152,378	1st	167,314
KY	9th	413,600	11th	289,766	4th	192,055
	5th	225,426	8th	168,067	7th	141,461
LA	6th	333,295	6th	255,372	3d	214,785
	8th	240,166	7th	204,909	2d	152,025
ME	1st	290,335	1st	195,072	4th	183,070
	2d	276,695	2d	188,563	1st	153,778
MD	2d	534,568	2d	311,413	2d	208,165
	1st	105,427	1st	194,568	5th	153,912
MASS.	10th	346,623	8th	259,954	5th	174,866
	1st	278,459	15th	217,307	6th	169,418
MICH	17th	419,007	6th	533,748	2d	191,841
	12th	200,265	10th	198,679	9th	148,626
MINN.	6th	334,781	5th	275,645	2d	188,480
	9th	283,845	9th	112,235	6th	184,848

* These years were chosen at random

State	1946 Dist.	1946 Population	* 1928 Dist.	* 1928 Population	* 1897 Dist.	* 1897 Population
MISS.	7th	470,781	3d	349,662	5th	224,618
	4th	201,316	8th	177,185	1st	143,315
MO	12th	503,738	10th	521,587	14th	230,478
	9th	214,787	8th	138,807	9th	152,442
MONT.	2d	323,507	2d	333,476	1 Representative	
	1st	235,859	1st	215,418		
NEB.	1st	369,190	6th	288,090	4th	195,434
	2d	305,961	1st	173,458	3d	163,674
NEV	1 Representative		1 Representative		1 Representative	
N H	2d	247,033	1st	224,842	1st	190,532
	1st	244,491	2d	218,241	2d	185,998
N J.	1st	370,220	8th	290,610	7th	256,093
	2d	226,169	11th	228,615	8th	125,793
N. M	2 Representatives Elected at large		1 Representative		Not yet admitted	
N Y	25th	365,918	23d	391,620	14th	227,978
	45th	235,913	12th	151,605	7th	114,766
N. C	4th	358,573	5th	408,139	6th	204,686
	1st	239,040	3d	202,760	3d	160,288
N. D	2 Representatives Elected at large		2d	220,700	1 Representative	
			3d	210,203		
OHIO	22d	698,650	14th	439,013	2d	205,293
	5th	163,561	11th	167,217	12th	158,026
OKLA	1st	416,863	3d	325,680	Not yet admitted	
	7th	189,547	7th	189,472		
ORE	3d	355,099	1st	346,989	2d	158,205
	2d	210,991	2d	160,502	1st	155,562
PA	11th	441,518	12th	390,991	4th	309,986
	14th	212,979	15th	136,283	3d	129,764
R I	2d	374,463	3d	210,201	1st	180,548
	1st	338,883	2d	193,186	2d	164,958
S C	2d	361,933	7th	266,956	4th	200,000
	5th	251,137	2d	203,418	5th	141,750
S D	1st	485,829	2d	251,405	1 Representative	
	2d	157,132	3d	138,031		
TENN	2d	388,938	3d	296,306	3d	190,972
	5th	225,918	5th	145,403	5th	153,773
TEX	8th	528,961	2d	349,859	6th	210,907
	17th	230,010	7th	211,032	1st	102,827
UTAH	2d	293,922	1st	229,907	1 Representative	
	1st	256,388	2d	219,489		
VT	1 Representative		2d	176,596	1st	169,940
			1st	175,882	2d	162,482
VA	9th	360,679	2d	312,458	9th	187,467
	4th	243,165	7th	167,588	2d	145,536
WASH.	1st	412,689	1st	348,474	2 Representatives Elected at large	
	4th	244,908	4th	200,258		
W. VA	6th	378,630	6th	279,072	3d	202,289
	1st	281,333	4th	214,930	1st	177,840
WIS	5th	391,467	5th	276,503	6th	187,001
	10th	263,088	6th	214,206	10th	149,845
WYO	1 Representative		1 Representative		1 Representative	

* These years were chosen at random

Mr. Justice Rutledge:

I concur in the result. But for the ruling in Smiley v. Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, I should have supposed that the provisions of the Constitution, Art 1, § 4, that "The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . . ;" Art I, § 2, vesting in Congress the duty of apportionment of representatives among the several states "according to their respective Numbers;" and Art I, § 5, making each house the sole judge of the Qualifications of its own Members, would remove the issues in this case from justiciable cognizance. But, in my judgment, the Smiley Case rules squarely to the contrary, save only in the matter of degree.

Moreover, we have but recently been admonished again that it is the very essence of our duty to avoid decision upon grave constitutional questions, especially when this may bring our function into clash with the political departments of the Government, if any tenable alternative ground for disposition of the controversy is presented [1]

I was unable to find such an alternative in that instance. There is one, however, in this case. And I think the gravity of the constitutional questions raised so great, together with the possibilities for collision above mentioned, that the admonition is appropriate to be followed here. Other reasons support this view, including the fact that, in my opinion, the basic ruling and less important ones in Smiley v. Holm (US) supra, would otherwise be brought into question.

Assuming that that decision is to stand, I think, with Mr. Justice Black, that its effect is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable.

In the later case of Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, the Court disposed of the cause on the ground that the 1929 Reapportionment Act, 46 Stat 21, c 28, 2 USCA § 2a, 2 FCA title 2, § 2a, did not carry forward the requirements of the 1911 Act, 37 Stat 13, c 5, 2 USCA § 2, 2 FCA title 2, § 2, and declined to decide whether there was equity in the bill. 287 US 1, 8, 77 L ed 131, 135, 53 S Ct 1. But, as the Court's opinion notes, four justices thought the bill should be dismissed for want of equity.[2]

In my judgment this complaint should be dismissed for the same reason. Assuming that the controversy is justiciable, I think the cause is of so delicate a character, in view of the considerations above noted, that the jurisdiction should be exercised only in the most compelling circumstances

As a matter of legislative attention, whether by Congress or the General Assembly, the case made by the complaint is strong But the

[1] United States v Lovett, 328 US 303, concurring opinion at 1261, ante, 1252, 66 S Ct 1073 "But the most fundamental principle of constitutional adjudication is not to face constitutional questions but to avoid them, if at all possible And so the 'Court developed for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision'"

[2] Want of equity jurisdiction does not go to the power of a court in the same manner as want of jurisdiction over the subject matter Thus, want of equity jurisdiction may be waived Matthews v Rodgers, 284 US 521, 524, 525, 76 L ed 447, 451, 452, 52 S Ct 217, and cases cited.

relief it seeks pitches this Court into delicate relation to the functions of state officials and Congress, compelling them to take action which heretofore they have declined to take voluntarily or to accept the alternative of electing representatives from Illinois at large in the forthcoming elections

The shortness of the time remaining makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek To force them to share in an election at large might bring greater equality of voting right It would also deprive them and all other Illinois citizens of representation by districts which the prevailing policy of Congress commands 46 Stat 26, c 28, as amended, 2 USCA § 2a, 2 FCA title 2, § 2a

If the constitutional provisions on which appellants rely give them the substantive rights they urge, other provisions qualify those rights in important ways by vesting large measures of control in the political subdivisions of the government and the state There is not, and could not be except abstractly, a right of absolute equality in voting At best there could be only a rough approximation And there is obviously considerable latitude for the bodies vested with those powers to exercise their judgment concerning how best to attain this, in full consistency with the Constitution

The right here is not absolute And the cure sought may be worse than the disease.

I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction [3] Accordingly, the judgment should be affirmed and I join in that disposition of the cause

Mr Justice Black, dissenting

The complaint alleges the following facts essential to the position I take Petitioners, citizens and voters of Illinois, live in Congressional election districts, the respective populations of which range from 612,000 to 914,000 Twenty other Congressional election districts have populations that range from 112,116 to 385,207 In seven of these districts the population is below 200,000 The Illinois Legislature established these districts in 1901 on the basis of the Census of 1900 The Federal Census of 1910, of 1920, of 1930, and of 1940, each showed a growth of population in Illinois and a substantial shift in the distribution of population among the districts established in 1901 But up to date, attempts to have the State Legislature reapportion Congressional election districts so as more nearly to equalize their population have been unsuccessful A contributing cause of this situation, according to petitioners, is the fact that the State Legislature is chosen on the basis of State election districts inequitably apportioned in a way similar to that of the 1901 Congressional election districts The implication is that the issues of State and Congressional apportionment are thus so interdependent that it is to the interest of State Legislators to perpetuate the inequitable apportionment of both State and Congressional election districts Prior to this proceeding a series of suits had been brought

[3] "The power of a court of equity to act is a discretionary one Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only 'to prevent irreparable injury which is clear and imminent' " American Federation of Labor, Metal Trades Dept v Watson, 327 US 582, ante, 873, 66 S Ct 761, and cases cited.

in the State courts challenging the State's local and federal apportionment system In all these cases the Supreme Court of the State had denied effective relief [1]

In the present suit the complaint attacked the 1901 State Apportionment Act on the ground that it among other things violates Article I and the Fourteenth Amendment of the Constitution Petitioners claim that since they live in the heavily populated districts their vote is much less effective than the vote of those living in a district which under the 1901 Act is also allowed to choose one Congressman, though its population is sometimes only one-ninth that of the heavily populated districts Petitioners contend that this reduction of the effectiveness of their vote is the result of a wilful legislative discrimination against them and thus amounts to a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment. They further assert that this reduction of the effectiveness of their vote also violates the privileges and immunities clause of the Fourteenth Amendment in abridging their privilege as citizens of the United States to vote for Congressmen, a privilege guaranteed by Article I of the Constitution They further contend that the State Apportionment Act directly violates Article I which guarantees that each citizen eligible to vote has a right to vote for Congressmen and to have his vote counted The assertion here is that the right to have their vote counted is abridged unless that vote is given approximately equal weight to that of other citizens It is my judgment that the District Court had jurisdiction; [2] that the complaint presented a justiciable case and controversy; [3] and that petitioners had standing to sue, since the facts alleged show that they have been injured as individuals [4] Unless previous decisions of this Court are to be overruled, the suit is not one against the State but against State officials as individuals [5] The complaint attacked the 1901 Apportionment Act as unconstitutional and alleged facts indicating that the Act denied petitioners the full right to vote and the equal protection of the laws These allegations have not been denied Under these circumstances, and since there is no adequate legal remedy for depriving a citizen of his right to vote, equity can and should grant relief

It is difficult for me to see why the 1901 State Apportionment Act does not deny petitioners equal protection of the laws The failure of the Legislature to reapportion the Congressional election districts for forty years, despite census figures indicating great changes in the distribution of the population, has resulted in election districts the populations of which range from 112,000 to 900,000 One of the petitioners

[1] People ex rel Woodyatt v Thompson, 155 Ill 451, 40 NE 307, Fergus v Marks, 321 Ill 510, 152 NE 557, 46 ALR 960, Fergus v Kinney, 333 Ill 437, 164 NE 665, People v Clardy, 334 Ill 160, 165 NE 688, People ex rel Fergus v Blackwell, 342 Ill 223, 173 NE 750, Daly v Madison County, 378 Ill 357, 38 NE2d 160 Cf Moran v Bowley, 347 Ill 148, 179 NE 526

[2] 28 USCA § 41 (14), 7 FCA title 28, § 41(14), Bell v Hood, No 344, decided April 1, 1946 [327 US 678, ante, 949, 66 S ct 773]

[3] Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, Koenig v Flynn, 285 US 375, 76 L ed 805, 52 S Ct 402, Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402, Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, Nixon v Herndon, 273 US 536, 540, 71 L ed 759, 761, 47 S Ct 446, McPherson v Blacker, 146 US 1, 23, 24, 36 L ed 869, 873, 13 S ct 3 See also cases collected in 2 ALR 1337 et seq, note

[4] Coleman v Miller, 307 US 433, 438, 467, 83 L ed 1385, 1388, 1404, 59 S Ct 972, 122 ALR 695

[5] Ex parte Young, 209 US 123, 52 L ed 714, 28 S Ct 441, 13 LRA(NS) 932, 14 Ann Cas 764, Sterling v Constantin, 287 US 378, 393, 77 L ed 375, 382, 53 S Ct 190

lives in a district of more than 900,000 people. His vote is consequently much less effective than that of each of the citizens living in the district of 112,000. And such a gross inequality in the voting power of citizens irrefutably demonstrates a complete lack of effort to make an equitable apportionment The 1901 State Apportionment Act if applied to the next election would thus result in a wholly indefensible discrimination against petitioners and all other voters in heavily populated districts The equal protection clause of the Fourteenth Amendment forbids such discrimination It does not permit the states to pick out certain qualified citizens or groups of citizens and deny them the right to vote at all. See Nixon v. Herndon, 273 US 536, 541, 71 L ed 759, 761, 47 S Ct 446; Nixon v Condon, 286 US 73, 76 L ed 984, 52 S Ct 484, 88 ALR 458 No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote The probable effect of the 1901 State Apportionment Act in the coming election will be that certain citizens, and among them the petitioners, will in some instances have votes only one-ninth as effective in choosing representatives to Congress as the votes of other citizens Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit

The 1901 State Apportionment Act in reducing the effectiveness of petitioners' votes abridges their privilege as citizens to vote for Congressmen and violates Article I of the Constitution Article I provides that Congressmen "shall be . . . chosen . . . by the people of the several States" It thus gives those qualified a right to vote and a right to have their vote counted. Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152, United States v Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904 This Court in order to prevent "an interference with the effective choice of the voters" has held that this right extends to primaries United States v Classic, 313 US 299, 314, 85 L ed 1368, 1377, 61 S Ct 1031 While the Constitution contains no express provision requiring that Congressional election districts established by the states must contain approximately equal populations, the Constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast To some extent this implication of Article I is expressly stated by § (2) of the Fourteenth Amendment which provides that "Representatives shall be apportioned among the several States according to their respective numbers. . " The purpose of this requirement is obvious It is to make the votes of the citizens of the several States equally effective in the selection of members of Congress It was intended to make illegal a nation-wide "rotten borough" system as between the States. The policy behind it is broader than that. It prohibits as well Congressional "rotten boroughs" within the States, such as the ones here involved The policy is that which is laid down by all the Constitutional provisions regulating the election of members of the House of Representatives, including Article I which guarantees the right to vote and to have that vote effectively counted: All groups, classes, and individuals shall to the extent that it is practically feasible be given equal representation in the House of Representatives, which,

in conjunction with the Senate, writes the laws affecting the life, liberty, and property of all the people.

It is true that the States are authorized by § 2 of Article I of the Constitution to legislate on the subject of Congressional elections to the extent that Congress has not done so. Thus the power granted to the State Legislature on this subject is primarily derived from the Federal and not from the State Constitution. But this federally-granted power with respect to elections of Congressmen is not to formulate policy but rather to implement the policy laid down in the Constitution, that, so far as feasible, votes be given equally effective weight Thus, a state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of "apportionment" than under any other name. For legislation which must inevitably bring about glaringly unequal representation in the Congress in favor of special classes and groups should be invalidated, "whether accomplished ingeniously or ingenuously" Smith v Texas, 311 US 128, 132, 85 L ed 84, 87, 61 S Ct 164 See also Lane v. Wilson, 307 US 268, 272, 83 L ed 1281, 1286, 59 S Ct 872

Had Illinois passed an Act requiring that all of its twenty-six Congressmen be elected by the citizens of one county, it would clearly have amounted to a denial to the citizens of the other counties of their Constitutionally guaranteed right to vote. And I cannot imagine that an Act that would have apportioned twenty-five Congressmen to the State's smallest county and one Congressman to all the others, would have been sustained by any Court Such an Act would clearly have violated the Constitutional policy of equal representation. The 1901 Apportionment Act here involved violates that policy in the same way The policy with respect to federal elections laid down by the Constitution, while it does not mean that the Courts can or should prescribe the precise methods to be followed by state legislatures and the invalidation of all Acts that do not embody those precise methods, does mean that state legislatures must make real efforts to bring about approximately equal representation of citizens in Congress Here the Legislature of Illinois has not done so. Whether that was due to negligence or was a wilful effort to deprive some citizens of an effective vote, the admitted result is that the Constitutional policy of equality of representation has been defeated Under these circumstances it is the Court's duty to invalidate the state law.

It is contended, however, that a court of equity does not have the power, or even if it has the power, that it should not exercise it in this case To do so, it is argued, would mean that the Court is entering the area of "political questions" I cannot agree with that argument There have been cases, such as Coleman v Miller, supra (307 US pp 454, 457, 83 L ed 1396, 1398, 59 S Ct 972, 122 ALR 695), where this Court declined to decide a question because it was political In the Miller Case, however, the question involved was ratification of a Constitutional amendment, a matter over which the Court believed Congress had been given final authority To have decided that question would have amounted to a trespass upon the Constitutional power of Congress Here we have before us a state law which abridges the Constitu-

tional rights of citizens to cast votes in such way as to obtain the kind of Congressional representation the Constitution guarantees to them

It is true that voting is a part of elections and that elections are "political" But as this Court said in Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446, supra, it is a mere "play on words" to refer to a controversy such as this as "political" in the sense that courts have nothing to do with protecting and vindicating the right of a voter to cast an effective ballot The Classic Case, among myriads of others, refutes the contention that courts are impotent in connection with evasions of all "political" rights Wood v. Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, does not preclude the granting of equitable relief in this case There this Court simply held that the State Apportionment Act did not violate the Congressional Reapportionment Act of 1929, 46 Stat 21, 26, 27, c 28, 2 USCA § 2a, 2 FCA title 2, § 2a, since that Act did not require election districts of equal population The Court expressly reserved the question of "the right of the complainant to relief in equity" Giles v Harris, 189 US 475, 47 L ed 909, 23 S Ct 639, also did not hold that a Court of Equity could not, or should not, exercise its power in a case like this As we said with reference to that decision in Lane v Wilson, 307 US 268, 272, 273, 83 L ed 1281, 1286, 59 S Ct 872, it stands for the principle that Courts will not attempt to "supervise" elections Furthermore, the author of the Giles v Harris opinion also wrote the opinion in Nixon v Herndon, in which a voter's right to cast a ballot was held to give rise to a justifiable controversy

In this case, no supervision over elections is asked for What is asked is that this Court do exactly what it did in Smiley v. Holm, 285 US 255, 76 L ed 795, 52 S Ct 397, supra It is asked to declare a state apportionment bill invalid and to enjoin state officials from enforcing it. The only difference between this case and the Smiley Case is that there the case originated in the State Courts while here the proceeding originated in the Federal District Court The only type of case in which this Court has held that a federal district court should in its discretion stay its hand any more than a state court is where the question is one which state courts or administrative agencies have special competence to decide This is not that type of question What is involved here is the right to vote guaranteed by the Federal Constitution It has always been the rule that where a federally protected right has been invaded the federal courts will provide the remedy to rectify the wrong done Federal courts have not hesitated to exercise their equity power in cases involving deprivation of property and liberty Ex parte Young, 209 US 123, 52 L ed 714, 28 S Ct 441, 13 LRA (NS) 932, 14 Ann Cas 764, supra; Hague v Committee for Industrial Organization, 307 US 496, 83 L ed 1423, 59 S Ct 954 There is no reason why they should do so where the case involves the right to choose representatives that make laws affecting liberty and property

Nor is there any more difficulty in enforcing a decree in this case than there was in the Smiley Case It is true that declaration of invalidity of the State Act and the enjoining of State officials would result in prohibiting the State from electing Congressmen under the system of the old Congressional districts But it would leave the State free to elect them from the State at large, which, as we held in the Smiley Case, is a manner authorized by the Constitution It is said that it

would be inconvenient for the State to conduct the election in this manner But it has an element of virtue that the more convenient method does not have—namely, it does not discriminate against some groups to favor others, it gives all the people an equally effective voice in electing their representatives as is essential under a free government, and it is Constitutional.

Mr Justice Douglas and Mr Justice Murphy join in this dissent

CHARLES W. BAKER et al., Appellants,

v

JOE C. CARR et al.

(369 U.S. 186)

March 26, 1962.

OPINION OF THE COURT

Mr. Justice Brennan delivered the opinion of the Court:

This civil action was brought under 42 USC §§ 1983 and 1988 to redress the alleged deprivation of federal constitutional rights The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members *of the General Assembly* among the State's 95 counties,[1] "these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court convened under 28 USC § 2281 in the Middle District of Tennessee.[2] The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F Supp 824 We noted probable jurisdiction of the appeal 364 US 898, 5 L ed 2d 193, 81 S Ct 230 [3] We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion.

The General Assembly of Tennessee consists of the Senate with 33 members and the House of Representatives with 99 members. The Tennessee Constitution provides in Art 2 as follows:

"Sec. 3 Legislative authority—Term of office—The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election

"Sec 4. Census.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years.

"Sec. 5 Apportionment of representatives.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided, that any county having two-thirds of the ratio shall be entitled to one member

"Sec. 6. Apportionment of senators—The number of Senators, shall, at the several periods of making the enumeration, be appor-

[1] Public Acts of Tennessee, c 122 (1901), now Tenn Code Ann §§ 3-101 to 3-107 The full text of the 1901 Act as amended appears in an Appendix to this opinion

[2] The three-judge court was convened pursuant to the order of a single district judge, who, after he had reviewed certain decisions of this Court and found them distinguishable in features "that may ultimately prove to be significant," held that the complaint was not so obviously without merit that he would be justified in refusing to convene a three-judge court 175 F Supp 649, 652

[3] We heard argument first at the 1960 Term and again at this Term when the case was set over for reargument. 366 US 907, 81 S Ct 1082.

tioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members of the House of Representatives, shall be made up to such county or counties in the Senate, as near as may be practicable When a district is composed of two or more counties, they shall be adjoining, and no county shall be divided in forming a district."

Thus, Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties, subject only to minor qualifications [4] Decennial reapportionment in compliance with the constitutional scheme was effected by the General Assembly each decade from 1871 to 1901. The 1871 apportionment [5] was preceded by an 1870 statute requiring an enumeration [6] The 1881 apportionment involved three statutes, the first authorizing an enumeration, the second enlarging the Senate from 25 to 33 members and the House from 75 to 99 members, and the third apportioning the membership of both Houses.[7] In 1891 there

[4] A county having less than, but at least two-thirds of, the population required to choose a Representative is allocated one Representative See also Tenn Const, Art 2, § 6 A common and much more substantial departure from the number-of-voters or total-population standard is the guaranty of at least one seat to each county See, e g, Kansas Const, Art 2, § 2, NJ Const, Art 4, § 3, ¶ 1

While the Tennessee Constitution speaks of the number of "qualified voters," the exhibits attached to the complaint use figures based on the number of persons 21 years of age and over This basis seems to have been employed by the General Assembly in apportioning legislative seats from the outset The 1870 statute providing for the first enumeration, Acts of 1870 (1st Sess) c 107, directed the courts of the several counties to select a Commissioner to enumerate "all the male inhabitants of their respective counties, who are twenty-one years of age and upward, who shall be resident citizens of their counties on the first day of January 1871." Reports compiled in the several counties on this basis were submitted to the General Assembly by the Secretary of State and were used in the first apportionment Appendix to Tenn SJ, 1871, 41, 43 Yet such figures would not reflect the numbers of persons qualified to exercise the franchise under the then-governing qualifications (a) citizenship, (b) residence in the State 12 months, and in the county six months, (c) payment of poll taxes for the preceding year unless entitled to exemption Acts of 1870 (2d Sess) c 10, (These qualifications continued at least until after 1901. See Tenn Code Ann, §§ 1167, 1220 (1896, Supp 1904)) Still, when the General Assembly directed the Secretary of State to do all he could to obtain complete reports from the counties, the Resolution spoke broadly of the "impossibility of . [redistricting] without the census returns of the voting population from each county . . " Tenn SJ, 1871, pp 46, 47, 96 The figures also showed a correlation with Federal Census figures for 1870 The Census reported 259,016 male citizens 21 and upward in Tennessee Ninth Census of the United States, 1870, Statistics of the Population 635 (1872) The Tennessee Secretary of State's Report, with 15 counties not reported, gave a figure of 237,431 Using the numbers of actual votes in the last gubernatorial election for those 15 counties, the Secretary arrived at a total of 250,025 Appendix to Tenn SJ, 1871, 41–43 This and subsequent history indicate continued reference to Census figures and finally in 1901, abandonment of a state enumeration in favor of the use of Census figures See notes 7, 8, 9, infra See also Williams, Legislative Apportionment in Tennessee, 20 Tenn L Rev 235, 236, n 6 It would therefore appear that unless there is a contrary showing at the trial, appellants' current figures, taken from the United States Census Reports, are apposite.

[5] Acts of 1871 (1st Sess), c 146

[6] Acts of 1870 (1st Sess), c 107.

[7] The statute authorizing the enumeration was Acts of 1881 (1st Sess), c. 124. The enumeration commissioners in the counties were allowed "access to the U S Census Reports of the enumeration of 1880, on file in the offices of the County Court Clerks of the State, and a reference to said reports by said commissioners shall be legitimate as an auxiliary in the enumeration required . . . " Ibid, § 4

The United States Census reported 330,305 male citizens 21 and upward in Tennessee The Tenth Census of the United States, 1880, Compendium 596 (1883) The Tennessee Secretary of State's Report gave a figure of 343,817, Tenn HJ (1st Extra Sess), 1881, 12–14 (1882)

The General Assembly was enlarged in accordance with the constitutional mandate since the State's population had passed 1,500,000 Acts of 1881 (1st Extra Sess), c 5, and see, id, Res No 3, see also Tenth Census of the United States, 1880, Statistics of the Population 77 (1881) The statute apportioning the General Assembly was Acts of 1881 (1st Extra Sess), c. 6.

was both an enumeration and an apportionment.[8] In 1901 the General Assembly abandoned separate enumeration in favor of reliance upon the Federal Census and passed the Apportionment Act here in controversy.[9] In the more than 60 years since that action, all proposals in both Houses of the General Assembly for reapportionment have failed to pass.[10]

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901 the population was 2,020,616, of whom 487,380 were eligible to vote.[11] The 1960 Federal Census reports the State's population at 3,567,089, of whom 2,092,891 are eligible to vote.[12] The relative standings of the counties in terms of qualified voters have changed significantly. It is primarily the continued application of the 1901 Apportionment Act to this shifted and enlarged voting population which gives rise to the present controversy.

Indeed, the complaint alleges that the 1901 statute, even as of the time of its passage, "made no apportionment of Representatives and Senators in accordance with the constitutional formula . . . , but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference . . to any logical or reasonable formula whatever."[13] It is further alleged that "because of the population changes since 1900, and the failure of the legislature to reapportion itself since 1901," the 1901 statute became "unconstitutional and obsolete." Appellants also argue that, because of the composition of the legislature effected by the 1901 apportionment act, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible.[14] The complaint concludes that "these plain-

[8] Acts of 1891, c. 22, Acts of 1891 (Extra Sess), c. 10. Reference to United States Census figures was allowed just as in 1881, see supra, note 7. The United States census reported 402,476 males 21 and over in Tennessee. The Eleventh Census of the United States, 1890, Population (Part I) 781 (1895). The Tennessee Secretary of State's report gave a figure of 399,575. I Tenn. SJ. 473–474 (1891).

[9] Acts of 1901, Sen. Jt. Res. No. 35. Acts of 1901, c. 122. The Joint Resolution said: "The Federal census of 1900 has been very recently taken and by reference to said Federal census an accurate enumeration of the qualified voters of the respective counties of the State of Tennessee can be ascertained and thereby save the expense of an actual enumeration . . ."

[10] For the history of legislative apportionment in Tennessee, including attempts made since 1901, see Tenn. SJ. 1959, pp. 909–930, and "A Documented Survey of Legislative Apportionment in Tennessee, 1870–1957," which is attached as exhibit 2 to the intervening complaint of Mayor West of Nashville, both prepared by the Tennessee State Historian, Dr. Robert H. White. Examples of preliminary steps are: In 1911, the Senate called upon the Redistricting Committee to make an enumeration of qualified voters and to use the Federal Census of 1910 as the basis. Acts of 1911, SJ. Res. No. 60, p. 315. Similarly, in 1961, the Senate called for appointment of a select committee to make an enumeration of qualified voters. Acts of 1961, SJ. Res. No. 47. In 1955, the Senate called for a study of reapportionment. Tenn. SJ. 224 (1955), but see id., at 1103. Similarly, in 1961, the House directed the State Legislative Council to study methods of reapportionment. Acts of 1961, HJ. Res. No. 65.

[11] Twelfth Census of the United States, 1900, Population (Part 1) 39 (1901), (Part 2) 202 (1902).

[12] United States Census of Population: 1960, General Population Characteristics—Tennessee, Table 16 (1961).

[13] In the words of one of the intervening complaints, the apportionment was "wholly arbitrary, . . . and, indeed, based upon no lawfully pertinent factor whatever."

[14] The appellants claim that no General Assembly constituted according to the 1901 Act will submit reapportionment proposals either to the people or to a Constitutional Convention. There is no provision for popular initiative in Tennessee. Amendments proposed in the Senate or House must first be approved by a majority of all members of each House and again by two-thirds of the members in the General Assembly next chosen. The proposals are then submitted to the people at the next general election in which a Governor is to be chosen. Alternatively, the legislature may submit to the people at any general election the question of calling a convention to consider specified proposals. Such as are

tiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes." [15] They seek a declaration that the 1901 statute is unconstitutional and an injunction restraining the appellees from acting to conduct any further elections under it. They also pray that unless and until the General Assembly enacts a valid reapportionment, the District Court should either decree a reapportionment by mathematical application of the Tennessee constitutional formulae to the most recent Federal Census figures, or direct the appellees to conduct leg-

adopted at a convention do not, however, become effective unless approved by a majority of the qualified voters voting separately on each proposed change or amendment at an election fixed by the convention Conventions shall not be held oftener than once in six years Tenn Const, Art 11, § 3 Acts of 1951, c 139, § 3, and Acts of 1957, c 340, § 3, provided that delegates to the 1953 and 1959 conventions were to be chosen from the counties and floterial districts just as are members of the State House of Representatives The General Assembly's call for a 1953 Constitutional Convention originally contained a provision "relating to the appointment [sic] of Representatives and Senators" but this was excised Tenn HJ, 1951, p 784 A Resolution introduced at the 1959 Constitutional Convention and reported unfavorably by the Rules Committee of the Convention was as follows

'By Mr Chambliss (of Hamilton County), Resolution No 12—Relative to Convention considering reapportionment, which is as follows

'WHEREAS, there is a rumor that this Limited Convention has been called for the purpose of postponing for six years a Convention that would make a decision as to reapportionment, and

"WHEREAS, there is pending in the United States Courts in Tennessee a suit under which parties are seeking, through decree, to compel reapportionment, and

'WHEREAS, it is said that this Limited Convention, which was called for limited consideration, is yet a Constitutional Convention within the language of the Constitution as to Constitutional Conventions, forbidding frequent Conventions in the last sentence of Article Eleven, Section 3, second paragraph, more often than each six years, to-wit

" 'No such Convention shall be held oftener than once in six years'

"NOW, THEREFORE, BE IT RESOLVED, That it is the consensus of opinion of the members of this Convention that since this is a Limited Convention as hereinbefore set forth another Convention could be had if it did not deal with the matters submitted to this Limited Convention

"BE IT FURTHER RESOLVED, That it is the consensus of opinion of this Convention that a Convention should be called by the General Assembly for the purpose of considering reapportionment in order that a possibility of Court enforcement being forced on the Sovereign State of Tennessee by the Courts of the National Government may be avoided

"BE IT FURTHER RESOLVED, That this Convention be adjourned for two years to meet again at the same time set forth in the statute providing for this Convention, and that it is the consensus of opinion of this body that it is within the power of the next General Assembly of Tennessee to broaden the powers of this Convention and to authorize and empower this Convention to consider a proper amendment to the Constitution that will provide, when submitted to the electorate, a method of reapportionment" Tenn Constitutional Convention of 1959, The Journal and Debates, 55, 278

[16] It is clear that appellants' federal consutitional claims rest exclusively on alleged violation of the Fourteenth Amendment Their primary claim is that the 1901 statute violates the Equal Protection Clause of that amendment There are allegations invoking the Due Process Clause but from the argument and the exhibits it appears that the Due Process Clause argument is directed at certain tax statutes Insofar as the claim involves the validity of those statutes under the Due Process Clause we find it unnecessary to decide its merits And if the allegations regarding the tax statutes are designed as the framework for proofs as to the effects of the allegedly discriminatory apportionment, we need not rely upon them to support our holding that the complaint states a federal constitutional claim of violation of the Equal Protection Clause Whether, when the issue to be decided is one of the constitutional adequacy of this particular apportionment, taxation arguments and exhibits as now presented add anything, or whether they could add anything however presented, is for the District Court in the first instance to decide

The complaint, in addition to the claims under the Federal Constitution, also alleges rights, and the General Assembly's duties, under the Tennessee Constitution Since we hold that appellants have—if it develops at trial that the facts support the allegations—a cognizable federal constitutional cause of action resting in no degree on rights guaranteed or putatively guaranteed by the Tennessee Constitution, we do not consider, let alone enforce, rights under a State Constitution which go further than the protections of the Fourteenth Amendment Lastly, we need not assess the legal significance, in reaching our conclusion, of the statements of the complaint that the apportionment effected today under the 1901 Act is 'contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence ."

islative elections, primary and general, at large. They also pray for such other and further relief as may be appropriate.

I.

The District Court's Opinion and Order of Dismissal.

Because we deal with this case on appeal from an order of dismissal granted on appellees' motions, precise identification of the issues presently confronting us demands clear exposition of the grounds upon which the District Court rested in dismissing the case The dismissal order recited that the court sustained the appellees' grounds "(1) that the Court lacks jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted, ..."

In the setting of a case such as this, the recited grounds embrace two possible reasons for dismissal·

First: That the facts and injury alleged, the legal bases invoked as creating the rights and duties relied upon, and the relief sought, fail to come within that language of Article III of the Constitution and of the jurisdictional statutes which define those matters concerning which United States District Courts are empowered to act;

Second: That, although the matter is cognizable and facts are alleged which establish infringement of appellants' rights as a result of state legislative action departing from a federal constitutional standard, the court will not proceed because the matter is considered unsuited to judicial inquiry or adjustment

We treat the first ground of dismissal as "lack of jurisdiction of the subject matter " The second we consider to result in a failure to state a justiciable cause of action

The District Court's dismissal order recited that it was issued in conformity with the court's per curiam opinion The opinion reveals that the court rested its dismissal upon lack of subject-matter jurisdiction and lack of a justiciable cause of action without attempting to distinguish between these grounds. After noting that the plaintiffs challenged the existing legislative apportionment in Tennessee under the Due Process and Equal Protection Clauses, and summarizing the supporting allegations and the relief requested, the court stated that "the action is presently before the Court upon the defendants' motion to dismiss predicated upon three grounds. first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted; and third, that indispensable party defendants are not before the Court " 179 F Supp, at 826

The court proceeded to explain its action as turning on the case's presenting a "question of the distribution of political strength for legislative purposes " For, "from a review of [numerous Supreme Court] . decisions there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene

in cases of this type to compel legislative reapportionment." 179 F Supp, at 826.

The court went on to express doubts as to the feasibility of the various possible remedies sought by the plaintiffs. 179 F Supp, at 827, 828 Then it made clear that its dismissal reflected a view not of doubt that violation of constitutional rights was alleged, but of a court's impotence to correct that violation·

"With the plaintiffs' argument that the legislature of Tennessee is guilty of a clear violation of the state constitution and of the rights of the plaintiffs the Court entirely agrees It also agrees that the evil is a serious one which should be corrected without further delay But even so the remedy in this situation clearly does not lie with the courts It has long been recognized and is accepted doctrine that there are indeed some rights guaranteed by the Constitution for the violation of which the courts cannot give redress." 179 F Supp, at 828

In light of the District Court's treatment of the case, we hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of actions is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes [16] Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial.

II.

Jurisdiction of the Subject Matter

The District Court was uncertain whether our cases withholding federal judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject matter for judicial consideration—what we have designated "nonjusticiability " The distinction between the two grounds is significant In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded In the instance of lack of jurisdiction the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art 3 § 2), or is not a "case or controversy" within the meaning of that section; or the cause is not one described by any jurisdictional statute Our conclusion, see pp 680–697, infra, that this cause presents no nonjusticiable "political question" settles the only possible doubt that it is a case or controversy Under the present heading of "Jurisdiction of the Subject Matter" we hold only that the matter set forth in the complaint does arise under the Constitution and is within 28 USC § 1343

[16] We need not reach the question of indispensable parties because the District Court has not yet decided it

Article 3 § 2 of the Federal Constitution provides that "the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority, . . ." It is clear that the cause of action is one which "arises under" the Federal Constitution The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit," Newburyport Water Co. v Newburyport, 193 US 561, 579, 48 L ed 795, 801, 24 S Ct 553, or "frivolous," Bell v Hood, 327 US 678, 683, 90 L ed 939, 943, 66 S Ct 773, 13 ALR2d 383[17] That the claim is unsubstantial must be "very plain" Hart v B. F Keith Vaudeville Exch, 262 US 271, 274, 67 L ed 977, 979, 43 S Ct 540 Since the District Court obviously and correctly did not deem the asserted federal constitutional claim unsubstantial and frivolous, it should not have dismissed the complaint for want of jurisdiction of the subject matter. And of course no further consideration of the merits of the claim is relevant to a determination of the court's jurisdiction of the subject matter We said in an earlier voting case from Tennessee: "It is obvious . . that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right But as the very nature of the controversy was Federal, and, therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States" Swafford v Templeton, 185 US 487, 493, 46 L ed 1005, 1008, 22 S Ct 783 "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." Bell v Hood, 327 US 678, 682, 90 L ed 939, 943, 66 S Ct 773, 13 ALR2d 383 See also Binderup v Pathe Exch, 263 US 291, 305–308, 68 L ed 308, 314, 315, 44 S Ct 96

Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art 3 § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts Congress has exercised that power in 28 USC § 1343(3):

"The district courts shall have original jurisdiction of any civil action authorized by law[18] to be commenced by any person . to redress the deprivation, under color of any State law, statute, ordi-

[17] The accuracy of calling even such dismissals "jurisdictional" was questioned in Bell v Hood See 327 US, at 683

[18] 42 USC § 1983 provides "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress"

nance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . ." [19]

An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art 1 § 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction "in view . . of the subject-matter of the controversy and the Federal characteristics which inhere in it . . . ." Ohio ex rel Davis v Hildebrant, 241 US 565 570, 60 L ed 1172, 1177, 36 S Ct 708. When the Minnesota Supreme Court affirmed the dismissal of a suit to enjoin the Secretary of State of Minnesota from acting under Minnesota redistricting legislation, we reviewed the constitutional merits of the legislation and reversed the State Supreme Court. Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397. And see companion cases from the New York Court of Appeals and the Missouri Supreme Court, Koenig v Flynn, 285 US 375, 76 L ed 805, 52 S Ct 403; Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402 When a three-judge District Court, exercising jurisdiction under the predecessor of 28 USC § 1343(3), permanently enjoined officers of the State of Mississippi from conducting an election of Representatives under a Mississippi redistricting act, we reviewed the federal questions on the merits and reversed the District Court Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, revg 1 F Supp 134 A similar decree of a District Court, exercising jurisdiction under the same statute, concerning a Kentucky redistricting act, was reviewed and the decree reversed Mahan v Hume, 287 US 575, 77 L ed 505, 53 S Ct 223, revg 1 F Supp 142.[20]

The appellees refer to Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, as authority that the District Court lacked jurisdiction of the subject matter. Appellees misconceive the holding of that case. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in Colegrove discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. Mr Justice Black joined by Mr. Justice Douglas and Mr Justice Murphy stated: "It is my judgment that the District Court had jurisdiction . . ," citing the predecessor of 28 USC § 1343 (3), and Bell v Hood, 327 US 678, 90 L ed 939, 66 S Ct 773, 13 ALR2d 383, supra 328 US, at 568 Mr. Justice Rutledge, writing separately, expressed agreement with this conclusion 328 US, at 564, 565, note 2 Indeed,

[19] This Court has frequently sustained District Court jurisdiction under 28 USC § 1343(3) or its predecessors to entertain suits to redress deprivations of rights secured against state infringement by the Equal Protection and Due Process Clauses of the Fourteenth Amendment Douglas v Jeannette, 319 US 157, 87 L ed 1324, 63 S Ct 877, 882, Stefanelli v Minard, 342 US 117, 96 L ed 138, 72 S Ct 118, cf Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446, Nixon v Condon, 286 US 73, 76 L ed 984, 52 S Ct 484, 88 ALR 458, Snowden v Hughes, 321 US 1, 88 L ed 497, 64 S Ct 397, Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110, Monroe v Pape, 365 US 167, 5 L ed 2d 492, 81 S Ct 473, Egan v Aurora, 365 US 514, 5 L ed 2d 741, 81 S Ct 684

[20] Since that case was not brought to the Court until after the election had been held, the Court cited not only Wood v Broom, but also directed dismissal for mootness, citing Brownlow v Schwartz, 261 US 216, 67 L ed 620, 43 S Ct 263

it is even questionable that the opinion of Mr. Justice Frankfurter, joined by Justices Reed and Burton, doubted jurisdiction of the subject matter Such doubt would have been inconsistent with the professed willingness to turn the decision on either the majority or concurring views in Wood v Broom, supra. 328 US, at 551.

Several subsequent cases similar to Colegrove have been decided by the Court in summary per curiam statements. None was dismissed for want of jurisdiction of the subject matter. Cook v Fortson, 329 US 675, 91 L ed 596, 67 S Ct 21; Turman v Duckworth, ibid ; Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973;[21] Tedesco v Board of Supervisors of Elections, 339 US 940, 94 L ed 1357, 70 S Ct 797; Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368; Cox v Peters, 342 US 936, 99 L ed 697, 72 S Ct 559; Anderson v Jordan, 343 US 912, 96 L ed 1328, 72 S Ct 648; Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223; Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S St 559; Hartsfield v Sloan, 357 US 916, 2 L ed 2d 1363, 78 S Ct 1363; Matthews v Handley, 361 US 127, 4 L ed 2d 180, 80 S Ct 256[22]

Two cases decided with opinions after Colegrove likewise plainly imply that the subject matter of this suit is within District Court jurisdiction In MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, the District Court dismissed for want of jurisdiction, which had been invoked under 28 USC § 1343(3), a suit to enjoin enforcement of the requirement that nominees for statewide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties This Court's disagreement with that action is clear since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit In South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, we affirmed the dismissal of an attack on the Georgia "county unit" system but founded our action on a ground that plainly would not have been reached if the lower court lacked jurisdiction of the subject matter, which allegedly existed under 28 USC § 1343(3) The express words of our holding were that "federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." 339 US, at 277.

We hold that the District Court has jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint

III.

Standing

A federal court cannot "pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies " Liverpool, N. Y & P S S. Co v Emigration Comrs 113 US 33, 39, 28 L ed 899, 901, 5 S Ct 532. Have the appellants

[21] Compare Boeing Aircraft Co v King County, 330 US 803, 91 L ed 1262, 67 S Ct 972 ("the appeal is dismissed for want of jurisdiction") See Coleman v Miller, 307 US 433, 440, 83 L ed 1385, 1389, 59 S Ct 972, 122 ALR 695

[22] Matthews did affirm a judgment that may be read as a dismissal for want of jurisdiction (DC Ind) 179 F Supp 470 However, the motion to affirm also rested on the ground of failure to state a claim upon which relief could be granted Cf text following, on MacDougall v Green And see text, p 697

alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law

The complaint was filed by residents of Davidson, Hamilton, Knox, Montgomery, and Shelby Counties. Each is a person allegedly qualified to vote for members of the General Assembly representing his county.[23] These appellants sued "on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated . . . ."[24] The appellees are the Tennessee Secretary of State, Attorney General, Coordinator of Elections, and members of the State Board of Elections, the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint[25]

[23] The Mayor of Nashville suing "on behalf of himself and all residents of the City of Nashville, Davidson County, " and the Cities of Chattanooga (Hamilton County) and Knoxville (Knox County), each suing on behalf of its residents, were permitted to intervene as parties plaintiff Since they press the same claims as do the initial plaintiffs, we find it unnecessary to decide whether the intervenors would have standing to maintain this action in their asserted representative capacities

[24] The complaint also contains an averment that the appellants sue "on their own behalf and *on behalf of all other voters* in the State of Tennessee" (Emphasis added) This may be read to assert a claim that voters in counties allegedly over-represented in the General Assembly also have standing to complain But it is not necessary to decide that question in this case

[25] The duties of the respective appellees are alleged to be as follows

"Defendant, Joe C Carr, is the duly elected, qualified and acting Secretary of State of the State of Tennessee, with his office in Nashville in said State, and as such he is charged with the duty of furnishing blanks, envelopes and information slips to the County Election Commissioners, certifying the results of elections and maintaining the records thereof, and he is further ex officio charged, together with the Governor and the Attorney General, with the duty of examining the election returns received from the County Election Commissioners and declaring the election results, by the applicable provisions of the Tennessee Code Annotated, and by Chapter 164 of the Acts of 1949, inter alia

"Defendant, George F McCanless, is the duly appointed and acting Attorney General of the State of Tennessee, with his office in Nashville in said State, and is charged with the duty of advising the officers of the State upon the law, and is made by Section 23–1107 of the Tennessee Code Annotated a necessary party defendant in any declaratory judgment action where the constitutionality of statutes of the State of Tennessee is attacked, and he is ex-officio charged, together with the Governor and the Secretary of State, with the duty of declaring the election results, under Section 2–140 of the Tennessee Code Annotated

Defendant, Jerry McDonald, is the duly appointed Coordinator of Elections in the State of Tennessee, with his office in Nashville, Tennessee, and as such official, is charged with the duties set forth in the public law enacted by the 1959 General Assembly of Tennessee creating said office

"Defendants, Dr Sam Coward, James Alexander, and Hubert Brooks are the duly appointed and qualified members constituting the State Board of Elections, and as such they are charged with the duty of appointing the Election Commissioners for all the counties of the State of Tennessee, the organization and supervision of the biennial elections as provided by the Statutes of Tennessee, Chapter 9 of Title 2 of the Tennessee Code Annotated, Sections 2–901, et seq

That this action is brought against the aforenamed defendants in their representative capacities, and that said Election Commissioners are sued also as representatives of all of the County Election Commissioners in the State of Tennessee, such persons being so numerous as to make it impracticable to bring them all before the court, that there is a common question of law involved, namely, the constitutionality of Tennessee laws set forth in the Tennessee Code Annotated, Section 3–101 through Section 3–105, inclusive, that common relief is sought against all members of said Election Commissions in their official capacities, it being the duties of the aforesaid County Election Commissioners, within their respective jurisdictions, to appoint the judges of elections, to maintain the registry of qualified voters of said County, certify the results of elections held in said County to the defendants State Board of Elections and Secretary of State, and of preparing ballots and taking other steps to prepare for and hold elections in said Counties by virtue of Sections 2–1201, et seq of Tennessee Code Annotated, and Section 2–301, et seq of Tennessee Code Annotated, and Chapter 164 of the Acts of 1949, inter alia"

The question whether the named defendants are sufficient parties remains open for consideration on remand

We hold that the appellants do have standing to maintain this suit. Our decisions plainly support this conclusion Many of the cases have assumed rather than articulated the premise in deciding the merits of similar claims [26] And Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, supra, squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue [27] A number of cases decided after Colegrove recognized the standing of the voters there involved to bring those actions [28]

These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly situated Their constitutional claim is, in substance, that the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-à-vis voters in irrationally favored counties A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, or by a refusal to count votes from arbitrarily selected precincts, cf United States v Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904, or by a stuffing of the ballot box, cf Ex parte Siebold, 100 US 371, 25 L ed 717; United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101.

It would not be necessary to decide whether appellants' allegations of impairment of their votes by the 1901 apportionment will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it If such impairment does produce a legally cog-

[26] Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, supra ("citizen, elector and taxpayer of the State"), Koenig v Flynn, 285 US 375, 76 L ed 805, 52 S Ct 403, supra ("citizens and voters of the State"). Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, supra ("citizen of Mississippi, a qualified elector under its laws, and also qualified to be a candidate for election as representative in Congress"), cf Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402, supra (candidate for office)

[27] Mr Justice Rutledge was of the view that any question of standing was settled in Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, supra, Mr Justice Black stated "that appellants had standing to sue, since the facts alleged show that they have been injured as individuals" He relied on Coleman v Miller 307 US 433, 438, 467, 83 L ed 1385, 1388, 1404, 59 S Ct 972, 122 ALR 695 See 328 US 564, 568

Commentators have suggested that the following statement in Mr Justice Frankfurter's opinion might imply a view that appellants there had no standing "This is not an action to recover for damage because of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens The basis for the suit is not a private wrong, but a wrong suffered by Illinois as a polity " 328 US at 552 See Jaffe, Standing to Secure Judicial Review Public Actions, 74 Harv L Rev 1265, 1298 (1961), Lewis, Legislative Apportionment and the Federal Courts, 71 Harv L Rev 1057, 1081–1083 (1958) But since the opinion goes on to consider the merits, it seems that this statement was not intended to intimate any view that the plaintiffs in that action lacked standing Nor do the cases cited immediately after the above quotation deal with standing See especially Lane v Wilson, 307 US 268, 272, 273, 83 L ed 1281, 1286, 59 S Ct 872

[28] MacDougall v Green, 335 US 281, 92 L ed 3, 69 S Ct 1, supra ("the 'Progressive Party,' its nominees for United States Senator, Presidential Electors, and State offices, and several Illinois voters"), South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, supra ("residents of the most populous county in the State"), Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559, supra ("citizen of Oklahoma and resident and voter in the most populous county"), Matthews v Handley, 361 US 127, 4 L ed 2d 180, 80 S Ct 256, supra ("citizen of the State"), see also Hawke v Smith (No 1), 253 US 221, 64 L ed 871, 40 S Ct 495, 10 ALR 1504, Leser v Garnett, 258 US 130, 66 L ed 505, 42 S Ct 217, Coleman v Miller, 307 US 433, 437–446, 83 L ed 1385, 1387–1393, 59 S Ct 972, 122 ALR 695

nizable injury, they are among those who have sustained it They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," Coleman v Miller, 307 US, at 438, not merely a claim of "the right, possessed by every citizen, to require that the Government be administered according to law " Fairchild v Hughes, 258 US 126, 129, 66 L ed 499, 504, 42 S Ct 274; compare Leser v Garnett, 258 US 130, 66 L ed 505, 42 S Ct 217 They are entitled to a hearing and to the District Court's decision on their claims "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury " Marbury v Madison (US) 1 Cranch 137, 163, 2 L ed 60, 69.

IV.

Justiciability.

In holding that the subject matter of this suit was not justiciable, the District Court relied on Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, supra, and subsequent per curiam cases[29] The court stated "From a review of these decisions there can be no doubt that the federal rule . is that the federal courts . will not intervene in cases of this type to compel legislative reapportionment " 179 F Supp, at 826 We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a "political question" and was therefore nonjusticiable We hold that this challenge to an apportionment presents no nonjusticiable "political question " The cited cases do not hold the contrary

Of course the mere fact that the suit seeks protection of a political right does not mean it presents a political question Such an objection "is little more than a play upon words." Nixon v Herndon, 273 US 536, 540, 71 L ed 759, 761, 47 S Ct 446 Rather, it is argued that apportionment cases, whatever the actual wording of the complaint, can involve no federal constitutional right except one resting on the guaranty of a republican form of government,[30] and that complaints based on that clause have been held to present political questions which are nonjusticiable

We hold that the claim pleaded here neither rests upon nor implicates the Guaranty Clause and that its justiciability is therefore not foreclosed by our decisions of cases involving that clause The District Court misinterpreted Colegrove v Green and other decisions of this Court on which it relied Appellants' claim that they are being denied equal protection is justiciable, and if "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political

[29] Cook v Fortson, 329 US 675, 91 L ed 596, 67 S Ct 21, Turman v Duckworth, ibid, Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973, MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368, Anderson v Jordan, 343 US 912, 96 L ed 1328, 72 S Ct 648, Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223, Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559

[30] "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence" US Const, Art 4 § 4,

rights" Snowden v Hughes, 321 US 1, 11, 88 L ed 497, 504, 64 S Ct 397 To show why we reject the argument based on the Guaranty Clause, we must examine the authorities under it But because there appears to be some uncertainty as to why those cases did present political questions, and specifically as to whether this apportionment case is like those cases, we deem it necessary first to consider the contours of the "political question" doctrine.

Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts That review reveals that in the Guaranty Clause cases and in the other "political question" cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."

We have said that "in determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations" Coleman v Miller, 307 US 433, 454, 455, 83 L ed 1385, 1396, 1397, 59 S Ct 972, 122 ALR 695. The nonjusticiability of a political question is primarily a function of the separation of powers Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case

Foreign relations: There are sweeping statements to the effect that all questions touching foreign relations are political questions[31] Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature,[32] but many such questions uniquely demand single-voiced statement of the Government's views[33] Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analy-

[31] E g, "The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision" Oetjen v Central Leather Co 246 US 297, 302, 62 L ed 726, 732, 38 S Ct 309

[32] See Doe ex dem Clark v Braden (US) 16 How 635, 657, 14 L ed 1090, 1099; Taylor v Morton, 2 Curt CC 454, F Cas No 13799 (D Mass) (Mr Justice Curtis), affd (US) 2 Black 481, 17 L ed 277

[33] See Doe ex dem Clark v Braden (US) 16 How 635, 657, 14 L ed 1090, 1099,

sis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question "governmental action . must be regarded as of controlling importance," if there has been no conclusive "governmental action" then a court can construe a treaty and may find it provides the answer Compare Terlinden v Ames, 184 US 270, 285, 46 L ed 534, 543, 22 S Ct 484, with Society for Propagation of Gospel v New Haven (US) 8 Wheat 464, 492–495, 5 L ed 662, 669, 670 [34] Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law. Compare Whitney v Robertson, 124 US 190, 31 L ed 386, 8 S Ct 456, with Kolovrat v Oregon, 366 US 187, 6 L ed 2d 218, 81 S Ct 922.

While recognition of foreign governments so strongly defies judicial treatment that without executive recognition a foreign state has been called "a republic of whose existence we know nothing," [35] and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory,[36] once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area [37] Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking, for example, to determine whether the situation is such that statutes designed to assure American neutrality have become operative. The Three Friends (United States v The Three Friends) 166 US 1, 63, 66, 41 L ed 897, 918, 919, 17 S Ct 495. Still again, though it is the executive that determines a person's status as representative of a foreign government, Ex parte Hitz, 111 US 766, 28 L ed 592, 4 S Ct 698, the executive's statements will be construed where necessary to determine the court's jurisdiction, Re Baiz, 135 US 403, 34 L ed 222, 10 S Ct 854. Similar judicial action in the absence of a recognizedly authoritative executive declaration occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments Compare Ex parte Peru, 318 US 578, 87 L ed 1014, 63 S Ct 793, with Mexico v Hoffman, 324 US 30, 34, 35, 89 L ed 729, 734, 735, 65 S Ct 530.

Dates of duration of hostilities: Though it has been stated broadly that "the power which declared the necessity is the power to declare its cessation, and what the cessation requires," Commercial Trust Co v Miller, 262 US 51, 57, 67 L ed 858, 862, 43 S Ct 486, here too analysis reveals isolable reasons for the presence of political questions, underlying this Court's refusal to review the political departments' determination of when or whether a war has ended Dominant is the need for finality in the political determination, for emergency's nature demands

[34] And see Clark v Allen, 331 US 503, 91 L ed 1633, 67 S Ct 1431, 170 ALR 953
[35] United States v Klintock (US) 5 Wheat 144, 149, 5 L ed 55, 56, see also United States v Palmer (US) 3 Wheat 610, 634, 635, 4 L ed 471, 478
[36] Foster v Neilson (US) 2 Pet 253, 307, 7 L ed 415, 434, and see Williams v Suffolk Ins Co (US) 13 Pet 415, 420, 10 L ed 226, 228
[37] Vermilya-Brown Co. v Connell, 335 US 377, 380, 93 L ed 76, 82, 69 S Ct 140, De Lima v Bidwell, 182 US 1, 180–200, 45 L ed 1041, 1049–1057, 21 S Ct 743

"a prompt and unhesitating obedience," Martin v Mott (US) 12 Wheat 19, 30, 6 L ed 537, 540 (calling up of militia) Moreover, "the cessation of hostilities does not necessarily end the war power It was stated in Hamilton v. Kentucky Distilleries & W. Co, 251 U S 146, 161, that the war power includes the power 'to remedy the evils which have arisen from its rise and progress' and continues during that emergency. Stewart v Kahn, 11 Wall 493, 507 " Fleming v Mohawk Wrecking Co. 331 US 111, 116, 91 L ed 1375, 1382, 67 S Ct 1129 But deference rests on reason, not habit.[38] The question in a particular case may not seriously implicate considerations of finality—e g, a public program of importance (rent control) yet not central to the emergency effort.[39] Further, clearly definable criteria for decision may be available. In such case the political question barrier falls away "[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. . . [It can] inquire whether the exigency still existed upon which the continued operation of the law depended." Chastleton Corp. v Sinclair, 264 US 543, 547, 548, 68 L ed 841, 843, 44 S Ct 405 [40] Compare Woods v Cloyd W Miller Co 333 US 138, 92 L ed 596, 68 S Ct 421 On the other hand, even in private litigation which directly implicates no feature of separation of powers, lack of judicially discoverable standards and the drive for even-handed application may impel reference to the political departments' determination of dates of hostilities' beginning and ending The Protector (Freeborn v The Protector) (US) 12 Wall 700, 20 L ed 463

Validity of enactments: In Coleman v Miller, 307 US 433, 83 L ed 1385, 59 S Ct 972, 122 ALR 695, supra, this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp.[41] Similar considerations apply to the enacting process: "the respect due to coequal and independent departments," and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities Marshall Field & Co v Clark, 143 US 649, 672, 676, 677, 36 L ed 294, 303–305, 12 S Ct 495; see Leser v Garnett, 258 US 130, 137, 66 L ed 505, 511, 42 S Ct 217 But it is not true that courts will never delve into a legislature's records upon such a quest · If the enrolled statute lacks an effective date, a court will not hesitate to seek it in the legislative journals in order to preserve the enactment. Gardner v Collector (Gardner v Barney) (US) 6 Wall 499, 18 L ed 890 The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder.

The status of Indian tribes: This Court's deference to the political departments in determining whether Indians are recognized as a tribe, while it reflects familiar attributes of political questions,[42] United States

[38] See, e g, Home Bldg & L Asso v Blaisdell, 290 US 398, 426, 78 L ed 413, 422, 54 S Ct 231, 88 ALR 1481

[39] Contrast Martin v Mott (US) 12 Wheat 19, 6 L ed 537, supra

[40] But cf Dakota Cent Tel Co v South Dakota, 250 US 163, 184, 187, 63 L ed 910, 924, 925, 39 S Ct 507, 4 ALR 1623

[41] Cf Dillon v Gloss, 256 US 368, 65 L ed 994, 41 S Ct 510 See also United States v Sprague, 282 US 716, 732, 75 L ed 640, 644, 51 S Ct 220, 71 ALR 1381

[42] See also Fellows v Blacksmith (US) 19 How 366, 372, 15 L ed 684, 686, United States v Old Settlers, 148 US 427, 466, 37 L ed 509, 523, 13 S Ct 650, and compare Doe ex dem Clark v Braden (US) 16 How 635, 657, 14 L ed 1090, 1099.

v Holliday (US) 3 Wall 407, 419, 18 L ed 182, 186, also has a unique element in that "the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else . . [The Indians are] domestic dependent nations . . in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." Cherokee Nation v Georgia (US) 5 Pet 1, 16, 17, 8 L ed 25, 30, 31.[43] Yet, here too, there is no blanket rule While " 'It is for [Congress] . . . , and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage,' . it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe . . ." United States v Sandoval, 231 US 28, 46, 58 L ed 107, 114, 34 S Ct 1. Able to discern what is "distinctly Indian," ibid , the courts will strike down any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power.

It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identifies it as essentially a function of the separation of powers Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent

[43] This case, so frequently cited for the broad proposition that the status of an Indian tribe is a matter for the political departments, is in fact a noteworthy example of the limited and precise impact of a political question The Cherokees brought an original suit in this Court to enjoin Georgia's assertion of jurisdiction over Cherokee territory and abolition of Cherokee government and laws Unquestionably the case lay at the vortex of most fiery political embroilment See 1 Warren The Supreme Court in United States History (Rev ed), 729–779 But in spite of some broader language in separate opinions, all that the Court held was that it possessed no original jurisdiction over the suit for the Cherokees could in no view be considered either a State of this Union or a "foreign state" Chief Justice Marshall treated the question as one of de novo interpretation of words in the Constitution The Chief Justice did say that 'the acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts," but here he referred to their existence "as a state, as a distinct political society, separated from others, " From there he went to "a question of much more difficulty Do the Cherokees constitute a foreign state in the sense of the constitution?" Id 5 Pet at 16 Thus, while the Court referred to "the political" for the decision whether the tribe was an entity, a separate polity, it held that whether being an entity the tribe had such status as to be entitled to sue originally was a judicially soluble issue criteria were discoverable in relevant phrases of the Constitution and in the common understanding of the times As to this issue, the Court was not hampered by problems of the management of unusual evidence or of possible interference with a congressional program Moreover, Chief Justice Marshall's dictum that "it savours too much of the exercise of political power to be within the proper province of the judicial department," id 5 Pet at 20, was not addressed to the issue of the Cherokees' status to sue, but rather to the breadth of the claim asserted and the impropriety of the relief sought Compare Georgia v Stanton (US) 6 Wall 50, 77, 18 L ed 721, 725 The Chief Justice made clear that if the issue of the Cherokees' rights arose in a customary legal context, "a proper case with proper parties," it would be justiciable Thus, where the same dispute produced a case properly brought, in which the right asserted was one of protection under federal treaties and laws from conflicting state law, and the relief sought was the voiding of a conviction under that state law, the Court did void the conviction Worcester v Georgia (US) 6 Pet 515, 8 L ed 483 There, the fact that the tribe was a separate polity served at a datum contributing to the result, and despite the consequences in a heated federal-state controversy and the opposition of the other branches of the National Government, the judicial power acted to reverse the State Supreme Court An example of similar isolation of a political question in the decision of a case is Luther v Borden (US) 7 How 1, 12 L ed 581, see infra

resolution without expressing lack of the respect due coordinate branches of government, or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence The doctrine of which we treat is one of "political questions," not one of "political cases" The courts cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority. The cases we have reviewed show the necessity for discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing

But it is argued that this case shares the characteristics of decisions that constitute a category not yet considered, cases concerning the Constitution's guaranty, in Art 4 § 4, of a republican form of government A conclusion as to whether the case at bar does present a political question cannot be confidently reached until we have considered those cases with special care We shall discover that Guaranty Clause claims involve those elements which define a "political question," and for that reason and no other, they are nonjusticiable In particular, we shall discover that the nonjusticiability of such claims has nothing to do with their touching upon matters of state governmental organization

Republican form of government: Luther v Borden (US) 7 How 1, 12 L ed 581, though in form simply an action for damages for trespass was, as Daniel Webster said in opening the argument for the defense, "an unusual case" [44] The defendants, admitting an otherwise tortious breaking and entering, sought to justify their action on the ground that they were agents of the established lawful government of Rhode Island, which State was then under martial law to defend itself from active insurrection; that the plaintiff was engaged in that insurrection; and that they entered under orders to arrest the plaintiff The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 7 How at 34, which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government [45] The plaintiff's right to recover depended upon which of the two groups was entitled to such recognition, but the lower court's refusal to receive evidence or hear argument on that issue, its charge to the jury that the earlier established or "charter" government was lawful, and the verdict for the defendants, were affirmed upon appeal to this Court.

Chief Justice Taney's opinion for the Court reasoned as follows: (1) If a court were to hold the defendants' acts unjustified because the

[44] 7 How, at 29 And see 11 The Writings and Speeches of Daniel Webster 217 (1903)

[45] See Mowry, The Dorr War (1901), and its exhaustive bibliography And for an account of circumstances surrounding the decision here, see 2 Warren, The Supreme Court in United States History (Rev ed), 185–195

Dorr himself, head of one of the two groups and held in a Rhode Island jail under a conviction for treason, had earlier sought a decision from the Supreme Court that his was the lawful government His application for original habeas corpus in the Supreme Court was denied because the federal courts then lacked authority to issue habeas for a prisoner held under a state court sentence Ex parte Dorr (US) 3 How 103, 11 L ed 514

charter government had no legal existence during the period in question, it would follow that all of that government's actions—laws enacted, taxes collected, salaries paid, accounts settled, sentences passed—were of no effect; and that "the officers who carried their decisions into operation [were] answerable as trespassers, if not in some cases as criminals."[46] There was, of course, no room for application of any doctrine of de facto status to uphold prior acts of an officer not authorized de jure, for such would have defeated the plaintiff's very action. A decision for the plaintiff would inevitably have produced some significant measure of chaos, a consequence to be avoided if it could be done without abnegation of the judicial duty to uphold the Constitution.

(2) No state court had recognized as a judicial responsibility settlement of the issue of the locus of state governmental authority. Indeed, the courts of Rhode Island had in several cases held that "it rested with the political power to decide whether the charter government had been displaced or not," and that that department had acknowledged no change.[47]

(3) Since "the question relates, altogether, to the constitution and laws of [the] . . . State," the courts of the United States had to follow the state courts' decisions unless there was a federal constitutional ground for overturning them.

(4) No provision of the Constitution could be or had been invoked for this purpose except Art. 4, § 4, the Guaranty Clause. Having already noted the absence of standards whereby the choice between governments could be made by a court acting independently, Chief Justice Taney now found further textual and practical reasons for concluding that, if any department of the United States was empowered by the Guaranty Clause to resolve the issue, it was not the Judiciary.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue, and . . . Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.

"So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. . . . [B]y the act of February 28, 1795, [Congress] provided, that, 'in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State or of the executive (when the legislature cannot be convened), to call forth such

[46] 7 How., at 39.
[47] Ibid.

number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection '

"By this act, the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President. .

"After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right? . . If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order . .

"It is true that in this case the militia were not called out by the President But upon the application of the governor under the charter government, the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority if it should be found necessary for the general government to interfere; . . [C]ertainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government, . . In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice . . ." 7 How at 42–44

Clearly, several factors were thought by the Court in Luther to make the question there "political" the commitment to the other branches of the decision as to which is the lawful state government; the unambiguous action by the President, in recognizing the charter government as the lawful authority; the need for finality in the executive's decision; and the lack of criteria by which a court could determine which form of government was republican [48]

[48] Even though the Court wrote of unrestrained legislative and executive authority under this Guaranty, thus making its enforcement a political question, the Court plainly implied that the political question barrier was no absolute "Unquestionably a military government, established as a permanent government of the State, would not be a republican government, and it would be the duty of Congress to overthrow it." 7 How, at 45 Of course, it does not necessarily follow that if Congress did not act, the Court would For while the judiciary might be able to decide the limits of the meaning of "republican form," and thus the factor of lack of criteria might fall away, there would remain other possible barriers to decision because of primary commitment to another branch, which would have to be considered in the particular fact setting presented

That was not the only occasion on which this Court indicated that lack of criteria does not obliterate the Guaranty's extreme limits "The guaranty is of a republican form of government No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended

"The guaranty necessarily implies a duty on the part of the States themselves to provide such a government All the States had governments when the Constitution was adopted In all the people participated to some extent, through their representatives elected in the manner specially provided These governments the Constitution did not change They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution " Minor v Happersett (US) 21 Wall 162, 175, 22 L ed 627, 630, 631 There, the question was whether a government republican in form could deny the vote to women

Re Duncan, 139 US 449, 35 L ed 219, 11 S Ct 573, upheld a murder conviction against a claim that the relevant codes had been invalidly enacted The Court there said

"By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves, but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities" 139 US, at 461 But the Court did not find any of these fundamental principles violated

But the only significance that Luther could have for our immediate purposes is in its holding that the Guaranty Clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government The Court has since refused to resort to the Guaranty Clause—which alone had been invoked for the purpose—as the source of a constitutional standard for invalidating state action See Taylor v Beckham (No. 1), 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009 (claim that Kentucky's resolution of contested gubernatorial election deprived voters of republican government held nonjusticiable), Pacific States Tel & Tel Co v Oregon, 223 US 118, 56 L ed 377, 32 S Ct 224 (claim that initiative and referendum negated republican government held nonjusticiable); Kiernan v Portland, 223 US 151, 56 L ed 386, 32 S Ct 231 (claim that municipal charter amendment per municipal initiative and referendum negated republican government held nonjusticiable), Marshall v Dye, 231 US 250, 58 L ed 206, 34 S Ct 92 (claim that Indiana's constitutional amendment procedure negated republican government held nonjusticiable); O'Neill v Leamer, 239 US 244, 60 L ed 249, 36 S Ct 54 (claim that delegation to court of power to form drainage districts negated republican government held, "futile"); Ohio ex rel Davis v Hildebrant, 241 US 565, 60 L ed 1172, 36 S Ct 708 (claim that invalidation of state reapportionment statute per referendum negates republican government held nonjusticiable), [49] Mountain Timber Co v Washington, 243 US 219, 61 L ed 685, 37 S Ct 260, 13 NCCA 927, Ann Cas 1917D 642 (claim that workmen's compensation violates republican government held nonjusticiable); Ohio ex rel Bryant v Akron Metropolitan Park Dist 281 US 74, 74 L ed 710, 50 S Ct 228, 66 ALR 1460 (claim that rule requiring invalidation of statute by all but one justice of state court negated republican government held nonjusticiable), Highland Farms Dairy v Agnew, 300 US 608, 81 L ed 835, 57 S Ct 549 (claim that delegation to agency of power to control milk prices violated republican government, rejected).

Just as the Court has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question so has it held, and for the same reasons, that challenges to congressional action on the ground of inconsistency with that clause present no justiciable question In Georgia v Stanton (US) 6 Wall 50, 18 L ed 721, the State sought by an original bill to enjoin execution of the Reconstruction Acts, claiming that it already possessed "a republican State, in every political, legal, constitutional, and juridical sense," and that enforcement of the new Acts "instead of keeping the guaranty against a forcible overthrow of its government by foreign invaders or domestic insurgents, . . . is destroying that very government by force" [50] Congress had clearly refused to recognize the republican character of the government of the suing State [51] It seemed to the Court that the only constitutional claim that could be presented was under

[49] But cf Hawke v Smith (No 1), 253 US 221, 64 L ed 871, 40 S Ct 495, 10 ALR 1504, National Prohibition Cases (Rhode Island v Palmer) 253 US 350, 64 L ed 946, 40 S Ct 486, 588

[50] 6 Wall at 65, 66

[51] The First Reconstruction Act opened "Whereas no legal State governments now exists [sic] in the rebel States of Georgia [and] Mississippi, . . . and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established . . ." 14 Stat 428 And see 15 Stat 2, 14

the Guaranty Clause, and Congress having determined that the effects of the recent hostilities required extraordinary measures to restore governments of a republican form, this Court refused to interfere with Congress' action at the behest of a claimant relying on that very guaranty [52]

In only a few other cases has the Court considered Art 4, § 4, in relation to congressional action It has refused to pass on a claim relying on the Guaranty Clause to establish that Congress lacked power to allow the States to employ the referendum in passing on legislation redistricting for congressional seats Ohio ex rel Davis v Hildebrant, 241 US 565, 60 L ed 1172, 36 S Ct 708, supra And it has pointed out that Congress is not required to establish republican government in the territories before they become States, and before they have attained a sufficient population to warrant a popularly elected legislature Downes v Bidwell, 182 US 244, 278, 279, 45 L ed 1088, 1103, 21 S Ct 770 (dictum) [53]

We come, finally to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present We find none The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court Nor do we risk embarrassment of our government abroad, or grave disturbance at home [54] if we take issue with Tennessee as to the constitutionality of her action here challenged Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action.

This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause Of course, as we have seen, any

[52] In Mississippi v Johnson (US) 4 Wall 475, 18 L ed 437, the State sought to enjoin the President from executing the Acts, alleging that his role was purely ministerial The Court held that the duties were in no sense ministerial, and that although the State sought to compel inaction rather than action, the absolute lack of precedent for any such distinction left the case one in which "general principles forbid judicial interference with the exercise of Executive discretion" 4 Wall at 499 See also Mississippi v Stanton, 154 US 554, 18 L ed 725, 14 S Ct 1209, and see 2 Warren, The Supreme Court in United States History (Rev ed), 463

For another instance of congressional action challenged as transgressing the Guaranty Clause, see The Collector v Day (Buffington v Day) (US) 11 Wall 113, 125, 126, 20 L ed 122, 126, overruled, Graves v New York, 306 US 466, 83 L ed 927, 59 S Ct 595, 120 ALR 1466

[53] On the other hand, the implication of the Guaranty Clause in a case concerning congressional action does not always preclude judicial action It has been held that the clause gives Congress no power to impose restrictions upon a State's admission which would undercut the constitutional mandate that the States be on an equal footing Coyle v Smith, 221 US 559, 55 L ed 853, 31 S Ct 688 And in Texas v White (US) 7 Wall 700, 19 L ed 227, although Congress had determined that the State's government was not republican in form, the State's standing to bring an original action in this Court was sustained

[54] See, infra, p 896, considering Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223

reliance on that clause would be futile But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself But we have found that not to be the case here

In this connection special attention is due Pacific States Tel & Tel Co v Oregon, 223 US 118, 56 L ed 377, 32 S Ct 224 In that case a corporation tax statute enacted by the initiative was attacked ostensibly on three grounds. (1) due process; (2) equal protection; and (3) the Guaranty Clause But it was clear that the first two grounds were invoked solely in aid of the contention that the tax was invalid by reason of its passage:

"The defendant company does not contend there that it could not have been required to pay a license tax. It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights If such questions had been raised they would have been justiciable, and therefore would have required the calling into operation of judicial power. Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character Its essentially political nature is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State It is addressed to the framework and political character of the government by which the statute levying the tax was passed It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form " 223 US, at 150, 151

The due process and equal protection claims were held nonjusticiable in Pacific States not because they happened to be joined with a Guaranty Clause claim, or because they sought to place before the court a subject matter which might conceivably have been dealt with through the Guaranty Clause, but because the Court believed that they were invoked merely in verbal aid of the resolution of issues which, in its view, entailed political questions Pacific States may be compared with cases such as Mountain Timber Co v Washington, 243 US 219, 61 L ed 685, 37 S Ct 260, Ann Cas 1917D 642, 13 NCCA 927, wherein the Court refused to consider whether a workmen's compensation act violated the Guaranty Clause but considered at length, and rejected, due process and equal protection arguments advanced against it, and O'Neill v Leamer, 239 US 244, 60 L ed 249, 36 S Ct 54, wherein the Court refused to consider whether Nebraska's delegation of power to form drainage districts violated the Guaranty Clause, but went on to consider and reject the contention that the action against which an injunction was sought was not a taking for a public purpose.

We conclude then that the nonjusticiability of claims resting on the Guaranty Clause which arises from their embodiment of questions that were thought "political," can have no bearing upon the justiciability of the equal protection claim presented in this case Finally, we emphasize that it is the involvement in Guaranty Clause claims of the elements thought to define "political questions," and no other feature, which could render them nonjusticiable Specifically, we have said that such claims are not held nonjusticiable because they touch matters of state governmental organization Brief examination of a few cases demonstrates this.

When challenges to state action respecting matters of "the administration of the affairs of the State and the officers through whom they are conducted"[55] have rested on claims of constitutional deprivation which are amenable to judicial correction, this Court has acted upon its view of the merits of the claim. For example, in Boyd v Nebraska, 143 US 135, 36 L ed 103, 12 S Ct 375, we reversed the Nebraska Supreme Court's decision that Nebraska's Governor was not a citizen of the United States or of the State and therefore could not continue in office In Kennard v Louisiana, 92 US 480, 23 L ed 478, and Foster v Kansas, 112 US 201, 28 L ed 629, 5 S Ct 8, 97, we considered whether persons had been removed from public office by procedures consistent with the Fourteenth Amendment's due process guaranty, and held on the merits that they had And only last Term, in Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125, we applied the Fifteenth Amendment to strike down a redrafting of municipal boundaries which effected a discriminatory impairment of voting rights, in the face of what a majority of the Court of Appeals thought to be a sweeping commitment to state legislatures of the power to draw and redraw such boundaries[56]

Gomillion was brought by a Negro who had been a resident of the City of Tuskegee, Alabama, until the municipal boundaries were so recast by the State Legislature as to exclude practically all Negroes The plaintiff claimed deprivation of the right to vote in municipal elections. The District Court's dismissal for want of jurisdiction and failure to state a claim upon which relief could be granted was affirmed by the Court of Appeals This Court unanimously reversed This Court's answer to the argument that States enjoyed unrestricted control over municipal boundaries was

"Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence' " 364 US, at 344, 345

To a second argument, that Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, supra, was a barrier to hearing the merits of the case, the Court responded that Gomillion was lifted "out of the so-

[55] Boyd v Nebraska, 143 US 135, 183, 36 L ed 103, 117, 12 S Ct 375 (Field, J, dissenting)

[56] Gomillion v Lightfoot (CA5 Ala) 270 F2d 594, relying upon, inter alia, Hunter v Pittsburgh, 207 US 161, 52 L ed 151, 28 S Ct 40.

called 'political' arena and into the conventional sphere of constitutional litigation" because here was discriminatory treatment of a racial minority violating the Fifteenth Amendment.

"A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries . . While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights That was not Colegrove v Green

"When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right " 364 US, at 347 [57]

We have not overlooked such cases as Re Sawyer, 124 US 200, 31 L ed 402, 8 S Ct 482, and Walton v House of Representatives, 265 US 487, 68 L ed 1115, 44 S Ct 628, which held that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer But these decisions explicitly reflect only a traditional limit upon equity jurisdiction, and not upon federal courts' power to inquire into matters of state governmental organization This is clear not only from the opinions in those cases, but also from White v Berry, 171 US 366, 43 L ed 199, 18 S Ct 917, which, relying on Sawyer, withheld federal equity from staying removal of a *federal* officer Wilson v North Carolina, 169 US 586, 42 L ed 865, 18 S Ct 435, simply dismissal an appeal from an unsuccessful suit to upset a State's removal procedure, on the ground that the constitutional claim presented—that a jury trial was necessary if the removal procedure was to comport with due process requirements —was frivolous Finally, in Taylor v Beckham (No 1), 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009, where losing candidates attacked the constitutionality of Kentucky's resolution of a contested gubernatorial election, the Court refused to consider the merits of a claim posited upon the Guaranty Clause, holding it presented a political question, but also held on the merits that the ousted candidates had suffered no deprivation of property without due process of law [58]

Since, as has been established, the equal protection claim tendered in this case does not require decision of any political question, and since the presence of a matter affecting state government does not render the case nonjusticiable, it seems appropriate to examine again the reasoning by which the District Court reached its conclusion that the case was nonjusticiable

We have already noted that the District Court's holding that the subject matter of this complaint was nonjusticiable relied upon Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, supra, and later cases Some of those concerned the choice of members of a state legis-

[57] The Court's opinion was joined by Mr Justice Douglas, noting his adherence to the dissents in Colegrove and South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, supra, and the judgment was concurred in by Mr Justice Whittaker, who wrote that the decision should rest on the Equal Protection Clause rather than on the Fifteenth Amendment, since there had been not solely a denial of the vote (if there had been that at all) but also a "fencing out" of a racial group

[58] No holding to the contrary is to be found in Cave v Missouri, 246 US 650, 62 L ed 921, 38 S Ct 334, dismg a writ of error to the Supreme Court of Missouri, 272 Mo 653, 199 SW 1014, or in Snowden v Hughes, 321 US 1, 88 L ed 497, 64 S Ct 397

lature, as in this case; others, like Colegrove itself and earlier precedents, Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, Koenig v Flynn, 285 US 375, 76 L ed 805, 52 S Ct 403, and Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402, concerned the choice of Representatives in the Federal Congress Smiley, Koenig and Carroll settled the issue in favor of justiciability of questions of congressional redistricting. The Court followed these precedents in Colegrove although over the dissent of three of the seven Justices who participate in that decision. On the issue of justiciability, all four Justices comprising a majority relied upon Smiley v Holm, but in two opinions, one for three Justices, 328 US, at 566, 568, and a separate one by Mr Justice Rutledge, 328 US, at 564 The argument that congressional redistricting problems presented a "political question" the resolution of which was confided to Congress might have been rested upon Art 1, § 4, Art 1, § 5, Art 1, § 2, and Amendment 14, § 2 Mr Justice Rutledge said "But for the ruling in Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, I should have supposed that the provisions of the Constitution, Art 1, § 4, that 'The Times, Places and Manner of holding Elections for Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . '; Art 1, § 2 [but see Amendment 14, §2], vesting in Congress the duty of apportionment of representatives among the several states 'according to their respective Numbers'; and Art 1, § 5, making each House the sole judge of the qualifications of its own members, would remove the issues in this case from justiciable cognizance But, in my judgment, the Smiley Case rules squarely to the contrary, save only in the matter of degree . Assuming that that decision is to stand, I think . . that its effect is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable" 328 US, at 564, 565 Accordingly, Mr Justice Rutledge joined in the conclusion that the case was justiciable, although he held that the dismissal of the complaint should be affirmed His view was that "The shortness of the time remaining [before forthcoming elections] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek . I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed and I join in that disposition of the cause" 328 US, at 565, 566 [59]

[59] The ground of Mr Justice Rutledge's vote to affirm is further explained in his footnote 3, 328 US at 566 "The power of a court of equity to act is a discretionary one Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only "to prevent irreparable injury which is clear and imminent". American Federation of Labor v. Watson, 327 U S 582, 593 and cases cited".

No constitutional questions, including the question whether voters have a judicially enforceable constitutional right to vote at elections of congressmen from districts of equal population, were decided in Colegrove Six of the participating Justices reached the questions but divided three to three on their merits Mr Justice Rutledge believed that it was not necessary to decide them He said

There is [an alternative to constitutional decision] in this case And I think the gravity of the constitutional questions raised so great, together with the possibilities for collusion [with the political departments of the Government], that the admonition [against avoidable constitutional decision] is appropriate to be followed here Other reasons support this view, including the fact that, in my opinion, the basic ruling and less important ones in Smiley v Holm, supra, would otherwise be brought into question" 328 US at 584, 585 He also joined with his brethren who shared his view that the issues were justiciable in considering that Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, decided no

Article 1 §§ 2, 4 and 5 and Amendment 14 § 2 relate only to congressional elections and obviously do not govern apportionment of state legislatures However, our decisions in favor of justiciability even in light of those provisions plainly afford no support for the District Court's conclusion that the subject matter of this controversy presents a political question Indeed, the refusal to award relief in Colegrove resulted only from the controlling view of a want of equity Nor is anything contrary to be found in those per curiams that came after Colegrove This Court dismissal the appeals in Cook v Fortson and Turman v Duckworth, 329 US 675, 91 L ed 596, 67 S Ct 21, as moot MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, held only that in that case equity would not act to void the State's requirement that there be at least a minimum of support for nominees for state-wide office, over at least a minimal area of the State Problems of timing were critical in Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368, dismissing for want of a substantial federal question a three-judge court's dismissal of the suit as prematurely brought, 102 F Supp 708; and in Hartsfield v Sloan, 357 US 916, 2 L ed 2d 1363, 78 S Ct 1363, denying mandamus sought to compel the convening of a three-judge court—movants urged the Court to advance considerations of their case, "inasmuch as the mere lapse of time before this case can be reached in the normal course . . business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case " South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, like Colegrove appears to be a refusal to exercise equity's powers; see the statement of the holding, quoted, supra, p 677 And Cox v Peters, 342 US 936, 96 L ed 697, 72 S Ct 559, dismissed for want of a substantial federal question the appeal from the state court's holding that their primary elections implicated no "state action " See 208 Ga 498, 67 SE2d 579 But compare Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809

Tedesco v Board of Supervisors of Elections, 339 US 940, 94 L ed 1357, 70 S Ct 797, indicates solely that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting See (La App) 43 So 2d 514 Similarly, in Anderson v Jordan, 343 US 912, 96 L ed 1328, 72 S Ct 648, it was certain only that the state court had refused to issue a discretionary writ, original mandamus in the Supreme Court That had been denied without opinion, and of course it was urged here that an adequate state ground barred this Court's review And in Kidd v McCanless, 200 Tenn 273, 292 SW2d 40, the Supreme Court of Tennessee held that it could not invalidate the very statute at issue in the case at bar, but its holding rested on its state law of remedies, i e, the state view of de facto officers,[60] and not on any view that the norm for legislative apportionment in Tennessee is not numbers of qualified voters resident in the several counties Of course this Court was there precluded by the adequate state ground, and in dismissing the appeal,

constitutional questions but "the Court disposed of the cause on the ground that the 1929 Reapportionment Act, 46 Stat 21, did not carry forward the requirements of the 1911 Act, 37 Stat 13, and declined to decide whether there was equity in the bill" 328 US at 565, see also, id 328 US at 573 We agree with this view of Wood v Broom

[60] See also Buford v State Board of Elections, 206 Tenn 480, 334 SW2d 726, State ex rel Sanborn v Davidson County Board of Election Comrs No 36, 391 Tenn Sup Ct, Oct 29, 1954 (unreported), 3 Vand L Rev 501

352 US 920, 1 L ed 2d 157, 77 S Ct 223, we cited Anderson (US) supra, as well as Colegrove. Nor does the Tennessee court's decision in that case bear upon this, for just as in Smith v Holm, 220 Minn 486, 19 NW2d 914, and Magraw v Donovan (DC Minn) 163 F Supp 184, 177 F Supp 803, a state court's inability to grant relief does not bar a federal court's assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights Problems of relief also controlled in Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559, affirming the District Court's refusal to mandamus the Governor to call a session of the legislature, to mandamus the legislature then to apportion, and if they did not comply, to mandamus the State Supreme Court to do so And Mathews v Handley, 361 US 127, 4 L ed 2d 180, 80 S Ct 256, affirmed a refusal to strike down the State's gross income tax statute—urged on the ground that the legislature was malapportioned—that had rested on the adequacy of available state legal remedies for suits involving that tax, including challenges to its constitutionality Lastly, Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973, in which Mr Justice Rutledge concurred in this Court's refusal to note the appeal from a dismissal for want of equity, is sufficiently explained by his statement in Cook v Fortson, 329 US 675, 91 L ed 596, 67 S Ct 21, supra "The discretionary exercise or nonexercise of equitable or declaratory judgment jurisdiction . in one case is not precedent in another case where the facts differ " 329 US, at 678, note 8 (Citations omitted)

We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

The judgment of the District Court is reversed and the cause is remanded for further proceedings consistent with this opinion.

Reversed and remanded

Mr Justice Whittaker did not participate in the decision of this case

APPENDIX

The Tennessee Code Annotated provides for representation in the General Assembly as follows·

"3–101. *Composition—Counties electing one representative each* — The general assembly of the state of Tennessee shall be composed of thirty-three (33) senators and ninety-nine (99) representatives, to be apportioned among the qualified voters of the state as follows· Until the next enumeration and apportionment of voters each of the following counties shall elect one (1) representative, to wit Bedford, Blount, Cannon, Carroll, Chester, Cocke, Claiborne, Coffee, Crockett, DeKalb, Dickson, Dyer, Fayette, Franklin, Giles, Greene, Hardeman, Hardin, Henry, Hickman, Hawkins, Haywood, Jackson, Lake, Lauderdale, Lawrence, Lincoln, Marion, Marshall, Maury, Monroe, Montgomery, Moore, McMinn, McNairy, Obion, Overton, Putnam, Roane, Robertson, Rutherford, Sevier, Smith, Stewart, Sullivan, Sumner, Tipton, Warren, Washington, White, Weakley, Williamson and Wilson [Acts 1881 (E S) ch 5, § 1; 1881 (E S), ch 6, § 1; 1901, ch 122, § 2; 1907, ch. 178, §§ 1, 2; 1915, ch 145; Shan , § 123; Acts 1919, ch. 147, §§ 1,

2; 1925 Private, ch 472, § 1; Code 1932, § 140; Acts 1935, ch 150, § 1; 1941, ch 58, § 1; 1945, ch 68, § 1, C Supp 1950, § 140.]

"3-102 *Counties electing two representatives each*.—The following counties shall elect two (2) representatives each, to wit: Gibson and Madison [Acts 1901, ch 122, § 3; Shan., § 124; mod Code 1932, § 141.]

"3-103 *Counties electing three representatives each*.—The following counties shall elect three (3) representatives each, to wit: Knox and Hamilton [Acts 1901, ch 122, § 4; Shan., § 125, Code 1932, § 142.]

"3-104 *Davidson County*.—Davidson county shall elect six (6) representatives [Acts 1901, ch. 122, § 5; Shan., § 126; Code 1932, § 143.]

"3-105 *Shelby county*.—Shelby county shall elect eight (8) representatives. Said county shall consist of eight (8) representative districts, numbered one (1) through eight (8), each district co-extensive with the county, with one (1) representative to be elected from each district [Acts 1901, ch. 122, § 6, Shan., § 126a1; Code 1932, § 144, Acts 1957, ch 220, § 1; 1959, ch 213, § 1.]

"3-106 *Joint representatives*.—The following counties jointly, shall elect one representative, as follows, to wit:

"First district—Johnson and Carter

"Second district—Sullivan and Hawkins

"Third district—Washington, Greene and Unicoi

"Fourth district—Jefferson and Hamblen

"Fifth district—Hancock and Grainger

"Sixth district—Scott, Campbell, and Union

"Seventh district—Anderson and Morgan

"Eighth district—Knox and Loudon.

"Ninth district—Polk and Bradley.

"Tenth district—Meigs and Rhea.

"Eleventh district—Cumberland, Bledsoe, Sequatchie, Van Buren and Grundy

"Twelfth district—Fentress, Pickett, Overton, Clay and Putnam

"Fourteenth district—Sumner, Trousdale and Macon

"Fifteenth district—Davidson and Wilson

"Seventeenth district—Giles, Lewis, Maury and Wayne

"Eighteenth district—Williamson, Cheatham and Robertson

"Nineteenth district—Montgomery and Houston

"Twentieth district—Humphreys and Perry

"Twenty-first district—Benton and Decatur

"Twenty-second district—Henry, Weakley and Carroll

"Twenty-third district—Madison and Henderson.

"Twenty-sixth district—Tipton and Lauderdale [Acts 1901, ch 122, § 7; 1907, ch 178, §§ 1, 2, 1915, ch 145, §§ 1, 2; Shan., § 127; Acts 1919, ch 147, § 1; 1925 Private, ch 472, § 2; Code 1932, § 145; Acts 1933, ch 167, § 1, 1935, ch 150, § 2; 1941, ch 58, § 2; 1945, ch 68, § 2; C Supp 1950, § 145, Acts 1957, ch 220, § 2.]

"3-107 *State senatorial districts*.—Until the next enumeration and apportionment of voters, the following counties shall comprise the senatorial districts, to wit:

"First district—Johnson, Carter, Unicoi, Greene, and Washington

"Second district—Sullivan and Hawkins

"Third district—Hancock, Morgan, Grainger, Claiborne, Union, Campbell, and Scott

"Fourth district—Cocke, Hamblen, Jefferson, Sevier, and Blount

"Fifth district—Knox

"Sixth district—Knox, Loudon, Anderson, and Roane

"Seventh district—McMinn, Bradley, Monroe, and Polk

"Eighth district—Hamilton.

"Ninth district—Rhea, Meigs, Bledsoe, Sequatchie, Van Buren, White, and Cumberland

"Tenth district—Fentress, Pickett, Clay, Overton, Putnam, and Jackson

"Eleventh district—Marion, Franklin, Grundy and Warren

"Twelfth district—Rutherford, Cannon, and DeKalb

"Thirteenth district—Wilson and Smith

"Fourteenth district—Sumner, Trousdale and Macon

"Fifteenth district—Montgomery and Robertson

"Sixteenth district—Davidson

"Seventeenth district—Davidson

"Eighteenth district—Bedford, Coffee and Moore

"Nineteenth district—Lincoln and Marshall

"Twentieth district—Maury, Perry and Lewis

"Twenty-first district—Hickman, Williamson and Cheatham

"Twenty-second district—Giles, Lawrence and Wayne

"Twenty-third district—Dickson, Humphreys, Houston and Stewart

"Twenty-fourth district—Henry and Carroll

"Twenty-fifth district—Madison, Henderson and Chester

"Twenty-sixth district—Hardeman, McNairy, Hardin, Decatur and Benton.

"Twenty-seventh district—Gibson.

"Twenty-eighth district—Lake, Obion and Weakley

"Twenty-ninth District—Dyer, Lauderdale and Crockett

"Thirtieth district—Tipton and Shelby.

"Thirty-first district—Haywood and Fayette

"Thirty-second district—Shelby

"Thirty-third district—Shelby. [Acts 1901, ch. 122, § 1, 1907, ch. 3, § 1, Shan., § 128, Code 1932, § 146; Acts 1945, ch. 11, § 1; C. Supp. 1950, § 146.]"

Today's apportionment statute is as enacted in 1901, with minor changes For example

(1) In 1957, Shelby County was raised from 7½ to 8 representatives. Acts of 1957, c. 220. See also Acts of 1959, c. 213 The 1957 Act, § 2, abolished the Twenty-seventh Joint Representative District, which had included Shelby and Fayette Counties

(2) In 1907, Marion County was given a whole House seat instead of sharing a joint seat with Franklin County Acts of 1907, c. 178. Acts of 1915, c. 145, repealed that change, restoring the status quo ante. And that reversal was itself reversed, Acts of 1919, c. 147.

(3) James County was in 1901 one of five counties in the Seventh State Senate District and one of the three in the Ninth House District It appears that James County no longer exists but we are not advised when or how it was dissolved.

(4) In 1945, Anderson and Roane Counties were shifted to the Sixth State Senate District from the Seventh, and Monroe and Polk Counties were shifted to the Seventh from the Sixth. Acts of 1945, c. 11.

SEPARATE OPINION

Mr. Justice Douglas, concurring:

While I join the opinion of the Court and, like the Court, do not reach the merits, a word of explanation is necessary [1] I put to one side the problems of "political" questions involving the distribution of power between this Court, the Congress, and the Chief Executive. We have here a phase of the recurring problem of the relation of the federal courts to state agencies. More particularly, the question is the extent to which a State may weight one person's vote more heavily than it does another's.

So far as voting rights are concerned, there are large gaps in the Constitution. Yet the right to vote is inherent in the republican form of government envisaged by Article 4 § 4 of the Constitution. The House —and now the Senate—are chosen by the people. The time, manner, and place of elections of Senators and Representatives are left to the States (Article 1 § 4, cl 1; Amendment 17) subject to the regulatory power of Congress. A "republican form" of government is guaranteed each State by Article 4 § 4, and each is likewise promised protection against invasion.[2] Ibid That the States may specify the qualifications

[1] I feel strongly that many of the cases cited by the Court and involving so-called "political" questions were wrongly decided

In joining the opinion, I do not approve those decisions but only construe the Court's opinion in this case as stating an accurate historical account of what the prior cases have held

[2] The statements in Luther v Borden (US) 7 How 1, 42, 12 L ed 581, 599, that this guaranty is enforceable only by Congress or the Chief Executive is not maintainable Of course the Chief Executive, not the Court, determines how a State will be protected against invasion Of course each House of Congress, not the Court, is "the Judge of the Elections, Returns, and Qualifications of its own Members" Article 1, § 5, Clause 1 But the abdication of all judicial functions respecting voting rights (7 How, at 41), however justified by the peculiarities of the charter form of government in Rhode Island at the time of Dorr's Rebellion, states no general principle It indeed is contrary to the cases discussed in the body of this opinion—the modern decisions of the Court that give the full panoply of judicial protection to voting rights Today we would not say with Chief Justice Taney that it is no part of the judicial function to protect the right to vote of those "to whom it is denied by the written and established constitution and laws of the State" Ibid

Moreover, the Court's refusal to examine the legality of the regime of martial law which had been laid upon Rhode Island (id 7 How at 45, 46) is indefensible, as Mr Justice Woodbury maintained in his dissent Id 7 How at 59 et seq Today we would ask with him ' who could hold for a moment, when the writ of habeas corpus cannot be suspended by the legislature itself, either in the general government or most of the States, without an express constitutional permission, that all other writs and laws could be suspended, and martial law substituted for them over the whole State or country, without any express constitutional license to that effect, in any emergency'" Id 7 How at 67

Justice Woodbury went on to say

"It would be alarming enough to sanction here an unlimited power, exercised either by legislatures, or the executive, or courts, when all our governments are themselves governments of limitations and checks, and of fixed and known laws, and the people a race above all others jealous of encroachments by those in power

And it is far better that those persons should be without the protection of the ordinary laws of the land who disregard them in an emergency, and should look to a grateful country for indemnity and pardon, than to allow, beforehand, the whole frame of jurisprudence to be overturned, and every thing placed at the mercy of the bayonet

"No tribunal or department in our system of governments ever can be lawfully authorized to dispense with the laws, like some of the tyrannical Stuarts, or to repeal, or abolish, or suspend the whole body of them, or, in other words, appoint an unrestrained military dictator at the head of armed men

"Whatever stretches of such power may be ventured on in great crises, they cannot be upheld by the laws, as they prostrate the laws and ride triumphant over and beyond them, however the Assembly of Rhode Island, under the exigency, may have hastily supposed that such a measure in this instance was constitu-

for voters is implicit in Article 1 § 2, Clause 1, which provides that the House of Representatives shall be chosen by the people and that "the Electors (voters) in each State shall have the Qualifications requisite for Electors (voters) of the most numerous Branch of the State Legislature" The same provision, contained in the Seventeenth Amendment, governs the election of Senators Within limits those qualifications may be fixed by state law See Lassiter v Northampton County Board of Elections, 360 US 45, 50, 51, 3 L ed 2d 1072, 1076, 79 S Ct 985. Yet, as stated in Ex parte Yarbrough, 110 US 651, 663, 664, 28 L ed 274, 278, 4 S Ct 152, those who vote for members of Congress do not "owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively upon the law of the State." The power of Congress to prescribe the qualifications for voters and thus override state law is not in issue here It is, however, clear that by reason of the commands of the Constitution there are several qualifications that a State may not require

Race, color, or previous condition of servitude are impermissible standards by reason of the Fifteenth Amendment, and that alone is sufficient to explain Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125 See Taper, Gomillion versus Lightfoot (1962), pp 12–17.

Sex is another impermissible standard by reason of the Nineteenth Amendment

There is a third barrier to a State's freedom in prescribing qualifications of voters and that is the Equal Protection Clause of the Fourteenth Amendment, the provision invoked here. And so the question is, may a State weight the vote of one county or one district more heavily than it weights the vote in another?

The traditional test under the Equal Protection Clause has been whether a State has made "an invidious discrimination," as it does when it selects "a particular race or nationality for oppressive treatment." See Skinner v Oklahoma, 316 US 535, 541, 86 L ed 1655, 1660, 62 S Ct 1110. Universal equality is not the test; there is room for weighting. As we stated in Williamson v Lee Optical of Okla, Inc 348 US 483, 489, 99 L ed 563, 573, 75 S Ct 461. "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

I agree with my Brother Clark that if the allegations in the complaint can be sustained a case for relief is established We are told that a single vote in Moore County, Tennessee, is worth 19 votes in Hamilton County, that one vote in Stewart or in Chester County is worth nearly eight times a single vote in Shelby or Knox County. The opportunity to prove that an "invidious discrimination" exists should therefore be given the appellants

It is said that any decision in cases of this kind is beyond the competence of courts. Some make the same point as regards the problem of equal protection in cases involving racial segregation Yet the legality of claims and conduct is a traditional subject for judicial determina-

tional It is but a branch of the omnipotence claimed by Parliament to pass bills of attainder, belonging to the same dangerous and arbitrary family with martial law" Id 7 How at 69, 70

What he wrote was later to become the tradition, as expressed by Chief Justice Hughes in Sterling v Constantin, 287 US 378, 401, 77 L ed 375, 387, 53 S Ct 190 "What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions."

tion Adjudication is often perplexing and complicated An example of the extreme complexity of the task can be seen in a decree apportioning water among the several States Nebraska v Wyoming, 325 US 589, 665, 89 L ed 1815, 1857, 65 S Ct 1332 The constitutional guide is often vague, as the decisions under the Due Process and Commerce Clauses show The problem under the Equal Protection Clause is no more intricate See Lewis, Legislative Apportionment and the Federal Courts, 71 Harv L Rev 1057, 1083–1084.

There are, of course, some questions beyond judicial competence Where the performance of a "duty" is left to the discretion and good judgment of an executive officer, the judiciary will not compel the exercise of his discretion one way or the other (Kentucky v Dennison (US) 24 How 66, 109, 16 L ed 717, 729), for to do so would be to take over the office Cf Federal Communications Com v Pottsville Broadcasting Co 309 US 134, 145, 84 L ed 656, 663, 60 S Ct 437.

Where the Constitution assigns a particular function wholly and indivisibly [3] to another department, the federal judiciary does not intervene Oetjen v Central Leather Co 246 US 297, 302, 62 L ed 726, 731, 38 S Ct 309 None of those cases is relevant here.

There is no doubt that the federal courts have jurisdiction of controversies concerning voting rights The Civil Rights Act gives them authority to redress the deprivation "under color of any state law" of any "right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens . . . ." 28 USC § 1343(3) And 28 USC § 1343(4) gives the federal courts authority to award damages or issue an injunction "to redress the violation of any Act of Congress providing for the protection of civil rights, including the *right to vote.*" (Italics added) The

[3] The category of the "political" question is in my view narrower than the decided cases indicate "Even the English courts have held that a resolution of one House of Parliament does not change the law (Stockdale v Hansard, [1839] 9A & E 1, and Bowles v Bank of England (No 2), [1913] 1 Ch 57), and these decisions imply that the House of Commons acting alone does not constitute the 'Parliament' recognised by the English courts" 103 Sol Jour 995, 996 The Court in Bowles v Bank of England, supra, pp 84–85, stated "By the statute 1 W & M, usually known as the Bill of Rights, it was finally settled that there could be no taxation in this country except under authority of an Act of Parliament The Bill of Rights still remains unrepealed, and no practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied on by the Crown as justifying any infringement of its provisions It follows that, with regard to the powers of the Crown to levy taxation, no resolution, either of the Committee for Ways and Means or of the House itself, has any legal effect whatever Such resolutions are necessitated by a parliamentary procedure adopted with a view to the protection of the subject against the hasty imposition of taxes, and it would be strange to find them relied on as justifying the Crown in levying a tax before such tax is actually imposed by Act of Parliament"

In Pocket Veto Case (Okanogan Indians v United States) 279 US 655, 73 L ed 894, 49 S Ct 463, 64 ALR 1434, the Court undertook a review of the veto provisions of the Constitution and concluded that the measure in litigation had not become a law Cf Coleman v Miller, 307 US 433, 83 L ed 1385, 59 S Ct 972, 122 ALR 695

Georgia v Stanton (US) 6 Wall 50, 18 L ed 721, involved the application of the Reconstruction Acts to Georgia—laws which destroyed by force the internal regime of that State Yet the Court refused to take jurisdiction That question was no more "political" than a host of others we have entertained See, e g, Pennsylvania v West Virginia, 262 US 553, 67 L ed 1117, 43 S Ct 658, 32 ALR 300, Youngstown Sheet & Tube Co v Sawyer, 343 US 579, 96 L ed 1153, 72 S Ct 863, 26 ALR2d 1378, Alabama v Texas, 347 US 272, 98 L ed 689, 74 S Ct 481

Today would this Court hold nonjusticiable or "political" a suit to enjoin a Governor who, like Fidel Castro, takes everything into his own hands and suspends all election laws?

Georgia v Stanton (US) 6 Wall 50, 18 L ed 721, supra, expresses a philosophy at war with Ex parte Milligan, 4 Wall 2, and Duncan v Kahanamoku, 327 US 304, 90 L ed 688, 66 S Ct 606 The dominance of the civilian authority has been expressed from the beginning See Wise v Withers (US) 3 Cranch 331, 337, 2 L ed 457, Sterling v Constantin, 287 US 378, 77 L ed 375, 53 S Ct 100, supra, note 2

element of state action covers a wide range. For as stated in United States v Classic, 313 US 299, 326, 85 L ed 1368, 1383, 61 S Ct 1031:

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." And see Monroe v Pape, 365 US 167, 5 L ed 2d 492, 81 S Ct 473.

The right to vote in both federal and state elections was protected by the judiciary long before that right received the explicit protection it is now accorded by § 1343(4). Discrimination against a voter on account of race has been penalized (Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152) or struck down. Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446; Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110; Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809. Fraudulent acts that dilute the votes of some have long been held to be within judicial cognizance. Ex parte Siebold, 100 US 371, 25 L ed 717. The "right to have one's vote counted" whatever his race or nationality or creed was held in United States v Mosley, 238 US 383, 386, 59 L ed 1355, 1356, 35 S Ct 904, to be "as open to protection by Congress as the right to put a ballot in a box." See also United States v Classic, supra (313 US 324, 325); United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101.

Chief Justice Holt stated in Ashby v White, 2 Ld. Raym. 938, 956 (a suit in which damages were awared against election officials for not accepting the plaintiff's vote, 3 Ld Raym 320) that.

"To allow this action will make publick officers more careful to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing mischief, and tends to the prejudice of the peace of the nation"

The same prophylactic effect will be produced here, as entrenched political regimes make other relief as illusory in this case as a petition to Parliament in Ashby v White would have been [4]

Intrusion of the Federal Government into the election machinery of the States has taken numerous forms—investigations (Hannah v Larche, 363 US 420, 4 L ed 2d 1307, 80 S Ct 1502); criminal proceedings (Ex parte Siebold; Ex parte Yarbrough; United States v Mosley; United States v Classic (US) all supra); collection of penalties (Smith v Allwright (US) supra), suits for declaratory relief and for an in-

[4] We are told by the National Institute of Municipal Law Officers in an amicus brief

"Regardless of the fact that in the last two decades the United States has become a predominantly urban country where well over two-thirds of the population now lives in cities or suburbs, political representation in the majority of state legislatures is 50 or more years behind the times Apportionments made when the greater part of the population was located in rural communities are still determining and undermining our elections

"As a consequence, the municipality of 1960 is forced to function in a horse and buggy environment where there is little political recognition of the heavy demands of an urban population These demands will become even greater by 1970 when some 150 million people will be living in urban areas

"The National Institute of Municipal Law Officers has for many years recognized the wide-spread complaint that by far the greatest preponderance of state representatives and senators are from rural areas which, in the main, fail to become vitally interested in the increasing difficulties now facing urban administrators

"Since World War II, the explosion in city and suburban population has created intense local problems in education, transportation, and housing Adequate handling of these problems has not been possible to a large extent, due chiefly to the political weakness of municipalities This situation is directly attributable to considerable under-representation of cities in the legislatures of most states" Amicus brief, pp 2–3.

junction (Terry v Adams (US) supra); suits by the United States under the Civil Rights Act to enjoin discriminatory practices. United States v Raines, 362 US 17, 4 L ed 2d 524, 80 S Ct 519

As stated by Judge McLaughlin in Dyer v Abe (DC Hawaii) 138 F Supp 220, 236 (an apportionment case in Hawaii which was reversed and dismissed as moot (CA9) 256 F2d 728):

"The whole thrust of today's legal climate is to end unconstitutional discrimination. It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired Legislators have no immunity from the Constitution The legislatures of our land should be made as responsive to the Constitution of the United States as are the citizens who elect the legislators."

With the exceptions of Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198; MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1; South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, and the decisions they spawned, the Court has never thought that protection of voting rights was beyond judicial cognizance. Today's treatment of those cases removes the only impediment to judicial cognizance of the claims stated in the present complaint

The justiciability of the present claims being established, any relief accorded can be fashioned in the light of well-known principles of equity.[5]

Mr. Justice Clark, concurring:

One emerging from the rash of opinions with their accompanying clashing of views may well find himself suffering a mental blindness. The Court holds that the appellants have alleged a cause of action. However, it refuses to award relief here—although the facts are undisputed—and fails to give the District Court any guidance whatever One

[5] The recent ruling by the Iowa Supreme Court that a legislature, though elected under an unfair apportionment scheme, is nonetheless a legislature empowered to act (Cedar Rapids v Cox, — Iowa —, 103 NW2d 253, 262, 263, cf Kidd v McCanless, 200 Tenn 273, 292 SW2d 40) is plainly correct.

There need be no fear of a more disastrous collision between federal and state agencies here than where a federal court enjoins gerrymandering based on racial lines See Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125, supra.

The District Court need not undertake a complete reapportionment It might possibly achieve the goal of substantial equality merely by directing respondent to eliminate the egregious injustices Or its conclusion that reapportionment should be made may in itself stimulate legislative action That was the result in Asbury Park Press, Inc v Woolley, 33 NJ 1, 161 A2d 705, where the state court ruled it had jurisdiction

"If by reason of passage of time and changing conditions the reapportionment statute no longer serves its original purpose of securing to the voter the full constitutional value of his franchise, and the legislative branch fails to take appropriate restorative action, the doors of the courts must be open to him The lawmaking body cannot by inaction alter the constitutional system under which it has its own existence" 33 NJ, at 14, 161 A2d, at 711 The court withheld its decision on the merits in order that the legislature might have an opportunity to consider adoption of a reapportionment act For the sequel see Application of Lamb, 67 NJ Super 39, 169 A2d 832, 835, 836

Reapportionment was also the result in Magraw v Donovan (DC Minn) 159 F Supp 901, where a federal three-judge District Court took jurisdiction, saying, 163 F Supp 184, 187

"Here it is the unmistakable duty of the State Legislature to reapportion itself periodically in accordance with recent population changes Early in January 1959 the 61st Session of the Minnesota Legislature will convene, all of the members of which will be newly elected on November 4th of this year The facts which have been presented to us will be available to them It is not to be presumed that the Legislature will refuse to take such action as is necessary to comply with its duty under the State Constitution We defer decision on all the issues presented (including that of the power of this Court to grant relief), in order to afford the Legislature full opportunity to 'heed the constitutional mandate to redistrict'"

See 177 F Supp 803, where the case was dismissed as moot, the State Legislature having acted.

dissenting opinion, bursting with words that go through so much and conclude with so little, contemns the majority action as "a massive repudiation of the experience of our whole past." Another describes the complaint as merely asserting conclusory allegations that Tennessee's apportionment is "incorrect," "arbitrary," "obsolete," and "unconstitutional." I believe it can be shown that this case is distinguishable from earlier cases dealing with the distribution of political power by a State, that a patent volation of the Equal Protection Clause of the United States Constitution has been shown, and that an appropriate remedy may be formulated.

I.

I take the law of the case from MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1 (1948), which involved an attack under the Equal Protection Clause upon an Illinois election statute The Court decided that case on its merits without hindrance from the "political question" doctrine Although the statute under attack was upheld , it is clear that the Court based its decision upon the determination that the statute represented a rational state policy It stated·

"It would be strange indeed, and doctrinaire, for this Court applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a *proper* diffusion of political initiative as between its thinly populated counties and those having concentrated masses, *in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former* " Id 335 US at 284 (Emphasis supplied)

The other cases upon which my Brethren dwell are all distinguishable or inapposite The widely heralded case of Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198 (1946), was one not only in which the Court was bob-tailed but in which there was no majority opinion. Indeed, even the "political question" point in Mr Justice Frankfurter's opinion was no more than an alternative ground [1] Moreover, the appellants did not present an equal protection argument [2] While it has served as a Mother Hubbard to most of the subsequent cases, I feel it was in that respect ill-cast and for all of these reasons put it to one side [3] Likewise, I do not consider the Guaranty Clause cases based on Art 1 §4, of the Constitution, because it is not invoked here and it involves different criteria, as the Court's opinion indicates. Cases resting on various other considerations not present here, such as Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559 (1957) (lack of equity) ; Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223 (1956) (adequate state grounds supporting the state judgment) ; Anderson v Jordan, 343 US 912, 96 L ed 1328, 72 S Ct 648 (1952) (adequate state grounds) ; Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368 (1952) (failure to exhaust state procedures), are of course not controlling Finally, the Georgia

[1] The opinion stated that the Court "could also dispose of this case on the authority of Wood v Broom [287 US 1, 77 L ed 131, 53 S Ct 1 (1932)]" Wood v Broom involved only the interpretation of a congressional reapportionment Act

[2] Similarly, the Equal Protection Clause was not invoked in Tedesco v Board of Supervisors of Elections, 339 US 940, 94 L ed 1357, 70 S Ct 797 (1950)

[3] I do not read the later case of Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973 (1947), as having rejected the equal protection argument adopted here That was merely a dismissal of an appeal where the equal protection point was mentioned along with attacks under three other constitutional provisions, two congressional Acts, and three state constitutional provisions.

county unit system cases, such as South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641 (1950), reflect the viewpoint of MacDougall, i e, to refrain from intervening where there is some rational policy behind the State's system.[4]

II.

The controlling facts cannot be disputed It appears from the record that 37% of the voters of Tennessee elect 20 of the 33 Senators while 40% of the voters elect 63 of the 99 members of the House. But this might not on its face be an "invidious discrimination," Williamson v Lee Optical of Okla, Inc 348 US 483, 489, 99 L ed 563, 573, 75 S Ct 461 (1955), for a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it" McGowan v Maryland, 366 US 420, 426, 6 L ed 2d 393, 399, 81 S Ct 1101 (1961)

It is true that the apportionment policy incorporated in Tennessee's Constitution, i e, state-wide numerical equality of representation with certain minor qualifications,[6] is a rational one On a county-by-county comparison a districting plan based thereon naturally will have disparities in representation due to the qualifications But this to my mind does not raise constitutional problems, for the overall policy is reasonable. However, the root of the trouble is not in Tennessee's Constitution, for admittedly its policy has not been followed The discrimination lies in the action of Tennessee's Assembly in allocating legislative seats to counties or districts created by it Try as one may, Tennessee's apportionment just cannot be made to fit the pattern cut by its Constitution This was the finding of the District Court The policy of the Constitution referred to by the dissenters, therefore, is of no relevance here. We must examine what the Assembly has done[6] The frequency and magnitude of the inequalities in the present districting admit of no policy whatever An examination of Table I accompanying this opinion conclusively reveals that the apportionment picture in Tennessee is a topsy-turvical of gigantic proportions. This is not to say that some of the disparity cannot be explained, but when the entire Table is examined—comparing the voting strength of counties of like population as well as contrasting that of the smaller with the larger counties —it leaves but one conclusion, namely that Tennessee's apportionment is a crazy quilt without rational basis At the risk of being accused of picking out a few of the horribles I shall allude to a series of examples that are taken from Table I.

As is admitted there is a wide disparity of voting strength between the large and small counties Some samples are: Moore County has a

[4] Georgia based its election system on a consistent combination of political units and population, giving six unit votes to the eight most populous counties, four unit votes to the 30 counties next in population, and two unit votes to each of the remaining counties

[5] See Part I of Appendix to Mr Justice Harlan's dissent

[6] It is suggested that the districting is not unconstitutional since it was established by a statute that was constitutional when passed some 60 years ago But many Assembly Sessions since that time have deliberately refused to change the original act, and in any event "a statute [constitutionally] valid when enacted may become invalid by change in the conditions to which it is applied" Nashville, C & St L R Co v Walters, 294 US 405, 415, 79 L ed 949, 955, 55 S Ct 486 (1935)

total representation of two[7] with a population (2,340) of only one-eleventh of Rutherford County (25,316) with the same representation; Decatur County (5,563) has the same representation as Carter (23,303) though the latter has four times the population; likewise, Loudon County (13,264), Houston (3,084), and Anderson County (33,990) have the same representation, i e, 1.25 each But it is said that in this illustration all of the underrepresented counties contain municipalities of over 10,000 population and they therefore should be included under the "urban" classification, rationalizing this disparity as an attempt to effect a rural-urban political balance. But in so doing one is caught up in the backlash of his own bull whip, for many counties have municipalities with a population exceeding 10,000, yet the same invidious discrimination is present. For example:

County	*Population*	*Representation*
Carter	23,303	1 10
Maury	24,556	2 25
Washington	36,967	1 93
Madison	37,245	3 50

Likewise, counties with no municipality of over 10,000 suffer a similar discrimination:

County	*Population*	*Representation*
Grundy	6,540	0 95
Chester	6,391	2 00
Cumberland	9,593	0 63
Crockett	9,676	2 00
Loudon	13,264	1 25
Fayette	13,577	2 50

This could not be an effort to give political balance between rural and urban populations. Since discrimination is present among counties of like population, the plan is neither consistent nor rational It discriminates horizontally creating gross disparities between rural areas themselves as well as between urban areas themselves,[8] still maintaining the wide vertical disparity already pointed out between rural and urban.

It is also insisted that the representation formula used above (see n 7) is "patently deficient" because "it eliminates from consideration the relative voting power of the counties that are joined together in a single election district " This is a strange claim coming from those who rely on the proposition that "the voice of every voter" need not have "approximate equality " Indeed, representative government, as they say, is not necessarily one of "bare numbers." The use of floterial districts in our political system is not ordinarily based on the theory that

[7] "Total representation" indicates the combined representation in the State Senate (33 members) and the State House of Representatives (99 members) in the Assembly of Tennessee Assuming a county has one representative, it is credited in this calculation with 1/99 Likewise, if the same county has one-third of a senate seat it is credited with another 1/99, and thus such a county, in our calculation, would have a "total representation" of two, if a county has one representative and one-sixth of a senate seat, it is credited with 1 5/99, or 1 50 It is this last figure that I use here in an effort to make the comparison clear The 1950 rather than the 1960 census of voting population is used to avoid the charge that use of 1960 tabulations might not have allowed sufficient time for the State to act However, the 1960 picture is even more irrational than the 1950 one

[8] Of course this was not the case in the Georgia county unit system, South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, supra, or the Illinois initiative plan, MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, supra, where recognized political units having independent significance were given minimum political weight

the floterial representative is splintered among the counties of his district per relative population His function is to represent the whole district However, I shall meet the charge on its own ground and by use of its "adjusted 'total representation'" formula show that the present apportionment is loco. For example, compare some "urban" areas of like populations, using the Harlan formula·

County	*Population*	*Representation*
Washington	36,967	2 65
Madison	37,245	4 87
Carter	23,303	1 48
Greene	23,649	2 05
Maury	24,556	3 81
Coffee	13,406	2 32
Hamblen	14,090	1 07

And now, using the same formula, compare some so-called "rural" areas of like population:

County	*Population*	*Representation*
Moore	2,340	1 23
Pickett	2,565	22
Stewart	5,238	1 60
Cheatham	5,263	74
Chester	6,391	1 36
Grundy	6,540	69
Smith	8,731	2 04
Unicoi	8,787	40

And for counties with similar representation but with gross differences in population, take:

County	*Population*	*Representation*
Sullivan	55,712	4 07
Maury	24,556	3 81
Blount	30,353	2 12
Coffee	13,406	2 32

These cannot be "distorted effects," for here the same formula proposed by the dissenters is used and the result is even "a crazier" quilt

The truth is that—although this case has been here for two years and has had over six hours' argument (three times the ordinary case) and has been most carefully considered over and over again by us in Conference and individually—no one, not even the State nor the dissenters, has come up with any rational basis for Tennessee's apportionment statute

No one—except the dissenters advocating the Harlan "adjusted 'total representation'" formula—contends that mathematical equality among voters is required by the Equal Protection Clause But certainly there must be some rational design to a State's districting The discrimination here does not fit any pattern—as I have said, it is but a crazy quilt My Brother Harlan contends that other proposed apportionment plans contain disparities Instead of chasing those rabbits he should first pause long enough to meet appellants proof of discrimination by showing that in fact the present plan follows a rational policy. Not being able to do this, he merely counters with such generalities as "classic

legislative judgment," no "significant discrepancy," and "de minimis departures." I submit that even a casual glance at the present apportionment picture shows these conclusions to be entirely fanciful. If present representation has a policy at all, it is to maintain the status quo of invidious discrimination at any cost. Like the District Court, I conclude that appellants have met the burden of showing "Tennessee is guilty of a clear violation of the state constitution and of the [federal] rights of the plaintiffs. . . ."

III.

Although I find the Tennessee apportionment statute offends the Equal Protection Clause, I would not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee. But the majority of the people of Tennessee have no "practical opportunities for exerting their political weight at the polls" to correct the existing "invidious discrimination." Tennessee has no initiative and referendum. I have searched diligently for other "practical opportunities" present under the law. I find none other than through the federal courts. The majority of the voters have been caught up in a legislative strait jacket. Tennessee has an "informed, civically militant electorate" and "an aroused popular conscience," but it does not sear "the conscience of the people's representatives." This is because the legislative policy has riveted the present seats in the Assembly to their respective constituencies, and by the votes of their incumbents a reapportionment of any kind is prevented. The people have been rebuffed at the hands of the Assembly; they have tried the constitutional convention route, but since the call must originate in the Assembly it, too, has been fruitless. They have tried Tennessee courts with the same result,[9] and Governors have fought the tide only to flounder. It is said that there is recourse in Congress and perhaps that may be, but from a practical standpoint this is without substance. To date Congress has never undertaken such a task in any State. We therefore must conclude that the people of Tennessee are stymied and without judicial intervention will be saddled with the present discrimination in the affairs of their state government.

IV.

Finally, we must consider if there are any appropriate modes of effective judicial relief. The federal courts are, of course, not forums for political debate, nor should they resolve themselves into state constitutional conventions or legislative assemblies. Nor should their jurisdiction be exercised in the hope that such a declaration, as is made today, may have the direct effect of bringing on legislative action and relieving the courts of the problem of fashioning relief. To my mind this would be nothing less than blackjacking the Assembly into reapportioning the State. If judicial competence were lacking to fashion an effective decree, I would dismiss this appeal. However, like the Solicitor General of the United States, I see no such difficulty in the position of this case. One plan might be to start with the existing as-

[9] It is interesting to note that state judges often rest their decisions on the ground that this Court has precluded adjudication of the federal claim. See, e. g., Scholle v. Hare, 360 Mich. 1, 104 N.W.2d 63 (1960).

sembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective But the plan here suggested would be at least release the strangle hold now on the Assembly and permit it to redistrict itself

In this regard the appellants have proposed a plan based on the rationale of state-wide equal representation Not believing that numerical equality of representation throughout a State is constitutionally required, I would not apply such a standard albeit a permissive one Nevertheless, the dissenters attack it by the application of the Harlan "adjusted 'total representation'" formula The result is that some isolated inequalities are shown, but this in itself does not make the proposed plan irrational or place it in the "crazy quilt" category Such inequalities as the dissenters point out in attempting to support the present apportionment as rational, are explainable Moreover, there is no requirement that any plan have mathematical exactness in its application Only where, as here, the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination

In view of the detailed study that the Court has given this problem, it is unfortunate that a decision is not reached on the merits The majority appears to hold, at least sub silentio, that an invidious discrimination is present, but it remands to the three-judge court for it to make what is certain to be that formal determination It is true that Tennessee has not filed a formal answer However, it has filed voluminous papers and made extended arguments supporting its position At no time has it been able to contradict the appellants' factual claims, it has offered no rational explanation for the present apportionment; indeed, it has indicated that there are none known to it As I have emphasized, the case proceeded to the point before the three-judge court that it was able to find an invidious discrimination factually present, and the State has not contested that holding here In view of all this background I doubt if anything more can be offered or will be gained by the State on remand, other than time Nevertheless, not being able to muster a court to dispose of the case on the merits, I concur in the opinion of the majority and acquiesce in the decision to remand However, in fairness I do think that Tennessee is entitled to have my idea of what it faces on the record before us and the trial court some light as to how it might proceed.

As John Rutledge (later Chief Justice) said 175 years ago in the course of the Constitutional Convention, a chief function of the Court is to secure the national rights [10] Its decision today supports the proposition for which our forebears fought and many died, namely that "to be fully conformable to the principle of right, the form of government must be representative" That is the keystone upon which our government was founded and lacking which no republic can survive It is well for this Court to practice self-restraint and discipline in constitutional adjudication, but never in its history have those principles received sanction where the national rights of so many have been so clearly

[10] I Farrand, The Records of the Federal Convention of 1787, 124

infringed for so long a time National respect for the courts is more enhanced through the forthright enforcement of those rights rather than by rendering them nugatory through the interposition of subterfuges In my view the ultimate decision today is in the greatest tradition of this Court.

TABLE I.

County	*1950 voting population*	*Present total representation using J Clark's formula*	*Present total representation using J Harlan's formula*	*Proposed total representation (appellant's plan), using J Harlan's formula*
Van Buren	2,039	63	.23	.11
Moore	2,340	2 00	1 23	.18
Pickett	2,565	70	22	24
Sequatchie	2,904	63	33	19
Meigs	3,039	.93	.48	17
Houston	3,084	1 25	.46	24
Trousdale	3,351	1 33	43	12
Lewis	3,413	1 25	39	25
Perry	3,711	1 50	71	40
Bledsoe	4,198	.63	.49	24
Clay	4,528	.70	.40	42
Union	4,600	76	.37	45
Hancock	4,710	93	.62	49
Stewart	5,238	1 75	1 60	41
Cheatham	5,263	1 33	.72	20
Cannon	5,341	2 00	1 43	52
Decatur	5,563	1 10	.79	52
Lake	6,252	2 00	1 44	.41
Chester	6,391	2 00	1 36	.19
Grundy	6,540	95	.69	43
Humphreys	6,588	1 25	1 39	.72
Johnson	6,649	1 10	.42	.43
Jackson	6,719	1 50	1 43	63
De Kalb	6,984	2 00	1 56	68
Benton	7,023	1 10	1.01	.66
Fentress	7,057	.70	.62	64
Grainger	7,125	.93	.94	65
Wayne	7,176	1 25	69	.76
Polk	7,330	1 25	68	.73
Hickman	7,598	2 00	1 85	80
Macon	7,974	1 33	1 01	.61
Morgan	8,308	93	.59	.75
Scott	8,417	76	.68	62
Smith	8,731	2 50	2 04	67
Unicoi	8,787	.93	40	.63
Rhea	8,937	.93	1 42	21
White	9,244	1 43	1 69	90
Overton	9,474	1 70	1 83	.89
Hardin	9,577	1 60	1.61	93
Cumberland	9,593	63	1 10	.87
Crockett	9,676	2.00	1 66	.63
Henderson	10,199	1 50	78	96
Marion	10,998	1 75	1 73	72
Marshall	11,288	2 50	2 28	84
Dickson	11,294	1 75	2 29	1 23
Jefferson	11,359	1 10	.87	1 03
McNairy	11,601	1 60	1 74	1 13
Cocke	12,572	1 60	1 46	.89
Sevier	12,793	1 60	1 47	69
Claiborne	12,799	1 43	1 61	1 34
Monroe	12,884	1 75	1.68	1 30
Loudon	13,264	1.25	.28	.52

County	1950 voting population	Present total representation using J. Clark's formula	Present total representation using J. Harlan's formula	Proposed total representation (appellant's plan), using J. Harlan's formula
Warren	13,337	1 75	1 89	1 68
Coffee	13,406	2 00	2 32	1 68
Hardeman	13,565	1 60	1 86	1 11
Fayette	13,577	2 50	2 48	1 11
Haywood	13,934	2 50	2 52	1 69
Williamson	14,064	2 33	2 96	1 71
Hamblen	14,090	1.10	1 07	1 67
Franklin	14,297	1.75	1 95	1 73
Lauderdale	14,413	2 50	2 45	1 73
Bedford	14,732	2 00	1 45	1 74
Lincoln	15,092	2 50	2 72	1 77
Henry	15,465	2 83	2 76	1 73
Lawrence	15,847	2 00	2 22	1 81
Giles	15,935	2 25	2 54	1 81
Tipton	15,944	3 00	1 68	1 13
Robertson	16,456	2 83	2 62	1 85
Wilson	16,459	3 00	3 03	1 21
Carroll	16,472	2 83	2 88	1 82
Hawkins	16,900	3 00	1 93	1 82
Putnam	17,071	1 70	2 50	1 86
Campbell	17,477	76	1 40	1 94
Roane	17,639	1 75	1 26	1 30
Weakley	18,007	2 33	2 63	1 85
Bradley	18,273	1 25	1 67	1 92
McMinn	18,347	1 75	1 97	1 92
Obion	18,434	2 00	2 30	1 94
Dyer	20,062	2 00	2 36	2 32
Sumner	20,143	2 33	3 56	2 54
Carter	23,303	1 10	1 48	2 55
Greene	23,649	1 93	2 05	2 68
Maury	24,556	2 27	3 81	2 85
Rutherford	25,316	2 00	3 02	2 39
Montgomery	26,284	3 00	3 73	3 06
Gibson	29,832	5 00	5 00	2 86
Blount	30,353	1 60	2 12	2 19
Anderson	33,990	1.25	1 30	3 62
Washington	36,967	1 93	2 65	3 45
Madison	37,245	3 50	4 87	3 69
Sullivan	55,712	3 00	4 07	5 57
Hamilton	131,971	6 00	6 00	15 09
Knox	140,559	7 25	8 96	15 21
Davidson	211,930	12.50	12 93	21 57
Shelby	312,345	15 50	16 85	31 59

Mr Justice Stewart, concurring:

The separate writings of my dissenting and concurring Brothers stray so far from the subject of to day's decision as to convey, I think, a distressingly inaccurate impression of what the Court decides For that reason, I think it appropriate, in joining the opinion of the Court, to emphasize in a few words what the opinion does and does not say.

The Court today decides three things and no more "(a) that the court possessed jurisdiction of the subject matter, (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) . . . that the appellants have standing to challenge the Tennessee apportionment statutes." Supra, p. 674.

The complaint in this case asserts that Tennessee's system of apportionment is utterly arbitrary—without any possible justification in rationality The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject Contrary to the suggestion of my Brother Harlan, the Court does not say or imply that "state legislatures must be so structured as to reflect with approximate equality the voice of every voter" Infra, p 752 The Court does not say or imply that there is anything in the Federal Constitution "to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people" Infra, p 752 And contrary to the suggestion of my Brother Douglas, the Court most assuredly does not decide the question, "may a State weight the vote of one county or one district more heavily than it weights the vote in another?" Supra, p 701

In MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, the Court held that the Equal Protection Clause does not "deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former" 335 US, at 284 In case after case arising under the Equal Protection Clause the Court has said what it said again only last Term—that "the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others" McGowan v Maryland, 366 US 420, 425, 6 L ed 2d 393, 399, 81 S Ct 1101 In case after case arising under that Clause we have also said that "the burden of establishing the unconstitutionality of a statute rests on him who assails it" Metropolitan Casualty Ins Co v Brownell, 294 US 580, 584, 79 L ed 1070, 1072, 55 S Ct 538.

Today's decision does not turn its back on these settled precedents I repeat, the Court today decides only, (1) that the District Court possessed jurisdiction of the subject matter, (2) that the complaint presents a justiciable controversy; (3) that the appellants have standing My Brother Clark has made a convincing prima facie showing that Tennessee's system of apportionment is in fact utterly arbitrary—without any possible justification in rationality My Brother Harlan has, with imagination and ingenuity, hypothesized possibly rational bases for Tennessee's system But the merits of this case are not before us now The defendants have not yet had an opportunity to be heard in defense of the State's system of apportionment; indeed, they have not yet even filed an answer to the complaint As in other cases, the proper place for the trial is in the trial court, not here

Mr Justice Frankfurter, whom Mr Justice Harlan joins, dissenting

The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago The impressive body of rulings thus cast aside reflected the equally uniform course of our political history regarding the relationship between population and legislative representation—a wholly different matter from denial of the franchise to individuals because of race, color, religion or sex Such a massive

repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme Disregard of inherent limits in the effective exercise of the Court's "judicial Power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined It may well impair the Court's position as the ultimate organ of "the supreme Law of the Land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce The Court's authority—possessed neither of the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements

A hypothetical claim resting on abstract assumptions is now for the first time made the basis for affording illusory relief for a particular evil even though it foreshadows deeper and more pervasive difficulties in consequence The claim is hypothetical and the assumptions are abstract because the Court does not vouchsafe the lower courts—state and federal—guide-lines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's unprecedented disposition is bound to stimulate in connection with politically motivated reapportionments in so many States In such a setting, to promulgate jurisdiction in the abstract is meaningless It is devoid of reality as "a brooding omnipresence in the sky" for it conveys no intimation what relief, if any, a District Court is capable of affording that would not invite legislatures to play ducks and drakes with the judiciary For this Court to direct the District Court to enforce a claim to which the Court has over the years consistently found itself required to deny legal enforcement and at the same time to find it necessary to withhold any guidance to the lower court how to enforce this turnabout, new legal claim, manifests an odd—indeed an esoteric—conception of judicial propriety One of the Court's supporting opinions, as elucidated by commentary, unwittingly affords a disheartening preview of the mathematical quagmire (apart from divers judicially inappropriate and elusive determinants), into which this Court today catapults the lower courts of the country without so much as adumbrating the basis for a legal calculus as a means of extrication Even assuming the indispensable intellectual disinterestedness on the part of judges in such matters, they do not have accepted legal standards or criteria or even reliable analogies to draw upon for making judicial judgments To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly, omnicompetence to judges The Framers of the Constitution persistently rejected a proposal that embodied this assumption and Thomas Jefferson never entertained it.

Recent legislation, creating a district appropriately described as "an atrocity of ingenuity," is not unique Considering the gross inequality among legislative electoral units within almost every State, the Court naturally shrinks from asserting that in districting at least substantial

equality is a constitutional requirement enforceable by courts.† Room continues to be allowed for weighting. This of course implies that geography, economics, urban-rural conflict, and all the other nonlegal factors which have throughout our history entered into political districting are to some extent not to be ruled out in the undefined vista now opened up by review in the federal courts of state reapportionments To some extent—aye, there's the rub In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty States If state courts should for one reason or another find themselves unable to discharge this task, the duty of doing so is put on the federal courts or on this Court, if State views do not satisfy this Court's notion of what is proper districting

We were soothingly told at the bar of this Court that we need not worry about the kind of remedy a court could effectively fashion once the abstract constitutional right to have courts pass on a state-wide system of electoral districting is recognized as a matter of judicial rhetoric, because legislatures would heed the Court's admonition This is not only an euphoric hope It implies a sorry confession of judicial impotence in place of a frank acknowledgement that there is not under our Constitution a judicial remedy for every political mischief, for every undesirable exercise of legislative power The Framers carefully and with deliberate forethough refused so to enthrone the judiciary. In this situation, as in others of like nature, appeal for relief does not belong here Appeal must be to an informed, civically militant electorate In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives In any event there is nothing judicially more unseemly nor more self-defeating than for this Court to make in terrorem pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope

This is the latest in the series of cases in which the Equal Protection and Due Process Clauses of the Fourteenth Amendment have been invoked in federal courts as restrictions upon the power of the States to allocate electoral weight among the voting populations of their various geographical subdivisions.[1] The present action, which comes here on

† It is worth reminding that the problem of legislative apportionment is not one dividing North and South Indeed, in the present House of Representatives, for example, Michigan's congressional districts are far less representative of the numbers of inhabitants, according to the 1960 census, than are Louisiana's Michigan's Sixteenth District, which is 93 1% urban, contains 802,394 persons and its Twelfth, which is 47 6% urban, contains 177,421—one-fifth as many persons Louisiana's most populous district, the Sixth, is 53 6% urban and contains 536,029 persons, and its least populous, the Eighth, 36 7% urban, contains 263,850—nearly half Gross disregard of any assumption that our political system implies even approximation to the notion that individual votes in the various districts within a State should have equal weight is as true, e g, of California, Illinois, and Ohio as it is of Georgia See United States Department of Commerce, Census Release, February 24, 1962, CB 62–23

[1] See Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1, Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, reh den 329 US 825, 91 L ed 701, 67 S Ct 118, motion for rearg before the full bench den 329 US 828, 91 L ed 703, 67 S Ct 199, Cook v Fortson, 329 US 675, 91 L ed 596, 67 S Ct 21, reh den 329, US 329, 91 L ed 703, 67 S Ct 296, Turman v Duckworth, 329 US 675, 91 L ed 596, 67 S Ct 21, reh den 329 US 829, 91 L ed 703, 67 S Ct 296, Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973, MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, Tedesco v Board of Supervisors of Elections, 339 US 940, 94 L ed 1357, 70 S Ct 797, Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368, Cox v Peters, 342 US 936, 96 L ed 697, 72 S Ct 559, reh den 343 US 921, 96 L ed 1334, 72 S Ct 675, Anderson v Jordan, 343

appeal from an order of a statutory three-judge District Court dismissing amended complaints seeking declaratory and injunctive relief, challenges the provisions of Tenn Code Ann, 1955, §§ 3–101 to 3–109, which apportion state representative and senatorial seats among Tennessee's ninety-five counties.

The original plaintiffs, citizens and qualified voters entitled to vote for members of the Tennessee Legislature in the several counties in which they respectively reside, bring this action in their own behalf and "on behalf of all other voters in the State of Tennessee," or, as they alternatively assert, "on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated." The cities of Knoxville and Chattanooga and the Mayor of Nashville—on his own behalf as a qualified voter and, pursuant to an authorizing resolution by the Nashville City Council, as a representative of all the city's residents —were permitted to intervene as parties plaintiff.[2] The defendants are executive officials charged with statutory duties in connection with state elections.[3]

The original plaintiffs' amended complaint avers, in substance, the following.[4] The Constitution of the State of Tennnessee declares that "elections shall be free and equal," provides that no qualifications other than age, citizenship and specified residence requirements shall be attached to the right of suffrage, and prohibits denying to any person the suffrage to which he is entitled except upon conviction of an infamous crime. Art 1 § 5; Art 4 § 1 It requires an enumeration of qualified voters within every term of ten years after 1871 and an apportionment of representatives and senators among the several coun-

US 912, 90 L ed 1328, 72 S Ct 648, Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223, Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559, Hartsfield v Sloan, 357 US 916, 2 L ed 2d 1363, 78 S Ct 1363, Matthews v Handley, 361 US 127, 4 L ed 2d 180, 80 S Ct 256, Perry v Folsom, 144 F Supp 874 (DC ND Ala), Magraw v Donovan, 163 F Supp 184 (DC D Minn), cf Dyer v Abe, 138 F Supp 220 (DC D Hawaii) And see Keogh v Neely, 50 F2d 685 (CA7th Cir)

[2] Although the motion to intervene by the Mayor of Nashville asserted an interest in the litigation in only a representative capacity, the complaint which he subsequently filed set forth that he was a qualified voter who also sued in his own behalf The municipalities of Knoxville and Chattanooga purport to represent their residents Since the claims of the municipal intervenors do not differ materially from those of the parties who sue as individual voters, the Court need not now determine whether the municipalities are proper parties to this proceeding See, e g, Stewart v Kansas City, 249 US 14, 60 L ed 120, 36 S Ct 15

[3] The original complaint named as defendants Tennessee's Secretary of State, Attorney General, Coordinator of Elections, and the three members of the State Board of Elections, seeking to make the Board members representatives of all the State's County Election Commissioners The prayer in an intervening complaint by the City of Knoxville, that the Commissioners of Elections of Knox County be added as parties defendant seems not to have been acted on by the court below Defendants moved to dismiss, inter alia, on the ground of failure to join indispensable parties, and they argue in this Court that only the County Election Commissioners of the ninety-five counties are the effective administrators of Tennessee's elections laws, and that none of the defendants have substantial duties in connection therewith The District Court deferred ruling on this ground of the motion Inasmuch as it involves questions of local law more appropriately decided by judges sitting in Tennessee than by this Court, and since in any event the failure to join County Election Commissioners in this action looking to prospective relief could be corrected, if necessary, by amendment of the complaints, the issue does not concern the Court on this appeal

[4] Jurisdiction is predicated upon RS § 1979, 42 USC § 1983, and 28 USC § 1343 (3)

ties or districts according to the number of qualified voters in each[5] at the time of each decennial enumeration. Art 2 §§ 4, 5, 6. Notwithstanding these provisions, the State Legislature has not reapportioned itself since 1901. The Reapportionment Act of that year, Tenn Acts 1901, c. 122, now Tenn Code Ann, 1955, §§ 3–101 to 3–109,[6] was unconstitutional when enacted, because not preceded by the required enumeration of qualified voters and because it allocated legislative seats arbitrarily, unequally and discriminatorily, as measured by the 1900 federal census Moreover, irrespective of the question of its validity in 1901, it is asserted that the Act became "unconstitutional and obsolete" in 1911 by virtue of the decennial reapportionment requirement of the Tennessee Constitution Continuing a "purposeful and systematic plan to discriminate against a geographic class of persons," recent Tennessee Legislatures have failed, as did their predecessors, to enact reapportionment legislation, although a number of bills providing for reapportionment have been introduced Because of population shifts since 1901, the apportionment fixed by the Act of that year and still in effect is not proportionate to population, denies to the counties in which the plaintiffs live an additional number of representatives to which they are entitled, and renders plaintiffs' votes "not as effective as the votes of the voters residing in other senatorial and representative districts . . ." Plaintiffs "suffer a debasement of their votes by virtue of the incorrect, arbitrary, obsolete and unconstitutional apportionment of the General Assembly . . . ," and the totality of the malapportionment's effect—which permits a minority of about thirty-seven percent of the voting population of the State to control twenty of the thirty-three members of Tennessee's Senate, and a minority of forty percent of the voting population to control sixty-three of the ninety-nine members of the House—results in "a distortion of the constitutional system" established by the Federal and State Constitutions, prevents the General Assembly "from being a body representative of the people of the State of Tennessee, . . ." and is "contrary to the basic principle of representative government . . . ," and "contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence . . . ."

[5] However, counties having two-thirds of the ratio required for a Representative are entitled to seat one member in the House, and there are certain geographical restrictions upon the formation of Senate districts The applicable provisions of Article 2 of the Tennessee Constitution are

"*Sec 4 Census*.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years"

"*Sec 5 Apportionment of representatives*.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine, Provided that any county having two-thirds of the ratio shall be entitled to one member"

"*Sec 6 Apportionment of senators*.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or counties in the Senate, as near as may be practicable When a district is composed of two or more counties, they shall be adjoining, and no county shall be divided in forming a district

[6] It is alleged that certain amendments to the Act of 1901 made only minor modifications of that Act, adjusting the boundaries of individual districts in a manner not material to plaintiffs' claims

Exhibits appended to the complaint purport to demonstrate the extent of the inequalities of which plaintiffs complain Based upon "approximate voting population,"[7] these set forth figures showing that the State Senator from Tennessee's most populous senatorial district represents five and two-tenths times the number of voters represented by the Senator from the least populous district, while the corresponding ratio for most and least populous House districts is more than eighteen to one The General Assembly thus apportioned has discriminated against the underrepresented counties and in favor of the overrepresented counties in the collection and distribution of various taxes and tax revenues, notably in the distribution of school and highway-improvement funds,[8] this discrimination being "made possible and effective" by the Legislature's failure to reapportion itself Plaintiffs conclude that election of the State Legislature pursuant to the apportionment fixed by the 1901 Act violates the Tennessee Constitution and deprives them of due process of law and of the equal protection of the laws guaranteed by the Fourteenth Amendment. Their prayer below was for a declaratory judgment striking down the Act, an injunction restraining defendants from any acts necessary to the holding of elections in the districts prescribed by Tenn Code Ann, 1955, §§ 3–101 to 3–109, until such time as the legislature is reapportioned "according to the Constitution of the State of Tennessee," and an order directing defendants to declare the next primary and general elections for members of the Tennessee Legislature on an at-large basis—the thirty-three senatorial candidates and the ninety-nine representative candidates receiving the highest number of votes to be declared elected[9]

Motions to dismiss for want of jurisdiction of the subject matter and for failure to state a claim were made and granted, 179 F Supp 824, the District Court relying upon this Court's series of decisions beginning with Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, reh den 329 US 825, 91 L ed 701, 67 S Ct 118, motion for rearg before the full bench den 329 US 828, 91 L ed 703, 67 S Ct 199 The original and intervening plaintiffs bring the case here on appeal 364 US 898, 5 L ed 2d 193, 81 S Ct 230 In this Court they

[7] The exhibits do not reveal the source of the population figures which they set forth, but it appears that the figures were taken from the United States Census of Population, 1950, Volume II, Part 42 (Tennessee), Table 41, at 78–91 These census figures represent the total population over twenty-one years of age in each Tennessee county they do not purport to enumerate "qualified voters" or "qualified electors" the measure of apportionment prescribed by the Tennessee Constitution See note 5, supra To qualify to vote in Tennessee, in addition to fulfilling the age requirement, an individual must be a citizen of the United States, a resident of the State for twelve months and of the county where he offers his vote for six months next preceding the election, and must not be under the disqualification attaching to conviction for certain offenses Tenn Code Ann, 1955, §§ 2–201, 2–205 The statistics found in the United States Census of Population, 1950, Volume II, Part 42 (Tennessee), Table 42, at 92–97, suggest that the residence requirement, in particular, may be an unknown variable of considerable significance Appellants do not suggest a means by which a court, on the basis of the federal census figures, can determine the number of qualified voters in the various Tennessee counties

[8] The "county aid funds" derived from a portion of a state gasoline privilege tax, for example, are distributed among the counties as follows one-half equally among the ninety-five counties, one-quarter on the basis of area, one-quarter on the basis of population, to be used by county authorities in the building, repairing and improving of county roads and bridges Tenn Code Ann, 1955 § 54–403 Appellants urge that this distribution is discriminatory

[9] Plaintiffs also suggested, as an alternative to at-large elections, that the District Court might itself redistrict the State They did not, however, expressly pray such relief

have altered their request for relief, suggesting a "step-by-step approach." The first step is a remand to the District Court with directions to vacate the order dismissing the complaint and to enter an order retaining jurisdiction, providing "the necessary spur to legislative action . . " If this proves insufficient, appellants will ask the "additional spur" of an injunction prohibiting elections under the 1901 Act, or a declaration of the Act's unconstitutionality, or both. Finally, all other means failing, the District Court is invited by the plaintiffs, greatly daring, to order an election at large or redistrict the State itself or through a master. The Solicitor General of the United States, who has filed a brief amicus and argued in favor of reversal, asks the Court on this appeal to hold only that the District Court has "jurisdiction" and may properly exercise it to entertain the plaintiffs' claims on the merits This would leave to that court after remand the questions of the challenged statute's constitutionality and of some undefined, unadumbrated relief in the event a constitutional violation is found After an argument at the last Term, the case was set down for reargument, 366 US 907, 81 S Ct 1082, and heard this Term.

I.

In sustaining appellants' claim, based on the Fourteenth Amendment, that the District Court may entertain this suit, this Court's uniform course of decision over the years are overruled or disregarded. Explicitly it begins with Colegrove v Green (US) supra, decided in 1946, but its roots run deep in the Court's historic adjudicatory process.

Colegrove held that a federal court should not entertain an action for declaratory and injunctive relief to adjudicate the constitutionality, under the Equal Protection Clause and other federal constitutional and statutory provisions, of a state statute establishing the respective districts for the State's election of Representatives to the Congress. Two opinions were written by the four Justices who composed the majority of the seven sitting members of the Court. Both opinions joining in the result in Colegrove v Green agreed that considerations were controlling which dictated denial of jurisdiction though not in the strict sense of want of power While the two opinions show a divergence of view regarding some of these considerations, there are important points of concurrence Both opinions demonstrate a predominant concern, first, with avoiding federal judicial involvement in matters traditionally left to legislative policymaking, second, with respect to the difficulty—in view of the nature of the problems of apportionment and its history in this country—of drawing on or devising judicial standards for judgment, as opposed to legislative determinations, of the part which mere numerical equality among voters should play as a criterion for the allocation of political power; and, third, with problems of finding appropriate modes of relief—particularly, the problem of resolving the essentially political issue of the relative merits of at-large elections and elections held in districts of unequal population

The broad applicability of these considerations—summarized in the loose shorthand phrase, "political question" in cases involving a State's

apportionment of voting power among its numerous localities has led the Court, since 1946, to recognize their controlling effect in a variety of situations (In all these cases decision was by a full Court) The "political question" principle as applied in Colegrove has found wide application commensurate with its function as "one of the rules basic to the federal system and this Court's appropriate place within that structure" Rescue Army v Municipal Court, 331 US 549, 570, 91 L ed 1666, 1679, 67 S Ct 1409. In Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973, litigants brought suit in a Federal District Court challenging as offensive to the Equal Protection Clause Illinois' state legislative apportionment laws They pointed to state constitutional provisions requiring decennial reapportionment and allocation of seats in proportion to population, alleged a failure to reapportion for more than forty-five years—during which time extensive population shifts had rendered the legislative districts grossly unequal—and sought declaratory and injunctive relief with respect to all elections to be held thereafter After the complaint was dismissed by the District Court, this court dismissed an appeal for want of a substantial federal question A similar District Court decision was affirmed here in Radford v Gary, 352 US 991, 1 L ed 2d 540, 77 S Ct 559 And cf Remmey v Smith, 342 US 916, 96 L ed 685, 72 S Ct 368 In Tedesco v Board of Supervisors of Elections, 339 US 940, 94 L ed 1357, 70 S Ct 797, the Court declined to hear, for want of a substantial federal question, the claim that the division of a municipality into voting districts of unequal population for the selection for councilmen fell afoul of the Fourteenth Amendment, and in Cox v Peters, 342 US 936, 96 L ed 697, 72 S Ct 559, reh den 343 US 921, 96 L ed 1334, 72 S Ct 675, it found no substantial federal question raised by a state court's dismissal of a claim for damages for "devaluation" of plaintiff's vote by application of Georgia's county-unit system in a primary election for the Democratic gubernatorial candidate. The same Georgia system was subsequently attacked in a complaint for declaratory judgment and an injunction; the federal district judge declined to take the requisite steps for the convening of a statutory three-judge court, and this Court, in Hartfield v Sloan, 357 US 916, 2 L ed 2d 1363, 78 S Ct 1363, denied a motion for leave to file a petition for a writ of mandamus to compel the district judge to act. In MacDougall v Green, 335 US 281, 283, 93 L ed 3, 7, 69 S Ct 1, the Court noted that "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government," and, citing the Colegrove cases, declined to find in "such broad constitutional concepts as due process and equal protection of the laws," id 335 US at 284, a warrant for federal judicial invalidation of an Illinois statute requiring as a condition for the formation of a new political party the securing of at least two hundred signatures from each of fifty counties. And in South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, another suit attacking Georgia's county-unit law, it affirmed a District Court dismissal, saying

"Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions" Id. 339 US at 277.

Of course it is important to recognize particular, relevant diversities among comprehensively similar situations Appellants seek to distinguish several of this Court's prior decisions on one or another ground —Colegrove v Green on the ground that congressional, not state legislative, apportionment was involved, Remmey v Smith on the ground that state judicial remedies had not been tried, Radford v Gary on the ground that Oklahoma has the initiative, whereas Tennessee does not It would only darken counsel to discuss the relevance and significance of each of these assertedly distinguishing factors here and in the context of this entire line of cases Suffice it that they do not serve to distinguish Colegrove v Barrett, 330 US 804, 91 L ed 1262, 67 S Ct 973, supra, which is on all fours with the present case, or to distinguish Kidd v McCanless, 352 US 920, 1 L ed 2d 157, 77 S Ct 223, in which the full Court without dissent, only five years ago, dismissed on authority of Colegrove v Green and Anderson v Jordan, 343 US 912, 96 L ed 1328, 72 S Ct 648, and appeal from the Supreme Court of Tennessee in which a precisely similar attack was made upon the very statute now challenged If the weight and momentum of an unvarying course of carefully considered decisions are to be respected, appellants' claims are foreclosed not only by precedents governing the exact facts of the present case but are themselves supported by authority the more persuasive in that it gives effect to the Colegrove principle in distinctly varying circumstances in which state arrangements allocating relative degrees of political influence among geographic groups of voters were challenged under the Fourteenth Amendment

II.

The Colegrove doctrine, in the form in which repeated decisions have settled it, was not an innovation It represents long judicial thought and experience From its earliest opinions this Court has consistently recognized a class of controversies which do not lend themselves to judicial standards and judicial remedies To classify the various instances as "political questions" is rather a form of stating this conclusion than revealing of analysis[10] Some of the cases so labelled have no relevance here But from others emerge unifying considerations that are compelling

1 The cases concerning war or foreign affairs, for example, are usually explained by the necessity of the country's speaking with one voice in such matters While this concern alone undoubtedly accounts for many of the decisions,[11] others do not fit the pattern It would hardly embarrass the conduct of war were this Court to determine, in connec-

[10] See Bickel, Foreword The Passive Virtues, 75 Harv L Rev 40, 45 et seq (1961)

[11] See, e g, United States v Palmer (US) 3 Wheat 610, 634, 635, 4 L ed 471, 478, The Divina Pastora (US) 4 Wheat 52, 4 L ed 512 Williams v Suffolk Ins Co (US) 13 Pet 415, 10 L ed 226, Kennett v Chambers (US) 14 How 38, 14 L ed 316, Doe ex dem Clark v Braden (US) 16 How 635, 14 L ed 1090 Jones v United States, 137 US 202, 34 L ed 691, 11 S Ct 80 Terlinden v Ames, 184 US 270, 46 L ed 534, 22 S Ct 484 Charlton v Kelly, 229 US 447, 57 L ed 1274, 33 S Ct 945, 46 LRA NS 337, Ostgen v Central Leather Co 246 US 297, 62 L ed 726, 38 S Ct 306, Ex parte Peru, 318 US 578, 87 L ed 1014, 63 S Ct 793 Clark v Allen, 331 US 503, 91 L ed 1633, 67 S Ct 1431, 170 ALR 957 Compare Foster v Neilson (US) 2 Pet 253, 7 L ed 415, with United States v Arredondo (US) 6 Pet 691, 8 L ed 547 Of course judgment concerning the 'political' nature of even a controversy affecting the nation's foreign affairs is not a simple mechanical matter, and certain of the Court's decisions have accorded scant weight to the consideration of unity of action in the conduct of external relations Compare Vermilya-Brown Co v Connell, 335 US 377, 93 L ed 76, 69 S Ct 140, with United States v Pink, 315 US 203, 86 L ed 796, 62 S Ct 552

tion with private transactions between litigants, the date upon which war is to be deemed terminated But the Court has refused to do so See, e g, The Protector (US) (Freeborn v The Protector) 12 Wall 700, 20 L ed 463, Brown v Hiatts (US) 15 Wall 177, 21 L ed 128, Adger v Alston (US) 15 Wall 555, 21 L ed 234, Williams v Bruffy, 96 US 176, 192, 193, 24 L ed 716, 720 It does not suffice to explain such cases as Ludecke v Watkins, 335 US 160, 92 L ed 1881, 68 S Ct 1429—deferring to political determination the question of the duration of war for purposes of the Presidential power to deport alien enemies—that judicial intrusion would seriously impede the President's power effectively to protect the country's interests in time of war Of course, this is true, but the precise issue presented is the duration of the time of war which demands the power Cf Martin v Mott (US) 12 Wheat 19, 6 L ed 537, Lamar v Browne, 92 US 187, 193 23 L ed 650, 652, Hamilton v Kentucky Distilleries & Warehouse Co 251 US 146, 64 L ed 194, 40 S Ct 106; Kahn v Anderson, 255 US 1, 65 L ed 469, 41 S Ct 224. And even for the purpose of determining the extent of congressional regulatory power over the tribes and dependent communities of Indians, it is ordinarily for Congress, not the Court, to determine whether or not a particular Indian group retains the characteristics constitutionally requisite to confer the power [12] E g, United States v Holliday (US) 3 Wall 407, 18 L ed 182, Tiger v Western Invest Co 221 US 286, 55 L ed 738, 31 S Ct 578, United States v Sandoval, 231 US 28, 58 L ed 107, 34 S Ct 1 A controlling factor in such cases is that, decision respecting these kinds of complex matters of policy being traditionally committed not to courts but to the political agencies of government for determination by criteria of political expediency, there exists no standard ascertainable by settled judicial experience or process by reference to which a political decision affecting the question at issue between the parties can be judged Where the question arises in the course of a litigation involving primarily the adjudication of other issues between the litigants, the Court accepts as a basis for adjudication the political departments' decision of it But where its determination is the sole function to be served by the exercise of the judicial power, the Court will not entertain the action See Chicago & S Air Lines, Inc v Waterman S S Corp 333 US 103, 92 L ed 568, 68 S Ct 431 The dominant consideration is "the lack of satisfactory criteria for a judicial determination " Mr Chief Justice Hughes, for the Court, in Coleman v Miller, 307 US 433, 454, 455 83 L ed 1385, 1396, 1397, 59 S Ct 972, 122 ALR 695 Compare United States v Rogers (US) 4 How 567, 572, 11 L ed 1105, 1107, with Worcester v George (US) 6 Pet 515, 8 L ed 483 [13]

This may be, like so many questions of law, a matter of degree. Questions have arisen under the Constitution to which adjudication gives answer although the criteria for decision are less than unwavering

[12] Obviously, this is the equivalent of saying that the characteristics are not "constitutionally requisite" in a judicially enforceable sense The recognition of their necessity as a condition of legislation is left, as is observance of certain other constitutional commands, to the conscience of the non-judicial organs Cf Kentucky v Dennison (US) 24 How 66, 16 L ed 717

[13] Also compare the Colemand Case and United States v Sprague, 282 US 716, 75 L ed 640 51 S Ct 220, 71 ALR 1501, with Hawke v Smith (No 1), 253 US 221, 64 L ed 871, 40 S Ct 495, 10 ALR 1504 See the National Prohibition Cases (Rhode Island v Palmer) 253 US 350, 64 L ed 946, 40 S Ct 486, 538, and consider the Court's treatment of the several contentions in Lever v Garnett, 258 US 130, 66 L ed 505, 42 S Ct 217

bright lines Often in these cases illumination was found in the federal structures established by, or the underlying presuppositions of, the Constitution. With respect to such questions, the Court has recognized that, concerning a particular power of Congress put in issue, ". . . effective restraints on its exercise must proceed from political rather than judicial processes" Wickard v Filburn, 317 US 11, 120, 87 L ed 122, 132, 63 S Ct 82. It is also true that even regarding the duration of war and the status of Indian tribes, referred to above as subjects ordinarily committed exclusively to the nonjudicial branches, the Court has suggested that some limitations exist upon the range within which the decisions of those branches will be permitted to go unreviewed. See United States v Sandoval, supra (231 US at 46), cf Chastleton Corp v Sinclair, 264 US 543, 68 L ed 841, 44 S Ct 405 But this is merely to acknowledge that particular circumstances may differ so greatly in degree as to differ thereby in kind, and that, although within a certain range of cases on a continuum, no standard of distinction can be found to tell between them, other cases will fall above or below the range The doctrine of political questions, like any other, is not to be applied beyond the limits of its own logic, with all the quiddities and abstract disharmonies it may manifest See the disposition of contentions based on logically distorting views of Colegrove v Green and Hunter v Pittsburgh, 207 US 161, 52 L ed 151, 28 S Ct 40, in Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125.

2 The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States The abstention from judicial entry into such areas has been greater even than that which marks the Court's ordinary approach to issues of state power challenged under broad federal guarantees "We should be very reluctant to decide that we had jurisdiction in such case, and thus in an action of this nature to supervise and review the political administration of a state government by its own officials and through its own courts The jurisdiction of this court would only exist in case there had been . such a plain and substantial departure from the fundamental principles upon which our government is based that it could with truth and propriety be said that if the judgment were suffered to remain, the party aggrieved would be deprived of his life, liberty or property in violation of the provisions of the Federal Constitution" Wilson v North Carolina, 169 US 586, 596, 42 L ed 865, 871, 18 S Ct 435 See Taylor v Beckham, No 1), 178 US 548, 44 L ed 1187, 20 S Ct 890, 1009; Walton v House of Representatives, 265 US 487, 68 L ed 1115, 44 S Ct 628; Snowden v Hughes, 321 US 1, 88 L ed 497, 64 S Ct 397 Cf Re Sawyer, 124 US 200, 220, 221, 31 L ed 402, 409, 8 S Ct 482.

Where, however, state law has made particular federal questions determinative of relations within the structure of state government, not in challenge of it, the Court has resolved such narrow, legally defined questions in proper proceedings. See Boyd v Nebraska, 143 US 135, 36 L ed 103, 12 S Ct 375 In such instances there is no conflict between state policy and the exercise of federal judicial power. This distinction explains the decisions in Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397; Koenig v Flynn, 285 US 375, 76 L ed 805, 52 S Ct 403; and Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402, in

which the Court released state constitutional provisions prescribing local lawmaking procedures from misconceived restriction of superior federal requirements Adjudication of the federal claim involved in those cases was not one demanding the accommodation of conflicting interests for which no readily accessible judicial standards could be found See McPherson v Blacker, 146 US 1, 36 L ed 869, 13 S Ct 3, in which, in a case coming here on writ of error from the judgment of a state court which had entertained it on the merits, the Court treated as justiciable the claim that a State could not constitutionally select its presidential electors by districts, but held that Art 2 § 1, cl 2, of the Constitution left the mode of choosing electors in the absolute discretion of the States Cf Pope v Williams, 193 US 621, 48 L ed 817, 24 S Ct 573, Breedlove v Suttles, 302 US 277, 82 L ed 252, 58 S Ct 205 To read with literalness the abstracted jurisdictional discussion in the McPherson opinion reveals the danger of conceptions of "justiciability" derived from talk and not from the effective decision in a case In probing beneath the surface of cases in which the Court has declined to interfere with the actions of political organs of government, of decisive significance is whether in each situation the ultimate decision has been to intervene or not to intervene Compare the reliance in South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641, on MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, and the "jurisdictional" form of the opinion in Wilson v North Carolina, 169 US 586, 596, 42 L ed 865, 871, 18 S Ct 435, supra

3 The cases involving Negro disfranchisement are no exception to the principle of avoiding federal judicial intervention into matters of state government in the absence of an explicit and clear constitutional imperative For here the controlling command of Supreme Law is plain and unequivocal An end of discrimination against the Negro was the compelling motive of the Civil War Amendments The Fifteenth expresses this in terms, and it is no less true of the Equal Protection Clause of the Fourteenth Slaughter-House Cases (US) 16 Wall 36, 67–72, 21 L ed 394, 405–407, Strauder v West Virginia, 100 US 303, 306, 307, 25 L ed 664, 665; Nixon v Herndon, 273 US 536, 541, 71 L ed 759, 761, 47 S Ct 446 Thus the Court, in cases involving discrimination against the Negro's right to vote, has recognized not only the action at law for damages,[14] but, in appropriate circumstances, the extraordinary remedy of declaratory or injunctive relief [15] Schnell v Davis, 336 US 933, 93 L ed 1093, 69 S Ct 749, Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809 [16] Injunctions in these cases, it should be noted, would

[14] E g, Myers v Anderson, 238 US 368, 59 L ed 1349, 35 S Ct 932, Nixon v Condon, 286 US 73, 76 L ed 984, 52 S Ct 484, 88 ALR 458, Lane v Wilson, 307 US 268, 83 L ed 1281, 59 S Ct 872, Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110 The action for damages for improperly rejecting an elector's vote had been given by the English law since the time of Ashby v White, 1 Brown's Cases in Parliament 62, 2 Ld Raym 938, 3 Ld Raym 320, a case which in its own day precipitated an intra-parliamentary war of major dimensions See 6 Hansard, Parliamentary History of England (1810), 225–324, 3176–4136 prior to the racial discrimination cases, this Court had recognized the action, by implication, in dictum in Swafford v Templeton, 185 US 487, 46 L ed 1005, 22 S Ct 783, and Wiley v Sinkler, 179 US 58, 45 L ed 84, 21 S Ct 17, both respecting federal elections

[15] Cf Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125

[16] By statute an action for preventive relief is now given the United States in certain voting cases 71 Stat 637, 42 USC §1971(c), amending RS §2004 See United States v Raines, 362 US 17, 4 L ed 524, 80 S Ct 519, United States v Thomas, 362 US 58, 4 L ed 2d 535, 80 S Ct 613

not have restrained state-wide general elections Compare Giles v Harris, 189 US 475, 47 L ed 909, 23 S Ct 639.

4 The Court has refused to exercise its jurisdiction to pass on "abstract questions of political power of sovereignty, of government" Massachusetts v Mellon, 262 US 447, 485, 67 L ed 1078, 1084, 43 S Ct 597 See Texas v Interstate Commerce Com 258 US 158, 162, 66 L ed 531, 537, 42 S Ct 261, New Jersey v Sargent, 269 US 328, 337, 70 L ed 289, 293, 46 S Ct 122 The "political question" doctrine, in this aspect, reflects the policies underlying the requirement of "standing"· that the litigant who would challenge official action must claim infringement of an interest particular and personal to himself, as distinguished from a cause of dissatisfaction with the general frame and functioning of government—a complaint that the political institutions are awry See Stearns v Wood, 236 US 75, 59 L ed 475, 35 S Ct 229, Fairchild v Hughes, 258 US 126, 66 L ed 499, 42 S Ct 274, United Public Workers v Mitchell, 330 US 75, 89–91, 91 L ed 754, 766–768, 67 S Ct 556 What renders cases of this kind non-justiciable is not necessarily the nature of the parties to them, for the Court has resolved other issues between similar parties;[17] nor is it the nature of the legal questions involved, for the same type of question has been adjudicated when presented in other forms of controversy[18] The crux of the matter is that courts are not fit instruments of decision where what is essentially at stake is the composition of those large contests of policy traditionally fought out in non-judicial forums, by which governments and the actions of governments are made and unmade See Texas v White (US) 7 Wall 700, 19 L ed 227, White v Hart (US) 13 Wall 646, 20 L ed 685, Phillips v Payne, 92 US 130, 23 L ed 649, Marsh v Burroughs (CC Ga) 1 Woods 463, 471, 472, F Cas No 9112 (Bradley, Circuit Justice); cf Wilson v Shaw, 204 US 24, 51 L ed 351, 27 S Ct 233, but see Coyle v Smith, 221 US 559, 55 L ed 853, 31 S Ct 688 Thus, where the Cherokee Nation sought by an original motion to restrain the State of Georgia from the enforcement of laws which assimilated Cherokee territory to the State's counties, abrogated Cherokee law, and abolished Cherokee government, the Court held that such a claim was not judicially cognizable Cherokee Nation v Georgia (US) 5 Pet 1, 8 L ed 25[19] And in Georgia v Stanton (US) 6 Wall 50, 18 L ed 721, the Court dismissed for want of jurisdiction a bill by the State of Georgia seeking to enjoin enforcement of the Reconstruction Acts on the ground that the command by military districts which they established extinguished existing state government and replaced it with a form of government unauthorized by the Constitution[20]

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[17] Compare Rhode Island v Massachusetts (US) 12 Pet 657, 9 L ed 1233, and cases following, with Georgia v Stanton (US) 6 Wall 50, 18 L ed 721

[18] Compare Worcester v Georgia (US) 6 Pet 515, 8 L ed 483, with Cherokee Nation v Georgia (US) 5 Pet 1, 20, 28 [8 L ed 25, 32, 34] (Mr Justice Johnson, concurring), 51 and 75 (Mr Justice Thompson, dissenting)

[19] This was an alternative ground of Chief Justice Marshall's opinion for the Court Id, 5 Pet at 20 The question which Marshall resolved as "unnecessary to decide," ibid, was not the justiciability of the bill in this aspect, but the 'more doubtful" question whether that 'part of the bill which respects the land occupied by the Indians, and prays the aid of the court to protect their possession," might be entertained Ibid Mr Justice Johnson, concurring, found the controversy non-justiciable and would have put the ruling solely on this ground, id, 5 Pet at 28, and Mr Justice Thompson, in dissent, agreed that much of the matter in the bill was not fit for judicial determination Id 5 Pet at 51, 75

[20] Cf Mississippi v Johnson (US) 4 Wall 475, 18 L ed 437

"That these matters, both as stated in the body of the bill, and, in the prayers for relief, call for the judgment of the court upon political questions, and, upon rights, not of persons or property, but of a political character, will hardly be denied For the rights for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a State, with all its constitutional powers and privileges No case of private rights or private property infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the court" Id 6 Wall at 77 [21]

5 The influence of these converging considerations—the caution not to undertake decision where standards meet for judicial judgment are lacking, the reluctance to interfere with matters of state government in the absence of an unquestionable and effectively enforceable mandate, the unwillingness to make courts arbiters of the broad issues of political organization historically committed to other institutions and for whose adjustment the judicial process is ill-adapted—has been decisive of the settled line of cases, reaching back more than a century, which holds that Art 4 § 4, of the Constitution, guaranteeing to the States "a Republican Form of Government," [22] is not enforceable through the courts E g, O'Neill v Leamer, 239 US 244, 60 L ed 249, 36 S Ct 54, Mountain Timber Co v Washington, 243 US 219, 61 L ed 685, 37 S Ct 260, 13 NCCA 927, Ann Cas 1917D 642; Cochran v Louisiana State Board of Education, 281 US 370, 74 L ed 913, 50 S Ct 335, Highland Farms Dairy, Inc. v Agnew, 300 US 608, 81 L ed 835, 57 S Ct 549 [23] Claims resting on this specific guarantee of the Constitution have been held nonjusticiable which challenged state distribution of powers

[21] Considerations similar to those which determined the Cherokee Nation Case and Georgia v Stanton no doubt explain the celebrated decision in Nabob of the Carnatic v East India Company, 1 Vesey Jr *371, 2 Vesey Jr *56, rather than any attribution of a portion of British sovereignty, in respect of Indian affairs, to the company The reluctance of the English Judges to involve themselves in contests of factional political power is of ancient standing In The Duke of York's Claim to the Crown, 5 Rotuli Parl 375, printed in Wambaugh, Cases on Constitutional Law (1915), 1, the role which the Judges were asked to play appears to have been rather that of advocates than of judges, but the answer which they returned to the Lords relied on reasons equally applicable to either role

[22] "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence"

[23] Cf the cases holding that the Fourteenth Amendment imposes no such restriction upon the form of a State's governmental organization as will permit persons affected by government action to complain that in its organization principles of separation of powers have been violated E g Dreyer v Illinois, 187 US 71, 47 L ed 79, 23 S Ct 28, Soliah v Heskin, 222 US 522, 56 L ed 294, 32 S Ct 103, Houck v Little River Drainage Dist 239 US 254, 60 L ed 266, 36 S Ct 58 The same consistent refusal of this Court to find that the federal Constitution restricts state power to design the structure of state political institutions is reflected in the cases rejecting claims arising out of the States' creation, alteration, or destruction of local subdivisions or their powers, insofar as these claims are made by the subdivisions themselves, see Laramie County v Albany County, 92 US 307, 23 L ed 552, Pawhuska v Pawhuska Oil & Gas Co 250 US 394, 63 L ed 1054, 39 S Ct 526 Trenton v New Jersey, 262 US 182, 67 L ed 937, 43 S Ct 534, 29 ALR 1471, Risty v Chicago, R I & P R Co 270 US 378, 389, 390, 70 L ed 641, 650, 651, 46 S Ct 296, Williams v Baltimore, 289 US 36, 77 L ed 1015, 53 S Ct 431, or by the whole body of their residents who share only a general, undifferentiated interest in their preservation See Hunter v Pittsburgh, 207 US 161, 52 L ed 151, 28 S Ct 40 The policy is also given effect by the denial of 'standing' to persons seeking to challenge state action as infringing the interest of some separate unit within the State's administrative structure—a denial which precludes the adjudgment by federal courts of what are only disputes over the local allocation of government functions and powers See, e g, Smith v Indiana, 191 US 138, 48 L ed 125, 24 S Ct 51, Braxton County Court v West Virginia, 208 US 192, 52 L ed 460, 28 S Ct 275, Marshall v Dye, 231 US 250, 58 L ed 206, 34 S Ct 92, Stewart v Kansas City, 239 US 14, 60 L ed 120, 36 S Ct 15

between the legislative and judicial branches, Ohio ex rel Bryant v Akron Metropolitan Park Dist 281 US 74, 74 L ed 710, 50 S Ct 228, 66 ALR 1460, state delegation of power to municipalities, Kiernan v Portland, 223 US 151, 56 L ed 386, 32 S Ct 231, state adoption of the referendum as a legislative institution, Ohio ex rel. Davis v Hildebrandt, 241 US 565, 569, 60 L ed 1172, 1177, 36 S Ct 708, and state restriction upon the power of state constitutional amendment, Marshall v Dye, 231 US 250, 256, 257, 58 L ed 206–208, 34 S Ct 92 The subject was fully considered in Pacific States Tel. & Tel. Co. v Oregon, 223 US 118, 56 L ed 377, 32 S Ct 224, in which the Court dismissed for want of jurisdiction a writ of error attacking a state license tax statute enacted by the initiative, on the claim that this mode of legislation was inconsistent with a Republican Form of Government and violated the Equal Protection Clause and other federal guarantees. After noting " . the ruinous destruction of legislative authority in matters purely political which would necessarily be occasioned by giving sanction to the doctrine which underlies and would be necessarily involved in sustaining the propositions contended for," [24] the Court said:

" [The] essentially political nature [of this claim] is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State It is addressed to the framework and political character of the government by which the statute levying the tax was passed It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form " Id 223 US at 150, 151.

The starting point of the doctrine applied in these cases is, of course, Luther v Borden (US) 7 How 1, 12 L ed 581 The case arose out of the Dorr Rebellion in Rhode Island in 1841–1842. Rhode Island, at the time of the separation from England, had not adopted a new constitution but had continued, in its existence as an independent State, under its original royal Charter, with certain statutory alterations This frame of government provided no means for amendment of the fundamental law; the right of suffrage was to be prescribed by legis-

[24] 223 US, at 141 " [T]he contention, if held to be sound, would necessarily affect the validity, not only of the particular statute which is before us, but of every other statute passed in Oregon since the adoption of the initiative and referendum And indeed the propositions go further than this, since in their essence they assert that there is no governmental function legislative or judicial, in Oregon, because it cannot be assumed, if the proposition be well founded, that there is at one and the same time one and the same government which is republican in form and not of that character" Compare Luther v Borden (US) 7 How 1, 38, 39, 12 L ed 581, 597

" For if this court is authorized to enter upon this inquiry as proposed by the plaintiff, and it should be decided that the charter government had no legal existence during the period of time above mentioned,—if it had been annulled by the adoption of the opposing government,—then the laws passed by its legislature during that time were nullities, its taxes wrongfully collected, its salaries and compensation to its officers illegally paid, its public accounts improperly settled, and the judgments and sentences of its courts in civil and criminal cases null and void, and the officers who carried their decisions into operation answerable as trespassers, if not in some cases as criminals

"When the decision of this court might lead to such results, it becomes its duty to examine very carefully its own powers before it undertakes to exercise jurisdiction "

lation, which limited it to freeholders In the 1830's, largely because of the growth of towns in which there developed a propertied class whose means were not represented by freehold estates, dissatisfaction arose with the suffrage qualifications of the charter government. In addition, population shifts had caused a dated apportionment of seats in the lower house to yield substantial numerical inequality of political influence, even among qualified voters The towns felt themselves underrepresented and agitation began for electoral reform When the charter government failed to respond, popular meetings of those who favored the broader suffrage were held and elected delegates to a convention which met and drafted a state constitution This constitution provided for universal manhood suffrage (with certain qualifications); and it was to be adopted by vote of the people at elections at which a similarly expansive franchise obtained. This new scheme of government was ratified at the polls and declared effective by the convention, but the government elected and organized under it, with Dorr at its head, never came to power. The charter government denied the validity of the convention, the constitution and its government and, after an insignificant skirmish, routed Dorr and his followers. It meanwhile provided for the calling of its own convention, which drafted a constitution that went peacefully into effect in 1843 [25]

Luther v Borden was a trespass action brought by one of Dorr's supporters in a United States Circuit Court to recover damages for the breaking and entering of his house The defendants justified under military orders pursuant to martial law declared by the charter government, and plaintiff, by his reply, joined issue on the legality of the charter government subsequent to the adoption of the Dorr constitution. Evidence offered by the plaintiff tending to establish that the Dorr government was the rightful government of Rhode Island was rejected by the Circuit Court; the court charged the jury that the charter government was lawful; and on a verdict for defendants, plaintiff brought a writ of error to this Court.

The Court, through Mr. Chief Justice Taney, affirmed. After noting that the issue of the charter government's legality had been resolved in that government's favor by the state courts of Rhode Island —that the state courts, deeming the matter a political one unfit for judicial determination, had declined to entertain attacks upon the existence and authority of the charter government—the Chief Justice held that the courts of the United States must follow those of the State in this regard. Id., 7 How at 39, 40. It was recognized that the compulsion to follow state law would not apply in a federal court in the face of a superior command found in the federal constitution, ibid, but no such command was found. The Constitution, the Court said—referring to the Guarantee Clause of the Fourth Article—". . . as far as it has provided for an emergency of this kind, and authorized the general government to interfere in the domestic concerns of a State, has treated the subject as political in its nature, and placed the power in the hands of that department." Id 7 How at 42.

[25] See Bowen, The Recent Contest in Rhode Island (1844), Frieze, A Concise History of the Efforts to Obtain an Extention of Suffrage in Rhode Island, From the Year 1811 to 1842 (2d ed 1842), Mowry, The Dorr War (1901), Wayland, The Affairs of Rhode Island (2d ed 1842)

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy Yet the right to decide is placed there, and not in the courts." Ibid.[26]

In determining this issue nonjusticiable, the Court was sensitive to the same considerations to which its later decisions have given the varied applications already discussed It adverted to the delicacy of judicial intervention into the very structure of government[27] It acknowledged that tradition had long entrusted questions of this nature to non-judicial processes,[28] and that judicial processes were unsuited to their decision[29] The absence of guiding standards for judgment was critical, for the question whether the Dorr constitution had been rightfully adopted depended, in part, upon the extent of the franchise to be recognized—the very point of contention over which rebellion had been fought

" . [I]f the Circuit Court had entered upon this inquiry, by what rule could it have determined the qualification of voters upon the adoption or rejection of the proposed constitution, unless there was some previous law of the State to guide it? It is the province of a court to expound the law, not to make it And certainly it is no part of the judicial functions of any court of the United States to prescribe the qualification of voters in a State, giving the right to those to whom it is denied by the written and established constitution and laws of the State, or taking it away from those to whom it is given, nor has it the right to determine what political privileges the citizens of a State are entitled to, unless there is an established constitution or law to govern its decision" Id 7 How at 41

Mr Justice Woodbury (who dissented with respect to the effect of martial law) agreed with the Court regarding the inappropriateness of judicial inquiry into the issues·

"But, fortunately for our freedom from political excitements in judicial duties, this court can never with propriety be called on officially to be the umpire in questions merely political The adjustment of these

[28] The Court reasoned, with respect to the guarantee against domestic violence also contained in Art 4 § 4, that this, too, was an authority committed solely to Congress., that Congress had empowered the President, not the courts, to enforce it, and that it was inconceivable that the courts should assume a power to make determinations in the premises which might conflict with those of the Executive It noted further that, in fact, the President had recognized the governor of the charter government as the lawful authority in Rhode Island, although it had been unnecessary to call out the militia in his support

[27] See note 24, supra

[28] Id, 7 How at 39, 46, 47

[29] Id, 7 How at 41, 42

questions belongs to the people and their political representatives, either in the State or general government These questions relate to matters not to be settled on strict legal principles They are adjusted rather by inclination,—or prejudice or compromise, often Some of them succeed or are defeated even by public policy alone, or mere naked power, rather than intrinsic right .

"Another evil, alarming and little foreseen, involved in regarding these as questions for the final arbitrament of judges would be, that in such an event all political privileges and rights would, in a dispute among the people, depend on our decision finally [D]isputed points in making constitutions, depending often, as before shown, on policy, inclination, popular resolves, and popular will, if the people, in the distribution of powers under the constitution, should ever think of making judges supreme arbiters in political controversies, when not selected by nor, frequently, amenable to them, nor at liberty to follow such various considerations in their judgments as belong to mere political questions, they will dethrone themselves and lose one of their own invaluable birthrights; building up in this way—slowly, but surely —a new sovereign power in the republic, in most respects irresponsible and unchangeable for life, and one more dangerous, in theory at least, than the worst elective oligarchy, in the worst of times ." Id 7 How at 51, 53 [30]

III.

The present case involves all of the elements that have made the Guarantee Clause cases non-justiciable It is, in effect, a Guarantee Clause claim masquerading under a different label But it cannot make the case more fit for judicial action that appellates invoke the Fourteenth Amendment rather than Art 4 § 4, where, in fact, the gist of their complaint is the same—unless it can be found that the Fourteenth Amendment speaks with greater particularity to their situation We have been admonished to avoid "the tyranny of labels" Snyder v Massachusetts, 291 US 97, 114, 78 L ed 674, 682, 54 S Ct 330, 90 ALR 575 Art 4 § 4, is not committed by express constitutional terms to Congress It is the nature of the controversies arising under it, nothing else, which has made it judicially unenforceable Of course, if a controversy falls within judicial power, it depends "on how he [the plaintiff] casts his action," Pan American Petroleum Corp v Superior Court of Delaware, 366 US 656, 662, 6 L ed 2d 584, 588, 81 S Ct 1303, whether he brings himself within a jurisdictional statute But where judicial competence is wanting, it cannot be created by invoking one clause of the Constitution rather than another When what was essentially a Guarantee Clause claim was sought to be laid, as well under the Equal Protection Clause in Pacific States Tel & Tel Co v Oregon, 223 US 118, 56 L ed 377, 32 S Ct 224, supra, the Court had no difficulty in "dispelling any mere confusion resulting from forms of expression and considering the substance of things " 223 US, at 140

Here appellants attack "the State as a State," precisely as it was perceived to be attacked in the Pacific States Case, id 223 US at 150

[30] In evaluating the Court's determination not to inquire into the authority of the charter government, it must be remembered that, throughout the country, Dorr "had received the sympathy of the Democratic press His cause, therefore, became distinctly a party issue" 2 Warren, The Supreme Court in United States History (Rev ed 1937), 186

Their complaint is that the basis of representation of the Tennessee Legislature hurts them They assert that "a minority now rules in Tennessee," that the apportionment statute results in a "distortion of the constitutional system," that the General Assembly is no longer "a body representative of the people of the State of Tennessee," all "contrary to the basic principle of representative government . . ." Accepting appellants' own formulation of the issue, one can know this handsaw from a hawk Such a claim would be nonjusticiable not merely under Art 4 § 4, but under any clause of the Constitution, by virtue of the very fact that a federal court is not a forum for political debate. Massachusetts v Mellon, 262 US 447, 67 L ed 1078, 43 S Ct 597, supra.

But appellants, of course, do not rest on this claim simpliciter. In invoking the Equal Protection Clause, they assert that the distortion of representative government complained of is produced by systematic discrimination against them, by way of "a debasement of their votes . . ." Does this characterization, with due regard for the facts from which it is derived, add anything to appellants' case? [31]

At first blush, this charge of discrimination based on legislative underrepresentation is given the appearance of a more private, less impersonal claim, than the assertion that the frame of government is askew Appellants appear as representatives of a class that is prejudiced as a class, in contradistinction to the polity in its entirety. However, the discrimination relied on is the deprivation of what appellants conceive to be their proportionate share of political influence. This, of course, is the practical effect of any allocation of power within the institutions of government Hardly any distribution of political authority that could be assailed as rendering government nonrepublican would fail similarly to operate to the prejudice of some groups, and to the advantage of others, within the body politic It would be ingenuous not to see, or consciously blind to deny, that the real battle over the initiative and referendum, or over a delegation of power to local rather than state-wide authority, is the battle between forces whose influence is disparate among the various organs of government to whom power may be given No shift of power but works a corresponding shift in political influence among the groups composing a society.

What, then, is this question of legislative apportionment? Appellants invoke the right to vote and to have their votes counted [32] But they are permitted to vote and their votes are counted They go to the polls, they cast their ballots, they send their representatives to the state councils. Their complaint is simply that the representatives are not suf-

[31] Appellants also allege discrimination in the legislature's allocation of certain tax burdens and benefits Whether or not such discrimination would violate the Equal Protection Clause if the tax statutes were challenged in a proper proceeding, see Dane v Jackson, 256 US 589, 65 L ed 1107, 41 S Ct 566, cf Nashville, C & St L R Co v Wallace, 288 US 249, 268, 77 L ed 730, 738, 53 S Ct 345, 87 ALR 1191, these recitative allegations do not affect the nature of the controversy which appellants' complaints present

[32] Appellants would find a "right" to have one's ballot counted on authority of United States v Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904, United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101 All that these cases hold is that conspiracies to commit certain sharp election practices which, in a federal election, cause ballots not to receive the weight which the law has in fact given them, may amount to deprivations of the constitutionally secured right to vote for federal officers But see United States v Bathgate, 246 US 220, 62 L ed 676, 38 S Ct 269 The cases do not so much as suggest that there exists a constitutional limitation upon the relative weight to which the law might properly entitle respective ballots, even in federal elections

ficiently numerous or powerful—in short, that Tennessee has adopted a basis of representation with which they are dissatisfied Talk of "debasement" or "dilution" is circular talk One cannot speak of "debasement" or "dilution" of the value of a vote until there is first defined a standard of reference as to what a vote should be worth. What is actually asked of the Court in this case is to choose among competing bases of representation—ultimately, really, among competing theories of political philosophy—in order to establish an appropriate frame of government for the State of Tennessee and thereby for all the States of the Union.

In such a matter, abstract analogies which ignore the facts of history deal in unrealities, they betray reason This is not a case in which a State has, through a device however oblique and sophisticated, denied Negroes or Jews or redheaded persons a vote, or given them only a third or a sixth of a vote That was Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125, supra What Tennessee illustrates is an old and still widespread method of representation—representation by local geographical division, only in part respective of population—in preference to others, others, forsooth, more appealing Appellants contest this choice and seek to make this Court the arbiter of the disagreement They would make the Equal Protection Clause the charter of adjudication, asserting that the equality which it guarantees comports, if not the assurance of equal weight to every voter's vote, at least the basic conception that representation ought to be proportionate to population, a standard by reference to which the reasonableness of apportionment plans may be judged

To find such a political conception legally enforceable in the broad and unspecific guarantee of equal protection is to rewrite the constitution See Luther v Borden (US) 7 How 1, 12 L ed 581, supra Certainly, "equal protection" is no more secure a foundation for judicial judgment of the permissibility of varying forms of representative government than is "Republican Form " Indeed since "equal protection of the laws" can only mean an equality of persons standing in the same relation to whatever governmental action is challenged, the determination whether treatment is equal presupposes a determination concerning the nature of the relationship This, with respect to apportionment, means an inquiry into the theoretic base of representation in an acceptably republican state For a court could not determine the equal-protection issue without in fact first determining the Republican-Form issue, simply because what is reasonable for equal protection purposes will depend upon what frame of government, basically, is allowed. To divorce "equal protection" from "Republican Form" is to talk about half a question

The notion that representation proportioned to the geographic spread of population is so universally accepted as a necessary element of equality between man and man that it must be taken to be the standard of a political equality preserved by the Fourteenth Amendment—that it is, in appellants' words "the basic principle of representative government"—is, to put it bluntly, not true However desirable and however desired by some among the great political thinkers and framers of our government, it has never been generally practiced, today or in the past. It was not the English system, it was not the colonial system, it

was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominantly practiced by the States at the time of adoption of the Fourteenth Amendment, it is not predominantly practiced by the States today Unless judges, the judges of this Court, are to make their private views of political wisdom the measure of the Constitution—views which in all honesty cannot but give the appearance, if not reflect the reality, of involvement with the business of partisan politics so inescapably a part of apportionment controversies—the Fourteenth Amendment, "itself a historical product," Jackman v Rosenbaum Co 260 US 22, 31, 67 L ed 107, 112, 43 S Ct 9, provides no guide for judicial oversight of the representation problem

1 Great Britain Writing in 1958, Professor W J M Mackenzie aptly summarized the British history of the principle of representation proportioned to population "'Equal electoral districts' formed part of the programme of radical reform in England in the 1830s, the only part of that programme which has not been realised" [33] Until the late nineteenth century, the sole base of representation (with certain exceptions not now relevant) was the local geographical unit each county or borough returned its fixed number of members, usually two for the English units, regardless of population [34] Prior to the Reform Act of 1832, this system was marked by the almost total disfranchisement of the populous northern industrial centers, which had grown to significant size at the advent of the Industrial Revolution and had not been granted borough representation, and by the existence of the rotten borough, playing its substantial part in the Crown's struggle for continued control of the Commons [35] In 1831, ten southernmost English counties, numbering three and a quarter million people, had two hundred and thirty-five parliamentary representatives, while the six northernmost counties, with more than three and a half-million people, had sixty-eight [36] It was said that one hundred and eighty persons appointed three hundred and fifty members in the Commons [37] Less than a half-century earlier, Madison in the Federalist had remarked that half the House was returned by less than six thousand of the eight million people of England and Scotland [38]

The Act of 1832, the product of a fierce partisan political struggle and the occasion of charges of gerrymandering not without foundation,[39] effected eradication of only the most extreme numerical inequalities of the unreformed system It did not adopt the principle of representation based on population, but merely disfranchised certain among the rotten borough and enfranchised most of the urban centers—still quite without regard to their relative numbers [40] In the wake of the Act there remained substantial electoral inequality the boroughs of

[33] Mackenzie, Free Elections (1958) (hereafter, Mackenzie), 108
[34] Ogg, English Government and Politics (2d ed 1936) (hereafter, Ogg), 248–250, 257, Seymour, Electoral Reform in England and Wales (1915) (hereafter, Seymour), 46–47
[35] Ogg 257–259, Seymour 45–52, Carpenter, The Development of American Political Thought (1930) (hereafter, Carpenter), 45–46
[36] Ogg 255
[37] Seymour 51
[38] The Federalist, No 56 (Wright ed 1961), at 382 Compare Seymour 49 This takes account of the restricted franchise as well as the effect of the local-unit apportionment principle
[39] Seymour 52–76
[40] Ogg 264–265, Seymour 318–319

Cornwall were represented sixteen times as weightily, judged by population, as the county's eastern division; the average ratio of seats to population in ten agricultural counties was four and a half times that in ten manufacturing divisions; Honiton, with about three thousand inhabitants, was equally represented with Liverpool, which had four hundred thousand [41] In 1866 apportionment by population began to be advocated generally in the House, but was not made the basis of the redistribution of 1867, although the act of that year did apportion representation more evenly, gauged by the population standard [42] Population shifts increased the surviving inequalities, by 1884 the representation ratio in many small boroughs was more than twenty-two times that of Birmingham or Manchester, forty-to-one disparities could be found elsewhere, and, in sum, in the '70's and '80's, a fourth of the electorate returned two-thirds of the members of the House [43]

The first systematic English attempt to distribute seats by population was the Redistribution Act of 1885 [44] The statute still left ratios of inequality of as much as seven to one,[45] which had increased to fifteen to one by 1912 [46] In 1918 Parliament again responded to "shockingly bad" conditions of inequality,[47] and to partisan political inspiration,[48] by redistribution [49] In 1944, redistribution was put on a periodic footing by the House of Commons (Redistribution of Seats) Act of that year,[50] which committed a continuing primary responsibility for reapportioning the Commons to administrative agencies (Boundary Commissions for England, Scotland, Wales and Northern Ireland, respectively) [51] The Commissions, having regard to certain rules prescribed for their guidance, are to prepare at designated intervals reports for the Home Secretary's submission to Parliament, along with the draft of an Order in Council to give effect to the Commissions' recommendations The districting rules adopt the basic principle of representation by population, although the principle is significantly modified by directions to respect local geographic boundaries as far as practicable, and by discretion to take account of special geographical conditions, including the size, shape and accessibility of constituencies. Under the original 1944 Act, the rules provided that (subject to the exercise of the discretion respecting special geographical conditions and to regard for the total size of the House of Commons as prescribed by the Act) so far as practicable, the single-member districts should not deviate more than twenty-five percent from the electoral quota (population divided by number of constituencies). However, apparently at the recommendation of the Boundary Commission for England, the twenty-five percent standard was eliminated as too restrictive in 1947, and replaced by the flexible provision that constituencies are to be as near

[41] For these and other instances of gross inequality, see Seymour 320–325
[42] Seymour 433–346, Ogg 265
[43] Seymour 349, 490–491
[44] Seymour 489–518
[45] Mackenzie 108, see also Seymour 513–517
[46] Ogg 270
[47] Ogg 253
[48] Ogg 270–271
[49] Ogg 273–274
[50] 7 & 8 Geo VI, c 41 The 1944 Act was amended by the House of Commons (Redistribution of Seats) Act, 1947, 10 & 11 Geo VI, c 10, and the two, with other provisions, were consolidated in the House of Commons (Redistribution of Seats) Act, 1949, 12 & 13 Geo VI, c 66, since amended by the House of Commons (Redistribution of Seats) Act, 1958, 6 & 7 Eliz II, c 26
[51] See generally Butler, The Redistribution of Seats, 33 Public Administration 125 (1955).

the electoral quota as practicable, a rule which is expressly subordinated both to the consideration of special geographic conditions and to that of preserving local boundaries.[52] Free of the twenty-five percent rule, the Commissions drew up plans of distribution in which inequalities among the districts run, in ordinary cases, as high as two to one and, in the case of a few extraordinary constituencies, three to one.[53] The action of the Boundary Commission for England was twice challenged in the courts in 1954—the claim being that the Commission had violated statutory rules prescribing the standards for its judgment—and in both cases the Judges declined to intervene. In Hammersmith Borough Council v Boundary Commission for England,[54] Harmon, J., was of opinion that the nature of the controversy and the scheme of the Acts made the matter inappropriate for judicial interference, and in Harper v Secretary,[55] the Court of Appeal, per Evershed, M. R., quoting Harman, J., with approval, adverting to the wide range of discretion entrusted to the Commission under the Acts, and remarking the delicate character of the parliamentary issues in which it was sought to engage the court, reached the same conclusion.[56]

The House of Commons (Redistribution of Seats) Act, 1958,[57] made two further amendments to the law. Responsive to the recommendation of the Boundary Commission for England,[58] the interval permitted between Commission reports was more than doubled, to a new maximum of fifteen years.[59] And at the suggestion of the same Commission that "It would ease the future labours of the Commission and remove much local irritation if Rule 5 [requiring that the electorate of each constituency be as near the electoral quota as practicable] were to be so amended as to allow us to make recommendations preserving the status quo in any area where such a course appeared to be desirable and not inconsistent with the broad intention of the Rules,"[60] the Commissions were directed to consider the inconveniences attendant upon the alteration of constituencies, and the local ties which such alteration might break. The Home Secretary's view of this amendment was that it worked to erect "a presumption against making changes unless there is a very strong case for them."[61]

2 The Colonies and the Union. For the guiding political theorists of the Revolutionary generation, the English system of representation, in its most salient aspects of numerical inequality, was a model to be avoided, not followed.[62] Nevertheless, the basic English principle of apportioning representatives among the local governmental entities, towns

[52] See note 50, supra. However, Commissions are given discretion to depart from the strict application of the local boundary rule to avoid excessive disparities between the electorate of a constituency and the electoral quota, or between the electorate of a constituency and that of neighboring constituencies. For detailed discussion, see Craig, Parliament and Boundary Commissions, [1959] Public Law 23. See also Butler, supra, note 51, at 127.

[53] Mackenzie 108, 113.

[54] The Times, Dec. 15, 1954, p. 4, cols. 1–2.

[55] [1955] 1 Ch. 238.

[56] The court reserved the question whether a judicial remedy might be found in a case in which it appeared that a Commission had manifestly acted in complete disregard of the Acts.

[57] Note 50, supra.

[58] First Periodical Report of the Boundary Commission for England [Cmd. 9311] (1954), 4, par. 19.

[59] Under the 1949 Act, see note 50, supra, the intervals between reports were to be not less than three nor more than seven years, with certain qualifications. The 1958 Act raised the minimum to ten and the maximum to fifteen years.

[60] First Periodical Report, supra, note 58, at 4, par. 20.

[61] 582 HC Deb. (5th ser. 1957–1958), 230.

[62] See Madison, supra, note 38; Tudor, Life of James Otis (1823), 188–190.

or counties, rather than among units of approximately equal population, had early taken root in the colonies [63] In some, as in Massachusetts and Rhode Island, numbers of electors were taken into account, in a rough fashion, by allotting increasing fixed quotas of representatives to several towns or classes of towns graduated by population, but in most of the colonies delegates were allowed to the local units without respect to numbers [64] This resulted in grossly unequal electoral units [65] The presentation ratio in one North Carolina county was more than eight times that in another [66] Moreover, American rotten boroughs had appeared,[67] and apportionment was made an instrument first in the political struggles between the King or the royal governnors and the colonial legislatures,[68] and, later, between the older tidewater regions in the colonies and the growing interior.[69] Madison in the Philadelphia Convention adverted to the "inequality of the Representation in the Legislatures of particular States, . . ." [70] arguing that it was necessary to confer on Congress the power ultimately to regulate the times, places and manner of selecting Representatives,[71] in order to forestall the over-represented counties' securing themselves a similar overrepresentation in the national councils The example of South Carolina, where Charleston's overrepresentation was a continuing bone of contention between the tidewater and the back-country, was cited by Madison in the Virginia Convention and by King in the Massachusetts Convention, in support of the same power, and King also spoke of the extreme numerical inequality arising from Connecticut's town-representation system [72]

Such inequalities survived the constitutional period. The United States Constitution itself did not largely adopt the principle of numbers Apportionment of the national legislature among the States was one of the most difficult problems for the Convention; [73] its solution—involving State representation in the Senate [74] and the three-fifths compromise in the House [75]—left neither chamber apportioned proportionately to population Within the States, electoral power continued to be allotted to favor the tidewater.[76] Jefferson, in his Notes on Virginia, recorded the "very unequal" representation there · individual counties differing in population by a ratio of more than seventeen to one elected the same number of representatives, and those nineteen thousand of Virginia's fifty thousand men who lived between the falls of the rivers and the sea-coast returned half the State's senators and almost half its delegates [77] In South Carolina in 1790, the three lower districts, with a white population of less than twenty-nine thousand elected twenty senators and seventy assembly members; while in the uplands

[63] Griffith, The Rise and Development of the Gerrymander (1907) (hereafter, Griffith), 23–24
[64] Luce, Legislative Principles (1930) (hereafter, Luce), 336–342
[65] Griffith 25
[66] Griffith 15–16, note 1
[67] Griffith 28
[68] Carpenter 48–49, 54, Griffith 26, 28–29, Luce 339–340
[69] Carpenter 87, Griffith 25–29, 31
[70] II Farrand, Records of the Federal Convention (1911), 241
[71] The power was provided Art 1 § 4, cl 1
[72] III Elliot's Debates (2d ed 1891), 367, II id, at 50–51.
[73] See Madison, in I Farrand, op cit, supra, note 70, at 321 "The great difficulty lies in the affair of Representation, and if this could be adjusted, all others would be surmountable"
[74] See The Federalist, No 62 (Wright ed 1961), at 408–409
[75] See The Federalist, No 54, id, at 369–374
[76] Carpenter 130
[77] Jefferson, Notes on the State of Virginia (Peden ed 1955), 118–119 See also II Writings of Thomas Jefferson (Memorial ed 1903), 160–162

more than one hundred and eleven thousand white persons elected seventeen senators and fifty-four assemblymen [78]

In the early nineteenth century, the demands of the interior became more insistent The apportionment quarrel in Virginia was a major factor in precipitating the calling of a constitutional convention in 1829. Bitter animosities racked the convention, threatening the State with disunion At last a compromise which gave the three hundred and twenty thousand people of the west thirteen senators, as against the nineteen senators returned by the three hundred sixty-three thousand people of the east, commanded agreement It was adopted at the polls but left the western counties so dissatisfied that there were threats of revolt and realignment with the State of Maryland [79]

Maryland, however, had her own numerical disproportions In 1820, one representative vote in Calvert County was worth five in Frederick County, and almost two hundred thousand people were represented by eighteen members, while fifty thousand others elected twenty [80] This was the result of the county-representation system of allotment And, except for Massachusetts which, after a long struggle, did adopt representation by population at the mid-century, a similar town-representation principle continued to prevail in various forms throughout New England, with all its attendant, often gross inequalities [81]

3 The States at the time of ratification of the Fourteenth Amendment, and those later admitted. The several state conventions throughout the first half of the nineteenth century were the scenes of fierce sectional and party strifes respecting the geographic allocation of representation [82] Their product was a wide variety of apportionment methods which recognized the element of population in differing ways and degrees Particularly pertinent to appraisal of the contention that the Fourteenth Amendment embodied a standard limiting the freedom of the States with regard to the principles and bases of local legislative apportionment is an examination of the apportionment provisions of the thirty-three states which ratified the Amendment between 1866 and 1870, at their respective times of ratification These may be considered in two groups (A) the ratifying States other than the ten Southern States whose constitutions, at the time of ratification or shortly thereafter, were the work of the Reconstruction Act conventions, [83] and (B) the ten Reconstruction-Act States All thirty-three are significant, because they demonstrate how unfounded is the assumption that the ratifying States could have agreed on a standard apportionment theory or practice, and how baseless the suggestion that by voting for the Equal Protection Clause they sought to establish a test mold for apportionment which—if appellants' argument is sound—struck down sub silentio not a few of their own state constitutional provisions But the constitutions of the ten Reconstruction-Act States have an added importance, for it is scarcely to be thought that the Congress which was so solicitous for the adoption of the Fourteenth Amendment as to make

[78] Carpenter 139–140
[79] Griffith 102–104
[80] Griffith 104–105
[81] Luce 343–350 Bowen, supra, note 25, at 17–18, records that in 1824 Providence County, having three-fifths of Rhode Island's population elected only twenty-two of its seventy-two representatives, and that the town of Providence, more than double the size of Newport, had half Newport's number of representatives
[82] Carpenter 130–137, Luce 364–367, Griffith 116–117
[83] See 14 Stat 428, 15 Stat 2, 14, 41

the readmission of the late rebel States to Congress turn on their respective ratifications of it, would have approved constitutions which —again, under appellants' theory—contemporaneously offended the Amendment.

A Of the twenty-three ratifying States of the first group, seven or eight had constitutions which demanded or allowed apportionment of both houses on the basis of population,[84] unequalifiedly or with only qualifications respecting the preservation of local boundaries.[85] Three more apportioned on what was essentially a population base, but provided that in one house counties having a specified fraction of a ratio—a moiety or two-thirds—should have a representative.[86] Since each of these three States limited the size of their chambers, the fractional rule could operate—and, at least in Michigan, has in fact operated[87]—to produce substantial numerical inequalities in favor of the sparsely populated counties.[88] Iowa favored her small counties by the rule that no more than four counties might be combined in a representative district,[89] and New York and Kansas compromised population and county-representation principles by assuring every county, regardless of the number of its inhabitants, at least one seat in their respective Houses.[90]

Ohio and Maine recognized the factor of numbers by a different device. The former gave a House representative to each county having half a ratio, two representatives for a ratio and three quarters, three representatives for three ratios, and a single additional representative

[84] Various indices of population were employed among the States which took account of the factor of numbers. Some counted all inhabitants, e. g., NJ Const, 1844, Art 4 § 3; some, only white inhabitants, e. g., Ill Const, 1848, Art 3 § 8; some, male inhabitants over twenty-one, e. g., Ind Const, 1851, Art 4 §§ 4, 5; some qualified voters, e. g., Tenn Const, 1834, Art 2 §§ 4 to 6; some excluded aliens, e. g., NY Const, 1846, Art 3 §§ 4, 5 (and untaxed persons of color); some excluded untaxed Indians and military personnel, e. g., Neb Const 1866–1867, Art 2 § 3. For present purposes these differences, although not unimportant as revealing fundamental divergences in representation theory, will be disregarded.

[85] Ore Const, 1857, Art 4 §§ 5, 6, 7; Ill Const, 1848, Art 3 §§ 8, 9; Ind Const, 1851, Art 4 §§ 4, 6, 8; Minn Const, 1857, Art 4 § 2; Wis Const, 1848, Art 4 §§ 3 to 5; Mass Const, 1780, Amends 21, 22; Neb Const, 1866–1867, Art 2 § 3. All of these but Minnesota made provision for periodic reapportionment. Nevada's Constitution of 1864, Art 15 § 13, provided that the federal censuses and interim state decennial enumerations should serve as the bases of representation for both houses, but did not expressly require either numerical equality or reapportionment at fixed intervals.

Several of these constitutions contain provisions which forbid splitting counties or which otherwise require recognition of local boundaries. See, e. g., the severe restriction in Ill Const, 1848, Art 3 § 9. Such provisions will almost inevitably produce numerical inequalities. See, for example, University of Oklahoma, Bureau of Government Research, Legislative Apportionment in Oklahoma (1956), 21–23. However, because their effect in this regard will turn on idiosyncratic local factors, and because other constitutional provisions are a more significant source of inequality, these provisions are here disregarded.

[86] Tenn Const, 1834, Art 2 §§ 4 to 6 (two-thirds of a ratio entitles a county to one representative in the House); W Va Const, 1861–1863, Art 4 §§ 4, 5, 7, 8, 9 (one-half of a ratio entitles a county to one representative in the House); Mich Const, 1850, Art 4 §§ 2 to 4 (one-half of a ratio entitles each county thereafter organized to one representative in the House). In Oregon and Iowa a major-fraction rule applied which gave a House seat not only to counties having a moiety of a single ratio, but to all counties having more than half a ratio in excess of the multiple of a ratio. Ore Const, 1857, Art 4 § 6, note 85, supra; Iowa Const, 1857, Art 3 §§ 33, 34, 35, 37, note 89, infra.

[87] See Bone, States Attempting to Comply with Reapportionment Requirements, 17 Law & Contemp Prob 387, 391 (1952).

[88] It also appears, although the section is not altogether clear, that the provisions of West Virginia's Constitution controlling apportionment of senators would operate in favor of the State's less populous regions by limiting any single county to a maximum of two senators. W Va Const, 1861–1863, Art 4 § 4.

[89] Iowa Const, 1857, Art 3 §§ 33, 34, 35, 37.

[90] NY Const, 1846, Art 3 §§ 4, 5 (except Hamilton County); Kan Const, 1859, Art 2 § 2, Art 10. The Kansas provisions require periodic apportionment based on censuses, but do not in terms demand equal districts.

for each additional ratio [91] The latter, after apportioning among counties on a population base, gave each town of fifteen hundred inhabitants one representative, each town of three thousand, seven hundred and fifty inhabitants two representatives, and so on in increasing intervals to twenty-six thousand, two hundred and fifty inhabitants—towns of that size or larger receiving the maximum permitted number of representatives: seven [92] The departure from numerical equality under these systems is apparent: in Maine, assuming the incidence of towns in all categories, representative ratios would differ by factors of two and a half to one, at a minimum Similarly, Missouri gave each of its counties, however small, one representative, two representatives for three ratios, three representatives for six ratios, and one additional representative for each three ratios above six [93] New Hampshire alloted a representative to each town of one hundred and fifty ratable male polls of voting age and one more representative for each increment of three hundred above that figure; [94] its Senate was not apportioned by population but among districts based on the proportion of direct taxes paid [95] In Pennsylvania, the basis of apportionment in both houses was taxable inhabitants; and in the House every county of at least thirty-five hundred taxables had a representative, nor could more than three counties be joined in forming a representative district; while in the Senate no city or county could have more than four of the State's twenty-five to thirty-three senators [96]

Finally, four States apportioned at least one House with no regard whatever to population In Connecticut [97] and Vermont [98] representation in the House was on a town basis; Rhode Island gave one senator to each of its towns or cities,[99] and New Jersey, one to each of its counties.[100] Nor, in any of these States, was the other house apportioned on a strict principle of equal numbers Connecticut gave each of its counties a minimum of two senators [101] and Vermont, one; [102] New Jersey assured each county a representative, [103] and in Rhode Island, which gave at least one representative to each town or city, no town or city could have more than one-sixth of the total number in the House [104]

B Among the ten late Confederate States affected by the Reconstruction Acts, in only four did it appear that apportionment of both state legislative houses would or might be based strictly on population [105] In North Carolina,[106] South Carolina,[107] Louisiana,[108] and Ala-

[91] Ohio Const, 1851, Art 11 §§ 1 to 5 See Art 11 §§ 6 to 9 for Senate apportionment
[92] Me Const, 1819, Art 4 Pt First, §§ 2, 3 See Art 4 Pt Second, § 2 for Senate apportionment based on numbers
[93] Mo Const, 1865, Art 4 §§ 2, 7, 8 See Art 4 §§ 4 to 8 for Senate apportionment based on numbers
[94] Towns smaller than one hundred and fifty, if so situated that it was "very inconvenient" to join them to other towns for voting purposes, might be permitted by the legislature to send a representative
[95] NH Const, 1792, Pt Second, §§ 9 to 11, Pt Second, § 26
[96] Pa Const, 1838, as amended, Art 1, §§ 4, 6, 7
[97] Conn Const, 1818, Art Third, § 3
[98] Vt Const, 1793, c 2 § 7
[99] RI Const, 1842, Art 6 § 1
[100] NJ Const, 1844, Art 4, § 2, cl One
[101] Conn Const, 1818, Amend 2
[102] Vt Const, 1793, Amend 23
[103] NJ Const, 1844, Art 4 § 3, cl One
[104] RI Const, 1842, Art 5 § 1
[105] Ark Const, 1868, Art 5 §§ 8, 9, Va Const 1864, Art 4 § 6 (this constitution was in effect when Virginia ratified the Fourteenth Amendment), Va Const, 1870, Art 5 § 4 (this was Virginia's Reconstruction-Act convention constitution), Miss Const, 1868, Art 4, §§ 33 to 35, Tex Const, 1868, Art 3 §§ 11, 34 The Virginia Constitutions and Texas' provisions for apportioning its lower chamber do not

bama,[100] each county (in the case of Louisiana, each parish) was assured at least one seat in the lower house irrespective of numbers—a distribution which exhausted, respectively, on the basis of the number of then-existing counties, three-quarters, one-quarter, two-fifths and three-fifths of the maximum possible number of representatives, before a single seat was available for assignment on a population basis; and in South Carolina, moreover, the Senate was composed of one member elected from each county, except that Charleston sent two [110] In Florida's House, each county had one seat guaranteed and an additional seat for every thousand registered voters up to a maximum of four representatives; [111] while Georgia, whose Senate seats were distributed among fourty-four single-member districts each composed of three contiguous counties,[112] assigned representation in its House as follows three seats to each of the six most populous counties, two to each of the thirty-one next most populous, one to each of the remaining ninety-five [113] As might be expected, the one-representative-per-county-minimum pattern has proved incompatible with numerical equality,[114] and Georgia's county-clustering system has produced representative-ratio disparities, between the largest and smallest counties, of more than sixty to one [115]

C The constitutions [116] of the thirteen States which Congress admitted to the Union after the ratification of the Fourteenth Amendment showed a similar pattern Six of them required or permitted apportionment of both houses by population, subject only to qualifications concerning local boundaries [117] Wyoming, apportioning by population,

in terms require equality of numbers, although they call for reapportionment following a census In Arkansas, the legislature was authorized, but not commanded, to reapportion periodically, it is not clear that equality was required

[106] NC Const, 1868, Art 2 §§ 6, 7 See Art 2 § 5 for Senate apportionment based on numbers

[107] SC Const, 1868, Art 1 § 34, Art 2 §§ 4 to 6

[108] La Const, 1868, Tit II, Arts 30, 21 See Tit II, Arts 28 to 30 for Senate apportionment based on numbers

[109] Ala Const, 1867, Art 8 § 1 See Art 8 § 3 for Senate apportionment based on numbers

[110] SC Const, 1868, Art 2 § 3

[111] Fla Const, 1868, Art 14 ¶ 1 See Art 14 ¶ 2, for Senate apportionment

[112] Ga Const, 1868, Art 3 § 2 The extent of legislative authority to alter these districts is unclear, but it appears that the structure of three contiguous counties for each of forty-four districts is meant to be permanent

[113] Ga Const, 1868, Art 3 § 3 The extent of legislative authority to alter the apportionment is unclear, but it appears that the three-tiered structure is meant to be permanent

[114] See, e g, Durfee, Apportionment of Representation in the Legislature A Study of State Constitutions, 43 Mich L Rev 1091, 1097 (1945), Short, States That Have Not Met Their Constitutional Requirements, 17 Law & Contemp Prob 377 (1952), Harvey, Reapportionments of State Legislatures—Legal Requirements, 17 Law & Contemp Prob 364, 370 (1952) For an excellent case study of numerical inequalities deriving solely from a one-member-per-county minimum provision in Ohio, see Aumann, Rural Ohio Hangs On, 46 Nat Mun Rev 189, 191–192 (1957)

[115] Dauer and Kelsay, Unrepresentative States, 44 Nat Mun Rev 571, 574 (1955) (This is the effect of a later Georgia constitutional provision, Ga Const, 1945, § 2–1501, substantially similar to that of 1868) The same three-tiered system has subsequently been adopted in Florida, Fla Const, 1885, Art 7 §§ 3, 4, where its effects have been inequalities of the order of eighty to one Dauer and Kelsay, supra, at 575, 587

[116] The constitutions discussed are those under which the new States entered the Union

[117] Colo Const, 1876, Art 5 §§ 45, 47, ND Const, 1889 Art 2 §§ 29, 35, SD Const, 1889, Art 3 § 5, Wash Const, 1889, Art 2 §§ 3, 6, Utah Const, 1895, Art 9 §§ 2, 4, NM Const 1911, Art 4, following § 41 The Colorado and Utah Constitutions provide for reapportionment "according to ratios to be fixed by law" after periodic census and enumeration In New Mexico the legislature is authorized, but not commanded, to reapportion periodically North Dakota does not in terms demand equality in House representation, members are to be assigned among the several senatorial districts which are of equal population

guaranteed to each of its counties at least one seat in each house,[118] and Idaho, which prescribed (after the first legislative session) that apportionment should be "as may be provided by law," gave each county at least one representative [119] In Oklahoma, House members were apportioned among counties so as to give one seat for half a ratio, two for a ratio and three quarters, and one for each additional ratio up to a maximum of seven representatives per county [120] Montana required reapportionment of its House on the basis of periodic enumerations according to ratios to be fixed by law [121] but its counties were represented as counties in the Senate, each county having one senator [122] Alaska [123] and Hawaii [124] each appointed a number of senators among constitutionally fixed districts, their respective Houses were to be periodically reapportioned by population, subject to a moiety rule in Alaska [125] and to Hawaii's guarantee of one representative to each of four constitutionally designated areas [126] The Arizona Constitution assigned representation to each county in each house, giving one or two senators and from one to seven representatives to each, and making no provision for reapportionment [127]

4 Contemporary apportionment. Detailed recent studies are available to describe the present-day constitutional and statutory status of apportionment in the fifty States [128] They demonstrate a decided twentieth-century trend away from population as the exclusive base of representation Today, only a dozen state constitutions provide for periodic legislative reapportionment of both houses by a substantially unqualified application of the population standard,[129] and only about a dozen more prescribe such reapportionment for even a single chamber "Specific provision for county representation in at least one house of the state legislature has been increasingly adopted since the end of the 19th century. . . " [130] More than twenty States now guarantee each county at least one seat in one of their houses regardless of population, and in nine others county or town units are given equal representation in one legislative branch, whatever the number of each unit's inhabitants. Of course, numerically considered, "These provisions invariably result in

[118] Wyo Const, 1889, Art 3, Legislative Department, § 3, Art 3 Apportionment, §§ 2, 3
[119] Idaho Const, 1889, Art 3 § 4
[120] Okla Const, 1907, Art 5 § 10(b) to (j) See Art 5, § 9(a), (b) for Senate apportionment based on numbers
[121] Mont Const, 1889, Art 6 §§ 2, 3
[122] Mont Const, 1889, Art 5 § 4, Art 6 § 4 The effective provisions are, first, that there shall be no more than one senator from each county, and, second, that no senatorial district shall consist of more than one county
[123] Alaska Const, 1956, Art 6 § 7, Art 14, § 2 The exact boundaries of the districts may be modified to conform to changes in House districts, but their numbers of senators and their approximate perimeters are to be preserved
[124] Hawaii Const, 1950, Art 3 § 2
[125] Alaska Const, 1956, Art 6 §§ 3, 4, 6 The method of equal proportions is used
[126] Hawaii Const, 1950, Art 3 § 4 The method of equal proportions is used, and, for sub-apportionment within the four "basic" areas, a form of moiety rule obtains
[127] Ariz Const, 1910, Art 4 Pt 2, § 1 On the basis of 1910 census figures, this apportionment yielded, for example, a senatorial-ratio differential of more than four to one between Mohave and Cochise or between Mohave and Maricopa Counties II Thirteenth Census of the United States (1910), 71–73
[128] The pertinent state constitutional provisions are set forth in tabular form in XIII Book of the States (1960–1961), 54–58, and Greenfield, Ford and Emery, Legislative Reapportionment California in National Perspective (University of California, Berkeley, 1959), 81–85 An earlier treatment now outdated in several respects but still useful is Durfee, supra, note 114 See discussions in Harvey, supra, note 114, Shull, Political and Partisan Implications of State Legislative Apportionment, 17 Law & Contemp Prob 417, 418–421 (1952)
[129] Nebraska's unicameral legislature is included in this count
[130] Greenfield, Ford and Emery, supra, note 128, at 7

over-representation of the least populated areas. . . ."[131] And in an effort to curb the political dominance of metropolitan regions, at least ten States now limit the maximum entitlement of any single county (or, in some cases, city) in one legislative house—another source of substantial numerical disproportion[132]

Moreover, it is common knowledge that the legislatures have not kept reapportionment up to date, even where state constitutions in terms require it[133] In particular, the pattern of according greater per capita representation to rural, relatively sparsely populated areas—the same pattern which finds expression in various state constitutional provisions,[134] and which has been given effect in England and elsewhere[135]—has, in some of the States, been made the law by legislative inaction in the face of population shifts[136] Throughout the country, urban and suburban areas tend to be given higher representation ratios than do rural areas.[137]

The stark fact is that if among the numerous widely varying principles and practices that control state legislative apportionment today there is any generally prevailing feature, that feature is geographic inequality in relation to the population standard[138] Examples could

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[131] Harvey, supra, note 114, at 367 See Tabor, The Gerrymandering of State and Federal Legislative Districts, 16 Md L Rev 277, 282–283 (1956)

[132] See, e g, Mather and Ray, The Iowa Senatorial Districts Can Be Reapportioned—A Possible Plan, 39 Iowa L Rev 525, 536–537 (1954)

[133] See, e g, Walter, Reapportionment and Urban Representation, 195 Annals of the American Academy of Political and Social Science 11, 12–13 (1938), Bone, supra, note 87 Legislative inaction and state constitutional provisions rejecting the principle of equal numbers have both contributed to the generally prevailing numerical inequality of representation in this country Compare Walter, supra, with Baker, One Vote, One Value, 47 Nat Mun Rev 16, 18 (1958)

[134] See, e g, Griffith 116–117, Luce 364–367, 370, Merriam, American Political Ideas (1929), 244–245, Legislation, Apportionment of the New York State Senate, 31 St John's L Rev 335, 341–342 (1957)

[135] In 1947, the Boundary Commission for England, " impressed by the advantages of accessibility [that large compact urban regions] enjoy over widely scattered rural areas came to the conclusion that they could conveniently support electorates in excess of the electoral quota, and would in the majority of cases prefer to do so rather than suffer severance of local unity for parliamentary purposes,"—that "in general urban constituencies could more conveniently support large electorates than rural constituencies " Initial Report of the Boundary Commission for England [Cmd 7260] (1947), 5 See also Mackenzie 110–111, De Grazia, General Theory of Apportionment, 17 Law & Contemp Prob 256, 261–262 (1952)

[136] See Walter, supra, note 133, Walter, Reapportionment of State Legislative Districts, 37 Ill L Rev 20, 37–38 (1942) The urban-rural conflict is often the core of apportionment controversy See Durfee, supra, note 114, at 1093–1094, Short, supra, note 114, at 391

[137] Baker, Rural Versus Urban Political Power (1955), 11–19, MacNeil, Urban Representation in State Legislatures, 18 State Government 59 (1945), United States Conference of Mayors, Government Of the People, By the People, For the People (ca 1947)

[138] See, in addition to the authorities cited in notes 130, 131, 136 and 137, supra, and 140 to 144, infra (all containing other examples than those remarked in text), Hurst, The Growth of American Law, The Law Makers (1950), 41–43, American Political Science Association, Committee on American Legislatures, American State Legislatures (Zeller ed 1954), 34–35, Gosnell, Democracy, The Threshold of Freedom (1948), 179–181, Lewis, Legislative Apportionment and the Federal Courts, 71 Harv L Rev 1057, 1059–1064 (1958), Friedman, Reapportionment Myth, 49 Nat Civ Rev 184, 185–186 (1960), 106 Cong Rec 13827–13842 (daily ed, June 29, 1960) (remarks of Senator Clark and supporting materials), HR Rep No 2533, 85th Cong, 2d Sess 24, HR Doc No 198, 84th Cong, 1st Sess 38–40, Hadwiger, Representation in the Missouri General Assembly, 24 Mo L Rev 178, 180–181 (1959), Hamilton, Beardsley and Coats, Legislative Reapportionment in Indiana, Some Observations and a Suggestion, 35 Notre Dame Law 368, 368–370 (1960), Carter, Pennsylvania Ponders Apportionment, 32 Temple LQ 279, 283–288 (1959) Concerning the classical gerrymander, see Griffith, passim, Luce 395–404, Brooks, Political Parties and Electoral Problems (3d ed 1933), 472–481 For foreign examples of numerical disproportion, see Hogan, Election and Representation (1945), 95, Finer, Theory and Practice of Modern Government (Rev ed 1949), 551–552

be endlessly multiplied In New Jersey, counties of thirty-five thousand and of more than nine hundred and five thousand inhabitants respectively each have a single senator [139] Representative districts in Minnesota range from 7,290 inhabitants to 107,246 inhabitants [140] Ratios of senatorial representation in California vary as much as two hundred and ninety-seven to one [141] In Oklahoma, the range is ten to one for House constituencies and roughly sixteen to one for Senate constituencies.[142] Colebrook, Connecticut—population 592—elects two House representatives, Hartford—population 177,397—also elects two.[143] The first, third and fifth of these examples are the products of constitutional provisions which subordinate population to regional considerations in apportionment; the second is the result of legislative inaction, the fourth derives from both constitutional and legislative sources A survey made in 1955, in sum, reveals that less than thirty percent of the population inhabit districts sufficient to elect a House majority in thirteen States and a Senate majority in nineteen States [144] These figures show more than individual variations from a generally accepted standard of electoral equality They show that there is not—as there has never been—a standard by which the place of equality as a factor in apportionment can be measured.

Manifestly, the Equal Protection Clause supplies no clearer guide for judicial examination of apportionment methods than would the Guarantee Clause itself Apportionment, by its character, is a subject of extraordinary complexity, involving—even after the fundamental theoretical issues concerning what is to be represented in a representative legislature have been fought out or compromised—considerations of geography, demography, electoral convenience, economic and social cohesions or divergencies among particular local groups, communications, the practical effects of political institutions like the lobby and the city machine, ancient traditions and ties of settled usage, respect for proven incumbents of long experience and senior status, mathematical mechanics, censuses compiling relevant data, and a host of others [145]

[139] Baker, supra, note 137, at 11 Recent New Jersey legislation provides for reapportionment of the State's lower house by executive action following each United States census subsequent to that of 1960 NJ Laws 1961, c 1 The apportionment is to be made on the basis of population, save that each county is assured at least one House seat In the State's Senate, however, by constitutional command, each county elects a single senator, regardless of population NJ Const, 1947, Art 4 § 2 ¶ 1

[140] Note, 42 Minn L Rev 617, 618–619 (1958)

[141] Greenfield, Ford and Emery, supra, note 128, at 3

[142] University of Oklahoma, Bureau of Government Research, The Apportionment Problem in Oklahoma (1959), 16–29

[143] 1 Labor's Economic Rev 83, 96 (1956)

[144] Dauer and Kelsay, Unrepresentative States, 44 Nat Mun Rev 571, 572, 574 (1955)

[145] See the Second Schedule to the House of Commons (Redistribution of Seats) Act, 1949, 12 & 13 Geo VI, c 66, as amended by the House of Commons (Redistribution of Seats) Act, 1958, 6 & 7 Eliz II, c 26, § 2, and the English experience described in text at notes 50 to 61, supra See also the Report of the Assembly Interim Committee on Elections and Reapportionment, California Assembly (1951) (hereafter, California Committee Report), 37 "The geographic—the socioeconomic—the desires of the people—the desires of the elected officeholders—the desires of political parties—all these can and do legitimately operate not only within the framework of the 'relatively equal in population districts' factor, but also within the factors of contiguity and compactness The county and Assembly line legal restrictions operate outside the framework of theoretically 'equal in population districts' All the factors might conceivably have the same weight in one situation, in another, some factors might be considerably more important than others in making the final determination" A Virginia legislative committee adverted to " many difficulties such as natural topographical barriers, divergent business and social interests, lack of communication by rail or highway, and the disinclinations of communities to breaking up political ties of long standing, resulting in some cases of districts requesting to remain with populations more than their averages rather than have their equal representation with the

Legislative responses throughout the country to the reapportionment demands of the 1960 Census have glaringly confirmed that these are not factors that lend themselves to evaluations of a nature that are the staple of judicial determinations or for which judges are equipped to adjudicate by legal training or experience or native wit And this is the more so true because in every strand of this complicated, intricate web of values meet the contending forces of partisan politics [146] The practical significance of apportionment is that the next election results may differ because of it Apportionment battles are overwhelmingly party or intra-party contests [147] It will add a virulent source of friction and tension in federal-state relations to embroil the federal judiciary in them [148]

IV.

Appellants, however, contend that the federal courts may provide the standard which the Fourteenth Amendment lacks by reference to the provisions of the constitution of Tennessee The argument is that although the same or greater disparities of electoral strength may be suffered to exist immune from federal judicial review in States where they result from apportionment legislation consistent with state constitutions, the Tennessee legislature may not abridge the rights which, on its face, its own constitution appears to give, without by that act denying equal protection of the laws It is said that the law of Tennessee, as expressed by the words of its written constitution, has made the basic choice among policies in favor of representation proportioned to population, and that it is no longer open to the State to allot its voting power on other principles

This reasoning does not bear analysis Like claims invoking state constitutional requirement have been rejected here and for good reason It is settled that whatever federal consequences may derive from a discrimination worked by a state statute must be the same as if the same

changed conditions" Report of the Joint Committee on the Re-apportionment of the State into Senatorial and House Districts, Virginia General Assembly, House of Delegates, H Doc No 9 (1922), 1–2 And the Tennessee State Planning Commission, concerning the problem of congressional redistricting in 1950, spoke of a "tradition [which] relates to the sense of belonging—loyalties to groups and items of common interest with friends and fellow citizens of like circumstance, environment or region" Tennessee State Planning Commission, Pub No 222, Redistricting for Congress (1950), First page

[146] See, e g, California Committee Report, at 52

"[T]he reapportionment process is, by its very nature, political

There will be politics in reapportionment as long as a representative form of government exists

"It is impossible to draw a district boundary line without that line's having some political significance"

[147] See, e g, Celler, Congressional Apportionment—Past, Present, and Future, 17 Law & Contemp Prob 268 (1952), speaking of the history of congressional apportionment

"A mere reading of the debates [from the Constitutional Convention down to contemporary Congresses] on this question of apportionment reveals the conflicting interests of the large and small states and the extent to which partisan politics permeates the entire problem"

[148] See Standards for Congressional Districts (Apportionment), Hearings Before Subcommittee No 2 of the Committee on the Judiciary, House of Representatives, 86th Cong, 1st Sess 23, concerning a proposed provision for judicial enforcement of certain standards in the laying out of districts

"Mr KASEM You do not think that that [a provision embodying the language 'in as compact form as practicable'] might result in a decision depending upon the political inclinations of the judge"

"Mr CELLER Are you impugning the integrity of our Federal judiciary?

"Mr KASEM No, I just recognize their human frailties"

For an instance of a court torn, in fact or fancy, over the political issues involved in reapportionment, see State ex rel Lashly v Becker, 290 Mo 560, 235 SW 1017, and especially the dissenting opinion of Higbee, J, 290 Mo at 613, 235 SW at 1037

discrimination were written into the State's fundamental law. Nashville, C & St L R Co v Browning, 310 US 362, 84 L ed 1254, 60 S Ct 968 And see Castillo v McConnico, 168 US 674, 42 L ed 622, 18 S Ct 229, Coulter v Louisville & N. R Co 196 US 599, 608, 609, 49 L ed 615, 617, 618, 25 S Ct 342, Owensboro Waterworks Co v Owensboro, 200 US 38, 50 L ed 361, 26 S Ct 249; Herbert v Louisiana, 272 US 312, 316, 317, 71 L ed 270, 272, 273, 47 S Ct 103, 48 ALR 1102; Snowden v Hughes, 321 US 1, 11, 88 L ed 497, 504, 64 S Ct 397 Appellants complain of a practice which, by their own allegations, has been the law of Tennessee for sixty years They allege that the apportionment act of 1901 created unequal districts when passed and still maintains unequal districts They allege that the Legislature has since 1901 purposely retained unequal districts And the Supreme Court of Tennessee has refused to invalidate the law establishing these unequal districts Kidd v McCanless, 200 Tenn 273, 292 SW2d 40, app dismd here in 352 US 920, 1 L ed 2d 157, 77 S Ct 223 In these circumstances, what was said in the Browning Case, supra (310 US at 369), clearly governs this case

" . Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law The Equal Protection Clause did not write an empty formalism into the Constitution Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text [T]he Equal Protection Clause is not a command of candor. . . ."

Tennessee's law and its policy respecting apportionment are what 60 years of practice show them to be, not what appellants cull from the unenforced and, according to its own judiciary, unenforceable words of its Constitution The statute comes here on the same footing, therefore, as would the apportionment laws of New Jersey, California or Connecticut,[149] and is unaffected by its supposed repugnance to the state constitutional language on which appellants rely [150]

In another aspect, however, the Kidd v McCanless Case (Tenn) supra, introduces a factor peculiar to this litigation, which only emphasizes the duty of declining the exercise of federal judicial jurisdiction In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their nonjusticiability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical

[149] See text at notes 139–143, supra

[150] Decisions of state courts which have entertained apportionment cases under their respective state constitutions do not, of course, involve the very different considerations relevant to federal judicial intervention State-court adjudication does not involve the delicate problems of federal-state relations which would inhere in the exercise of federal judicial power to impose restrictions upon the States' shaping of their own governmental institutions Moreover, state constitutions generally speak with a specificity totally lacking in attempted utilization of the generalities of the Fourteenth Amendment to apportionment matters Some expressly commit apportionment to state judicial review, see, e g, NY Const, 1938, Art 3 § 5, and even where they do not, they do precisely fix the criteria for judicial judgment respecting the allocation of representative strength within the electorate See, e g, Asbury Park Press, Inc v Woolley, 33 NJ 1, 161 A2d 705

centers of a State's political system and threaten political dislocation whose consequences are not foreseeable A declaration devoid of implied compulsion of injunctive or other relief would be an idle threat.[151] Surely a Federal District Court could not itself remap the State the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweeping political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts

In Tennessee, moreover, the McCanless Case has closed off several among even these unsatisfactory and dangerous modes of relief That case was a suit in the state courts attacking the 1901 Reapportionment Act and sending a declaration and an injunction of the Act's enforcement or, alternatively, a writ of mandamus compelling state election officials to hold the elections at large, or, again alternatively, a decree of the court reapportioning the State The Chancellor denied all coercive relief, but entertained the suit for the purpose of rendering a declaratory judgment It was his view that despite an invalidation of the statute under which the present legislature was elected, that body would continue to possess de facto authority to reapportion, and that therefore the maintaining of the suit did not threaten the disruption of the government The Tennessee Supreme Court agreed that no coercive relief could be granted, in particular, it said, "There is no provision of law for election of our General Assembly by an election at large over the State " 200 Tenn, at 277, 292 SW2d, at 42 Thus, a legislature elected at large would not be the legally constituted legislative authority of the State The court reversed, however, the Chancellor's determination to give declaratory relief, holding that the ground of demurrer which asserted that a striking down of the statute would disrupt the orderly process of government should have been sustained

"(4) It seems obvious and we therefore hold that if the Act of 1901 is to be declared unconstitutional, then the de facto doctrine cannot be applied to maintain the present members of the General Assembly in office If the Chancellor is correct in holding that this statute has expired by the passage of the decade following its enactment then for the same reason all prior apportionment acts have expired by a like lapse of time and are nonexistent Therefore we would not only not have any existing members of the General Assembly but we would have no apportionment act whatever under which a new election could be held for the election of members to the General Assembly

. . . .

"The ultimate result of holding this Act unconstitutional by reason of the lapse of time would be to deprive us of the present Legislature and the means of electing a new one and ultimately bring about the destruction of the State itself " Id , 200 Tenn, at 281, 282, 292 SW2d, at 44

[151] Appellants' suggestion that, although no relief may need be given, jurisdiction ought to be retained as a "spur" to legislative action does not merit discussion.

A federal court enforcing the Federal Constitution is not, to be sure, bound by the remedial doctrines of the state courts. But it must consider as pertinent to the propriety or impropriety of exercising its jurisdiction those state-law effects of its decree which it cannot itself control. A federal court cannot provide the authority requisite to make a legislature the proper governing body of the State of Tennessee. And it cannot be doubted that the striking down of the statute here challenged on equal protection grounds, no less than on grounds of failure to reapportion decennially, would deprive the State of all valid apportionment legislation and—under the ruling in McCanless—deprive the State of an effective law-based legislative branch. Just such considerations, among others here present, were determinative in Luther v. Borden and the Oregon initiative cases.[152]

Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action. The judgment of the District Court, in dismissing the complaint for failure to state a claim on which relief can be granted, should therefore be affirmed.

Dissenting opinion of Mr. Justice Harlan, whom Mr. Justice Frankfurter joins.

The dissenting opinion of Mr. Justice Frankfurter, in which I join, demonstrates the abrupt departure the majority makes from judicial history by putting the federal courts into this area of state concerns—an area which, in this instance the Tennessee state courts themselves have refused to enter.

It does not detract from his opinion to say that the panorama of judicial history it unfolds, though evincing a steadfast underlying principle of keeping the federal courts out of these domains, has a tendency, because of variants in expression, to becloud analysis in a given case. With due respect to the majority, I think that has happened here.

Once one cuts through the thicket of discussion devoted to "jurisdiction," "standing," "justiciability" and "political question," there emerges a straightforward issue which, in my view, is determinative of this case. Does the complaint disclose a violation of a federal constitutional right, in other words, a claim over which a United States District Court would have jurisdiction under 28 USC § 1343(3) and 42 USC § 1983? The majority opinion does not actually discuss this basic question, but, as one concurring Justice observes, seems to decide it "sub silentio." Ante, p. 711. However, in my opinion, appellants' allegations, accepting all of them as true, do not, parsed down or as a whole, show an infringement by Tennessee of any rights assured by the Fourteenth Amendment. Accordingly, I believe the complaint should have been dismissed for "failure to state a claim upon which relief can be granted." Fed. Rules Civ. Proc. 12(b) (6).

It is at once essential to recognize this case for what it is. The issue here relates not to a method of state electoral apportionment by which seats in the *federal* House of Representatives are allocated, but solely to the right of a State to fix the basis of representation in its *own*

[152] See note 24, supra.

legislature Until it is first decided to what extent that right is limited by the Federal Constitution, and whether what Tennessee has done or failed to do in this instance runs afoul of any such limitation, we need not reach the issues of "justiciability" or "political question" or any of the other considerations which in such cases as Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, led the Court to decline to adjudicate a challenge to a state apportionment affecting seats in the federal House of Representatives, in the absence of a controlling Act of Congress See also Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1.

The appellants' claim in this case ultimately rests entirely on the Equal Protection Clause of the Fourteenth Amendment It is asserted that Tennessee has violated the Equal Protection Clause by maintaining in effect a system of apportionment that grossly favors in legislative representation the rural sections of the State as against its urban communities. Stripped to its essentials the complaint purports to set forth three constitutional claims of varying breadth

(1) The Equal Protection Clause requires that each vote cast in state legislative elections be given approximately equal weight.

(2) Short of this, the existing apportionment of state legislators is so unreasonable as to amount to an arbitrary and capricious act of classification on the part of Tennessee Legislature, which is offensive to the Equal Protection Clause

(3) In any event, the existing apportionment is rendered invalid under the Fourteenth Amendment because it flies in the face of the Tennessee Constitution.

For reasons given in Mr Justice Frankfurter's opinion, ante, pp 748, 749, the last of these propositions is manifestly untenable, and need not be dealt with further I turn to the other two

I.

I can find nothing in the Equal Protection Clause or elsewhere in the Federal Constitution which expressly or impliedly supports the view that state legislatures must be so structured as to reflect with approximate equality the voice of every voter Not only is that proposition refuted by history, as shown by my Brother Frankfurter, but it strikes deep into the heart of our federal system Its acceptance would require us to turn our backs on the regard which this Court has always shown for the judgment of state legislatures and courts on matters of basically local concern

In the last analysis, what lies at the core of this controversy is a difference of opinion as to the function of representative government It is surely beyond argument that those who have the responsibility for devising a system of representation may permissibly consider that factors other than bare numbers should be taken into account The existence of the United States Senate is proof enough of that To consider that we may ignore the Tennessee Legislature's judgment in this instance because that body was the product of an asymmetrical electoral apportionment would in effect be to assume the very conclusion here disputed Hence we must accept the present form of the Tennessee Legislature as the embodiment of the State's choice, or, more realistically, its compromise, between competing political philos-

ophies The federal courts have not been empowered by the Equal Protection Clause to judge whether this resolution of the State's internal political conflict is desirable or undesirable, wise or unwise

With respect to state tax statutes and regulatory measures, for example, it has been said that the "day is gone when this Court uses the Fourteenth Amendment to strike down state laws because they may be unwise, improvident, or out of harmony with a particular school of thought" Williamson v Lee Optical of Okla, Inc 348 US 483, 488, 99 L ed 563, 572, 75 S Ct 461 I would think it all the more compelling for us to follow this principle of self-restraint when what is involved is the freedom of a State to deal with so intimate a concern as the structure of its own legislative branch The Federal Constitution imposes no limitation on the form which a state government may take other than generally committing to the United States the duty to guarantee to every State "a Republican Form of Government" And, as my Brother Frankfurter so conclusively proves (ante, pp 738–743), no intention to fix immutably the means of selecting representatives for state governments could have been in the minds of either the Founders or the draftsmen of the Fourteenth Amendment

In short, there is nothing in the Federal Constitution to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people I would have thought this proposition settled by MacDougall v Green, 335 US 281 [93 L ed 3, 69 S Ct 1], in which the Court observed (at p 283) that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government," and reaffirmed by South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641 A State's choice to distribute electoral strength among geographical units, rather than according to a census of population, is certainly no less a rational decision of policy than would be its choice to levy a tax on property rather than a tax on income Both are legislative judgments entitled to equal respect from this Court

II.

The claim that Tennessee's system of apportionment is so unreasonable as to amount to a capricious classification of voting strength stands up no better under dispassionate analysis

The Court has said time and again that the Equal Protection Clause does not demand of state enactments either mathematical identity or rigid equality E g, Allied Stores of Ohio, Inc v Bowers, 358 US 522, 527, 528, 3 L ed 2d 480, 484, 485, 79 S Ct 437, and authorities there cited, McGowan v Maryland, 366 US 420, 425, 426, 6 L ed 2d 393, 398, 399, 81 S Ct 1101 All that is prohibited is "invidious discrimination" bearing no rational relation to any permissible policy of the State Williamson v Lee Optical of Okla, Inc supra (348 US at 489) And in deciding whether such discrimination has been practiced by a State, it must be borne in mind that a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it" McGowan v Maryland (US) supra It is not inequality alone that calls for a holding of unconstitutionality, only if the inequality is based on an impermissible standard may this Court condemn it

What then is the basis for the claim made in this case that the distribution of state senators and representatives is the product of capriciousness or of some constitutionally prohibited policy? It is not that Tennessee has arranged its electoral districts with a deliberate purpose to dilute the voting strength of one race. cf Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125, or that some religious group is intentionally underrepresented Nor is it a charge that the legislature has indulged in sheer caprice by allotting representatives to each county on the basis of a throw of the dice, or of some other determinant bearing no rational relation to the question of apportionment Rather, the claim is that the State Legislature has unreasonably retained substantially the same allocation of senators and representatives as was established by statute in 1901, refusing to recognize the great shift in the population balance between urban and rural communities that has occurred in the meantime

It is further alleged that even as of 1901 the apportionment was invalid, in that it did not allocate state legislators among the counties in accordance with the formula set out in Art 2 § 5, of the Tennessee Constitution In support of this the appellants have furnished a Table which indicates that as of 1901 six counties were overrepresented and 11 were underrepresented But that Table in fact shows nothing in the way of significant discrepancy, in the instance of each county it is only one representative who is either lacking or added And it is further perfectly evident that the variations are attributable to nothing more than the circumstance that the then enumeration of voters resulted in fractional remainders with respect to which the precise formula of the Tennessee Constitution was in some instances slightly disregarded Unless such de minimis departures are to be deemed of significance, these statistics certainly provide no substantiation for the charge that the 1901 apportionment was arbitrary and capricious Indeed, they show the contrary

Thus reduced to its essentials, the charge of arbitrariness and capriciousness rests entirely on the consistent refusal of the Tennessee Legislature over the past 60 years to alter a pattern of apportionment that was reasonable when conceived

A Federal District Court is asked to say that the passage of time has rendered the 1901 apportionment obsolete to the point where its continuance becomes vulnerable under the Fourteenth Amendment But is not this matter one that involves a classic legislative judgment? Surely it lies within the province of a state legislature to conclude that an existing allocation of senators and representatives constitutes a desirable balance of geographical and demographical representation, or that in the interest of stability of government it would be best to defer for some further time the redistribution of seats in the state legislature

Indeed, I would hardly think it unconstitutional if a state legislature's expressed reason for establishing or maintaining an electoral imbalance between its rural and urban population were to protect the State's agricultural interests from the sheer weight of numbers of those residing in its cities A State may, after all, take account of the interests of its rural population in the distribution of tax burdens, e g , American Sugar Ref Co v Louisiana, 179 US 89, 45 L ed 102, 21 S Ct 43, and rec-

ognition of the special problems of agricultural interests has repeatedly been reflected in federal legislation, e g, Capper-Volstead Act, 42 Stat 388, Agricultural Adjustment Act of 1938, 52 Stat 31 Even the exemption of agricultural activities from state criminal statutes of otherwise general application has not been deemed offensive to the Equal Protection Clause Tigner v Texas, 310 US 141, 84 L ed 1124, 60 S Ct 879, 130 ALR 1321. Does the Fourteenth Amendment impose a stricter limitation upon a State's apportionment of political representatives to its central government? I think not These are matters of local policy, on the wisdom of which the federal judiciary is neither permitted nor qualified to sit in judgment

The suggestion of my Brother Frankfurter that courts lack standards by which to decide such cases as this, is relevant not only to the question of "justiciability," but also, and perhaps more fundamentally, to the determination whether any cognizable constitutional claim has been asserted in this case Courts are unable to decide when it is that an apportionment originally valid becomes void because the factors entering into such a decision are basically matters appropriate only for legislative judgment And so long as there exists a possible rational legislative policy for retaining an existing apportionment, such a legislative decision cannot be said to breach the bulwark against arbitrariness and caprice that the Fourteenth Amendment affords Certainly, with all due respect, the facile arithmetical argument contained in Part II of my Brother Clark's separate opinion (ante, pp 707–709) provides no tenable basis for considering that there has been such a breach in this instance (See the Appendix to this opinion)

These conclusions can hardly be escaped by suggesting that capricious state action might be found were it to appear that a majority of the Tennessee legislators, in refusing to consider reapportionment, had been actuated by self-interest in perpetuating their own political offices or by other unworthy or improper motives Since Fletcher v Peck (US) 6 Cranch 87, 3 L ed 162, was decided many years ago, it has repeatedly been pointed out that it is not the business of the federal courts to inquire into the personal motives of legislators E g, Arizona v California, 283 US 423, 455, and note 7, 75 L ed 1154, 1165, 1166, 51 S Ct 522 The function of the federal judiciary ends in matters of this kind once it appears, as I think it does here on the undisputed facts, that the state action complained of could have rested on some rational basis (See the Appendix to this opinion)

It is my view that the majority opinion has failed to point to any recognizable constitutional claim alleged in this complaint Indeed, it is interesting to note that my Brother Stewart is at pains to disclaim for himself, and to point out that the majority opinion does not suggest, that the Federal Constitution requires of the States any particular kind of electoral apportionment, still less that they must accord to each voter approximately equal voting strength Concurring opinion, ante, p 713 But that being so, what, may it be asked, is left of this complaint? Surely the bare allegations that the existing Tennessee apportionment is "incorrect," "arbitrary," "obsolete" and "unconstitutional"—amounting to nothing more than legal conclusions—do not themselves save the complaint from dismissal See Snowden v Hughes,

321 US 1, 88 L ed 497, 64 S Ct 397, Collins v Hardyman, 341 US 651, 95 L ed 1253, 71 S Ct 937 Nor do those allegations shift to the appellees the burden of proving the *constitutionality* of this state statute, as is so correctly emphasized by my Brother Stewart (ante, p. 714), this Court has consistently held in cases arising under the Equal Protection Clause that " 'the burden of establishing the *unconstitutionality* of a statute rests on him who assails it,' Metropolitan Ins Co v Brownell, 294 U S 581, 584 " (Emphasis added) Moreover, the appellants do not suggest that they could show at a trial anything beyond the matters previously discussed in this opinion, which add up to nothing in the way of a supportable constitutional challenge against this statute And finally, the majority's failure to come to grips with the question whether the complaint states a claim recognizable under the Federal Constitution—an issue necessarily presented by appellee's motion to dismiss —does not of course furnish any ground for permitting this action to go to trial.

From a reading of the majority and concurring opinions one will not find it difficult to catch the premises that underlie this decision The fact that the appellants have been unable to obtain political redress of their asserted grievances appears to be regarded as a matter which should lead the Court to stretch to find some basis for judicial intervention While the Equal Protection Clause is invoked, the opinion for the Court notably eschews explaining how, consonant with past decisions, the undisputed facts in this case can be considered to show a violation of that constitutional provision The majority seems to have accepted the argument, pressed at the bar, that if this Court merely asserts authority in this field, Tennessee and other "malapportioning" States will quickly respond with appropriate political action, so that this Court need not be greatly concerned about the federal courts becoming further involved in these matters At the same time the majority has wholly failed to reckon with what the future may hold in store if this optimistic prediction is not fulfilled Thus, what the Court is doing reflects more an adventure in judicial experimentation than a solid piece of constitutional adjudication Whether dismissal of this case should have been for want of jurisdiction or, as is suggested in Bell v Hood, 327 US 678, 682, 683, 90 L ed 939, 943, 66 S Ct 773, 13 ALR2d 383, for failure of the complaint to state a claim upon which relief could be granted, the judgment of the District Court was correct

In conclusion, it is appropriate to say that one need not agree, as a citizen, with what Tennessee has done or failed to do, in order to deprecate, as a judge, what the majority is doing today Those observers of the Court who see it primarily as the last refuge for the correction of all inequality or injustice, no matter what its nature or source, will no doubt applaud this decision and its break with the past Those who consider that continuing national respect for the Court's authority depends in large measure upon its wise exercise of self-restraint and discipline in constitutional adjudication, will view the decision with deep concern

I would affirm

Appendix

THE INADEQUACY OF ARITHMETICAL FORMULAS AS MEASURES OF THE RATIONALITY OF TENNESSEE'S APPORTIONMENT

Two of the three separate concurring opinions appear to concede that the Equal Protection Clause does not guarantee to each state voter a vote of approximately equal weight for the State Legislature Whether the existing Tennessee apportionment is constitutional is recognized to depend only on whether it can find "any possible justification in rationality" (ante, p 713); it is to be struck down only if "the discrimination here does not fit any pattern" (ante, p 709)

One of the concurring opinions, that of my Brother Stewart, suggests no reasons which would justify a finding that the present distribution of state legislators is unconstitutionally arbitrary The same is true of the majority opinion My Brother Clark, on the other hand, concludes that "the apportionment picture in Tennessee is a topsy-turvical of gigantic proportions" (ante, p 707), solely on the basis of certain statistics presented in the text of his separate opinion and included in a more extensive Table appended thereto In my view, that analysis is defective not only because the "total representation" formula set out in footnote 7 of the opinion (ante, p 707), rests on faulty mathematical foundations, but, more basically, because the approach taken wholly ignores all other factors justifying a legislative determination of the sort involved in devising a proper apportionment for a State Legislature.

In failing to take any of such other matters into account and in focusing on a particular mathematical formula which, as will be shown, is patently unsound, my Brother Clark's opinion has, I submit, unwittingly served to bring into bas-relief the very reasons that support the view that this complaint does not state a claim on which relief could be granted For in order to warrant holding a state electoral apportionment invalid under the Equal Protection Clause, a court, in line with well-established constitutional doctrine, must find that *none* of the permissible policies and *none* of the possible formulas on which it might have been based could rationally justify particular inequalities

I.

At the outset, it cannot be denied that the apportionment rules explicitly set out in the Tennessee Constitution are rational These rules are based on the following obviously permissible policy determinations (1) to utilize counties as electoral units, (2) to prohibit the division of any county in the composition of electoral districts, (3) to allot to each county that has a substantial voting population—at least two-thirds of the average voting population per county—a separate "direct representative"; (4) to create "floterial" districts (multicounty representative districts) made up of more than one county; and (5) to

require that such districts be composed of adjoining counties[1] Such a framework unavoidably leads to unreliable arithmetic inequalities under any mathematical formula whereby the counties' "total representation" is sought to be measured It particularly results in egregiously deceptive disparities if the formula proposed in my Brother Clark's opinion is applied

That formula computes a county's "total representation" by adding (1) the number of "direct representatives" the county is entitled to elect; (2) a fraction of any other seats in the Tennessee House which are allocated to that county jointly with one or more others in a "floterial district", (3) triple the number of senators the county is entitled to elect alone, and (4) triple a fraction of any seats in the Tennessee Senate which are allocated to that county jointly with one or more others in a multicounty senatorial district The fractions used for items (2) and (4) are computed by allotting to each county in a combined district an equal share of the House or Senate seat, *regardless* of the voting population of each of the counties that make up the election district[2]

This formula is patently deficient in that it eliminates from consideration the relative voting power of the counties that are joined together in a single election district As a result, the formula unrealistically assigns to Moore County one-third of a senator, in addition to its direct representative (ante, pp 707, 708), although it must be obvious that Moore's voting strength in the Eighteenth Senatorial District is almost negligible Since Moore County could cast only 2,340 votes of a total eligible vote of 30,478 in the senatorial district, it should in truth be considered as represented by one-fifteenth of a senator Assuming, arguendo, that any "total representation" figure is of significance, Moore's "total representation" should be 1 23, not 2[3]

The formula suggested by my Brother Clark must be adjusted regardless whether one thinks, as I assuredly do not, that the Federal Constitution requires that each vote be given equal weight The correc-

[1] The relevant provisions of the Tennessee Constitution are Art 2 §§ 5 and 6

"Sec 5 The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified voters in each, and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine, Provided, That any county having two-thirds of the ratio shall be entitled to one member

"Sec 6 The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each, and shall not exceed one-third the number of Representatives In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members of the House of Representatives, shall be made up to such county or counties in the Senate as near as may be practicable When a district is composed of two or more counties they shall be adjoining, and no counties shall be divided in forming a district"

[2] This formula is not clearly spelled out in the opinion, but it is necessarily inferred from the figures that are presented Knox County, for example, is said to have a "total representation" of 7 25 It elects (1) three direct representatives (value 3 00), (2) one representative from a two-county district (value 50), (3) one direct senator (value 3 00), and (4) one senator in a four-county district (value 75) See Appendix, ante, pp 753, 759

[3] If this "adjusted" formula for measuring "total representation" is applied to the other "horribles" cited in the concurring opinion (ante, pp 707, 708), it reveals that these counties—which purportedly have equal "total representation" but distinctly unequal voting population—do not have the same "total representation" at all Rather than having the same representation as Rutherford County, Moore County has only about 40% of what Rutherford has Decatur County has only 55% of the representation of Carter County While Loudon and Anderson Counties are substantially underrepresented, this is because of their proximity to Knox County, which outweighs their votes in the Sixth Senatorial District and in the Eighth Floterial District

tion is necessary simply to reflect the real facts of political life It may, of course, be true that the floterial representative's "function is to represent the whole district" (ante, pp. 708, 709) But can it be gainsaid that so long as elections within the district are decided not by a county-unit system, in which each county casts one vote, but by adding the total number of individual votes cast for each candidate, the concern of the elected representatives will primarily be with the most populous counties in the district?

II.

I do not mean to suggest that *any* mathematical formula, albeit an "adjusted" one, would be a proper touchstone to measure the rationality of the present or of appellants' proposed apportionment plan. For, as the Table appended to my Brother Clark's opinion so conclusively shows, whether one applies the formula he suggests or one that is adjusted to reflect proportional voting strength within an election district, no plan of apportionment consistent with the principal policies of the Tennessee Constitution could provide proportionately equal "total representation" for each of Tennessee's 95 counties.

The pattern suggested by the appellants in Exhibits "A" and "B" attached to their complaint is said to be a "fair distribution" which accords with the Tennessee Constitution, and under which each of the election districts represents approximately equal voting population But even when tested by the "adjusted" formula, the plan reveals gross "total representation" disparities that would make it appear to be a "crazy quilt" For example, Loudon County, with twice the voting population of Humphreys County would have *less* representation than Humphreys, and about one-third the representation of Warren County, which has only 73 more voters Among the more populous counties, similar discrepancies would appear Although Anderson County has only somewhat over 10% more voters than Blount County, it would have approximately 75% more representation. And Blount would have approximately two-thirds the representation of Montgomery County, which has about 13% *less* voters [4]

III.

The fault with a purely statistical approach to the case at hand lies not with the particular mathematical formula used, but in the failure to take account of the fact that a multitude of legitimate legislative policies, along with circumstances of geography and demography, could account for the seeming electoral disparities among counties The principles set out in the Tennessee Constitution are just some of those that were deemed significant Others may have been considered and accepted by those entrusted with the responsibility for Tennessee's apportionment And for the purposes of judging constitutionality under the Equal Protection Clause it must be remembered that what is controlling

[4] These disparities are as serious, if not more so, when my Brother Clark's formula is applied to the appellants' proposal For example, if the nine counties chosen by him as illustrative are examined as they would be represented under the appellants' distribution, Moore County, with a voting population of 2,340, is given more electoral strength than Decatur County, with a voting population of 5,663 Carter County (voting population 33,302) has 20% *more* "total representation" than Anderson County (voting population 33,990), and 33% *more* than Rutherford County (voting population 25,316)

on the issue of "rationality" is not what the State Legislature may *actually* have considered but what it may be *deemed* to have considered

For example, in the list of "horribles" cited by my Brother Clark (ante, pp 707, 708), *all* the "underrepresented" counties are semi-urban all contain municipalities of over 10,000 population [5] This is not to say, however, that the presence of any such municipality within a county necessarily demands that its proportional representation be reduced in order to render it consistent with an "urban versus rural" plan of apportionment. Other considerations may intervene and outweigh the Legislature's desire to distribute seats so as to achieve a proper balance between urban and rural interests The size of a county, in terms of its total area, may be a factor [6] Or the location within a county of some major industry may be thought to call for dilution of voting strength [7] Again, the combination of certain smaller counties with their more heavily populated neighbors in senatorial or "floterial" districts may result in apparent arithmetic inequalities [8]

More broadly, the disparities in electoral strength among the various counties in Tennessee, both those relied upon by my Brother Clark and others, may be accounted for by various economic,[9] political,[10] and geographic [11] considerations No allegation is made by the appellants that the existing apportionment is the result of any other forces than are always at work in any legislative process; and the record, briefs, and arguments in this Court themselves attest to the fact that the appellants could put forward nothing further at a trial.

By disregarding the wide variety of permissible legislative considerations that may enter into a state electoral apportionment my Brother Clark has turned a highly complex process into an elementary arith-

[5] Murfreesboro, Rutherford County (pop 16,017), Elizabethton, Carter County (pop 10,754), Oak Ridge, Anderson County (pop 27,387) Tennessee Blue Book, 1960, pp 143–149

[6] For example, Carter and Washington Counties are each approximately 60% as large as Maury and Madison Counties in terms of square miles, and this may explain the disparity between their "total representation" figures

[7] For example, in addition to being "semi-urban," Blount County is the location of the City of Alcoa, where the Aluminum Company of America has located a large aluminum smelting and rolling plant This may explain the difference between its "total representation" and that of Gibson County, which has no such large industry and contains no municipality as large as Maryville

[8] For example, Chester County (voting population 6,391) is one of those that is presently said to be overrepresented But under the appellants' proposal, Chester would be combined with populous Madison County in a "floterial district" and with four others, including Shelby County, in a senatorial district Consequently, its total representation according to the Appendix to my Brother Clark's opinion would be 19 (Ante, pp 711–713) This would have the effect of disenfranchising all the county's voters Similarly, Rhea County's almost 9,000 voters would find their voting strength so diluted as to be practically nonexistent

[9] For example, it is primarily the eastern portion of the State that is complaining of malapportionment (along with the Cities of Memphis and Nashville) But the eastern section is where industry is principally located and where population density, even outside the larger cities, is highest Consequently, if Tennessee is apportioning in favor of its agricultural interests, as constitutionally it was entitled to do, it would necessarily reduce representation from the east

[10] For example, sound political reasons surely justify limiting the legislative chambers to workable numbers, in Tennessee, the House is set at 99 and the Senate at 33 It might have been deemed desirable, therefore, to set a ceiling on representation from any single county so as not to deprive others of individual representation The proportional discrepancies among the four counties with large urban centers may be attributable to a conscious policy of limiting representation in this manner

[11] For example, Moore County is surrounded by four counties each of which have sufficient voting population to exceed two-thirds of the average voting population per county (which is the standard prescribed by the Tennessee Constitution for the assignment of a direct representative), thus qualifying for direct representatives Consequently Moore County must be assigned a representative of its own despite its small voting population because it cannot be joined with any of its neighbors in a multicounty district, and the Tennessee Constitution prohibits combining it with nonadjacent counties See note 1, supra

metical puzzle It is only by blinking reality that such an analysis can stand and that the essentially legislative determination can be made the subject of judicial inquiry

IV.

Apart from such policies as those suggested which would suffice to justify particular inequalities, there is a further consideration which could rationally have led the Tennessee Legislature, in the exercise of a deliberate choice, to maintain the status quo Rigidity of an apportionment pattern may be as much a legislative policy decision as is a provision for periodic reapportionment In the interest of stability, a State may write into its fundamental law a permanent distribution of legislators among its various election districts, thus forever ignoring shifts in population Indeed, several States have achieved this result by providing for minimum and maximum representation from various political subdivision such as counties, districts, cities, or towns See Harvey, Reapportionments of State Legislatures—Legal Requirements, 17 Law & Contemp Probs (1952), 364, 368–372

It is said that one "cannot find any rational standard" in what the Tennessee Legislature has failed to do over the past 60 years But surely one need not search far to find rationality in the Legislature's continued refusal to recognize the growth of the urban population that has accompanied the development of industry over the past half decade The existence of slight disparities between rural areas does not overcome the fact that the foremost apparent legislative motivation has been to preserve the electorate strength of the rural interests notwithstanding shifts in population And I understand it to be conceded by at least some of the majority that this policy is not rendered unconstitutional merely because it favors rural voters

Once the electoral apportionment process is recognized for what it is —the product of legislative give-and-take and of compromise among policies that often conflict—the relevant constitutional principles at once put these appellants out of the federal courts

JAMES H. GRAY et al., Appellants,

v

JAMES O'HEAR SANDERS

(372 U.S. 368)

March 18, 1963.

OPINION OF THE COURT

Mr Justice Douglas delivered the opinion of the Court

I.

This suit was instituted by appellee, who is qualified to vote in primary and general elections in Fulton County, Georgia, to restrain appellants from using Georgia's county unit system as a basis for counting votes in a Democratic primary for the nomination of a United States Senator and statewide officers, and for declaratory relief Appellants are the Chairman and Secretary of the Georgia State Democratic Executive Committee, and the Secretary of State of Georgia Appellee alleges that the use of the county unit system in counting, tabulating, consolidating, and certifying votes cast in primary elections for statewide offices violates the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment and the Seventeenth Amendment As the constitutionality of a state statute was involved and the question was a substantial one, a three-judge court was properly convened See 28 USC § 2281, United States v Georgia Public Service Com 371 US 285, 9 L ed 2d 317, 83 S Ct 397, decided January 14, 1963.

Appellants moved to dismiss, and they also filed an answer denying that the county unit system was unconstitutional and alleging that it was designed "to achieve a reasonable balance as between urban and rural electoral power"

Under Georgia law each county is given a specified number of representatives in the lower House of the General Assembly [1] This county unit system at the time this suit was filed was employed as follows in statewide primaries [2] (1) Candidates for nominations who received the highest number of popular votes in a county were considered to have carried the county and to be entitled to two votes for each representative to which the county is entitled in the lower House of the General Assembly; (2) the majority of the county unit vote nominated a United States Senator and Governor, the plurality of the county unit vote nominated the others.

[1] Ga Const, 1945, Art 3, § 8, ¶ 1

'The House of Representatives shall consist of representatives apportioned among the several counties of the State as follows To the eight counties having the largest population, three representatives each, to the thirty counties having the next largest population, two representatives each, and to the remaining counties, one representative each"

[2] Ga Code Ann, §§ 34-3212, 34-3213 (1936)

Appellee asserted that the total population of Georgia in 1960 was 3,943,116; that the population of Fulton County, where he resides, was 556,326; that the residents of Fulton County comprised 14 11% of Georgia's total population, but that, under the county unit system, the six unit votes of Fulton County constituted 1 46% of the total of 410 unit votes, or one-tenth of Fulton County's percentage of statewide population The complaint further alleged that Echols County, the least populous county in Georgia, had a population in 1960 of 1,876, or 05% of the State's population, but the unit vote of Echols County was 48% of the total unit vote of all counties in Georgia, or 10 times Echols County's statewide percentage of population One unit vote in Echols County represented 938 residents, whereas one unit vote in Fulton County represented 92,721 residents Thus, one resident in Echols County had an influence in the nomination of candidates equivalent to 99 residents of Fulton County.

On the same day as the hearing in the District Court, Georgia amended the statutes challenged in the complaint This amendment [3] modified the county unit system by allocating units to counties in accordance with a "bracket system" instead of doubling the number of representatives of each county in the lower House of the Georgia Assembly Counties with from 0 to 15,000 people were allotted two units; an additional one unit was allotted for the next 5,000 persons, an additional unit for the next 10,000 persons, another unit for each of the next two brackets of 15,000 persons; and, thereafter, two more units for each increase of 30,000 persons Under the amended Act, all candidates for statewide office (not merely for Senator and Governor as under the earlier Act) are required to receive a majority of the county unit votes to be entitled to nomination in the first primary In addition, in order to be nominated in the first primary, a candidate has to receive a majority of the popular votes unless there are only two candidates for the nomination and each receives an equal number of unit votes, in which event the candidate with the popular majority wins If no candidate receives both a majority of the unit votes and a majority of the popular votes, a second runoff primary is required between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes In the second primary, the candidate receiving the highest number of unit votes is to prevail But again, if there is a tie in unit votes the candidate with the popular majority wins.

Appellee was allowed to amend his complaint so as to challenge the amended Act The District Court held that the amended Act had some of the vices of the prior Act It stated that under the amended Act "the vote of each citizen counts for less and less as the population of the county of his residence increases" 203 F Supp 158, 170, note 10 It went on to say:

"There are 97 two-unit counties, totalling 194 unit votes, and 22 counties totalling 66 unit votes, altogether 260 unit votes, within 14 of a majority, but no county in the above has as much as 20,000 population The remaining 40 counties range in population from 20,481 to

[3] Ga Laws 1962, Ex Sess, p 1217, Ga Code Ann §§ 34–3212, 34–3213 (1962)

556,326, but they control altogether only 287 county unit votes Combination of the units from the counties having the smallest population gives counties having population of one-third of the total in the state a clear majority of county units " Ibid

The District Court held that as a result of Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, it had jurisdiction, that a justiciable case was stated, that appellee had standing, and that the Democratic primary in Georgia is "state" action within the meaning of the Fourteenth Amendment It held that the county unit system as applied violates the Equal Protection Clause, and it issued an injunction,[4] not against conducting any party primary election under the county unit system, but against conducting such an election under a county unit system that does not meet the requirements specified by the court[5] 203 F Supp 158. In other words, the District Court did not proceed on the basis that in a statewide election every qualified person was entitled to one vote and that all weighted voting was outlawed Rather, it allowed a county unit system to be used in weighting the votes if the system showed no greater disparity against a county than exists against any State in the conduct of national elections[6] Thereafter the Democratic Committee voted to hold the 1962 primary election for the statewide offices mentioned on a popular vote basis We noted probable jurisdiction 370 US 921, 8 L ed 2d 502, 82 S Ct 1564

II.

We agree with the District Court that the action of this party in the conduct of its primary constitutes state action within the meaning of the Fourteenth Amendment Judge Sibley, writing for the court in Chapman v King (CA5 Ga) 154 F2d 460, showed with meticulous detail the manner in which Georgia regulates the conduct of party primaries (id. 154 F2d pp 463, 464) and he concluded

"We think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and puts its power behind the rules of the party It adopts the primary as a part of the public election machinery The exclusions of voters made by the party by the primary rules become exclusions enforced by the State " Id 154 F2d p 464

We agree with that result and conclude that state regulation of this preliminary phase of the election process makes it state action See United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110

[4] The order, dated April 28, 1962, was not restricted to the party primary of September 12, 1962, nor was the relief asked so restricted

[5] The District Court in its order defined the type of county unit system which violated the Equal Protection Clause as follows

"A county unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the vote for electors of the party in the most recent presidential election, provided, no discrimination is deemed to be invidious under such system if the disparity against any county is not in excess of the disparity that exists as against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress of the United States, and, provided provision is made for allocations to be adjusted to accord with changes in the basis at least once each ten years "

[6] See note 5, supra

We also agree that appellee, like any person whose right to vote is impaired (Smith v Allwright (US) supra, Baker v Carr, supra (369 US pp. 204–208)) has standing to sue [7]

Moreover, we think the case is not moot by reason of the fact that the Democratic Committee voted to hold the 1962 primary on a popular vote basis But for the injunction issued below, the 1962 Act remains in force; and if the complaint were dismissed it would govern future elections In addition the voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and long-standing For if the case were dismissed as moot appellants would "be free to return to . [their] old ways " United States v W. T. Grant Co 345 US 629, 632, 97 L ed 1303, 1309, 73 S Ct 894.

III.

On the merits we take a different view of the nature of the problem than did the District Court

This case, unlike Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, supra, does not involve a question of the degree to which the Equal Protection Clause of the Fourteenth Amendment limits the authority of a State Legislature in designing the geographical districts from which representatives are chosen either for the State Legislature or for the Federal House of Representatives Nor does it include the related problems of Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125, where "gerrymandering" was used to exclude a minority group from participation in municipal affairs Nor does it present the question, inherent in the bicameral form of our Federal Government, whether a State may have one house chosen without regard to population The District Court, however, analogized Georgia's use of the county unit system in determining the results of a statewide election to phases of our federal system It pointed out

[7] Chief Justice Holt stated over 250 years ago

"A right that a man has to give his vote at the election of a person to represent him in parliament, there to concur to the making of laws, which are to bind his liberty and property, is a most transcendent thing, and of a high nature [I]t is a great injury to deprive [him] of it

"It would look very strange, when the commons of *England* are so fond of their right of sending representatives to parliament, that it should be in the power of a sheriff, or other officer, to deprive them of that right, and yet that they should have no remedy This right of voting is a right in the plaintiff by the common law, and consequently he shall maintain an action for the obstruction of it

"But in the principle case my brother says, we cannot judge of this matter, because it is a parliamentary thing O' by all means be very tender of that Besides it is intricate, and there may be contrariety of opinions To allow this action will make publick officiers more careful to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing mischief, and tends to the prejudice of the peace of the nation But they say, that this is a matter out of our jurisdiction, and we ought not to inlarge it I agree we ought not to incroach or inlarge our jurisdiction, but sure we may determine on a charter granted by the king, or on a matter of custom or prescription, when it comes before us without incroaching on the parliament And if it be a matter within our jurisdiction, we are bound by our oaths to judge of it This is a matter of property determinable before us Was ever such a petition heard of in parliament, as that a man was hindered of giving his vote, and praying them to give him a remedy" The parliament undoubtedly would say, take your remedy at law It is not like the case of determining the right of election between the candidates" Ashby v White, 2 Ld Raym 938, 953, 954, 956 (1702)

that under the electoral college,[8] required by Art 2, § 1 of the Constitution and the Twelfth Amendment in the election of the President voting strength "is not in exact proportion to population Recognizing that the electoral college was set up as a compromise to enable the formation of the Union among the several sovereign states, it still could hardly be said that such a system used in a state among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious" 203 F Supp 169

Accordingly the District Court as already noted[9] held that use of the county unit system in counting the votes in a statewide election was permissible "if the disparity against any county is not in excess of the disparity that exists against the state in the most recent electoral college allocation" 203 F Supp 170 Moreover the District Court held that use of the county unit system in counting the votes in a statewide election was permissible "if the disparity against any county is not in excess of the disparity that exists under the equal proportions formula for representation of the several States in the Congress" Ibid The assumption implicit in these conclusions is that since equality is not inherent in the electoral college and since precise equality among blocs of votes in one State or in the several States when it comes to the election of members of the House of Representatives is never possible, precise equality is not necessary in statewide elections

We think the analogies to the electoral college, to districting and redistricting, and to other phases of the problems of representation in state or federal legislatures or conventions[10] are inapposite The inclusion of the electoral college in the Constitution as the result of specific historical concerns,[11] validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a state in a statewide election No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued Nor does the

[8] The electoral college was designed by men who did not want the election of the President to be left to the people See S Doc No 97, Survey of the Electoral College in the Political System of the United States, 79th Cong, 1st Sess "George Washington was elected to the office of Chief Magistrate of the Nation, by 69 votes—the total number cast by the electors At that time, three States did not vote New York had not yet passed an electoral law, and North Carolina and Rhode Island had not yet ratified the Constitution Therefore, of an estimated population of 4,000,000 people, a President was chosen by 69 voters, who had not been selected by the people, but appointed by State legislatures, save in the instances of Maryland and Virginia" Id, p 4

Hamilton expressed the philosophy behind the electoral college in The Federalist No 68 "This process of election affords a moral certainty, that the office of president, will seldom fall to the lot of any man, who is not in an eminent degree endowed with the requisite qualifications Talents for low intrigue and the little arts of popularity may alone suffice to elevate a man to the first honors in a single state, but it will require other talents and a different kind of merit to establish him in the esteem and confidence of the whole union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of president of the United States It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue And this will be thought no inconsiderable recommendation of the constitution, by those, who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration"

Passage of the Fifteenth, Seventeenth, and Nineteenth Amendments shows that this conception of political equality belongs to a bygone day, and should not be considered in determining what the Equal Protection Clause of the Fourteenth Amendment requires in statewide elections

[9] See note 5, supra

[10] We do not reach here the questions that would be presented were the convention system used for nominating candidates in lieu of the primary system

[11] See note 8, supra.

question here have anything to do with the composition of the state or federal legislature. And we intimate no opinion on the constitutional phases of that problem beyond what we said in Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, supra The present case is only a voting case Cf Nixon v Herndon, 273 US 536, 71 L ed 759, 47 S Ct 446, Nixon v Condon, 286 US 73, 76 L ed 984, 52 S Ct 484, 88 ALR 458; Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110, supra Georgia gives every qualified voter one vote in a statewide election, but in counting those votes she employs the county unit system which in end result weights the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties

States can within limits specify the qualifications of voters both in state and federal elections, the Constitution indeed makes voters' qualifications rest on state law even in federal elections. Art 1, § 2. As we held in Lassiter v Northampton County Election Board, 360 US 45, 3 L ed 2d 1072, 79 S Ct 985, a State may if it chooses require voters to pass literacy tests, provided of course that literacy is not used as a cloak to discriminate against one class or group But we need not determine all the limitations that are placed on this power of a State to determine the qualifications of voters, for appellee is a qualified voter.

The Fifteenth Amendment prohibits a State from denying or abridging a Negro's right to vote. The Nineteenth Amendment does the same for women If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that that discrimination was allowable See Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809 How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions

The Court has consistently recognized that all qualified voters have a constitutionally protected right "to cast their ballots and have them counted at Congressional elections " United States v Classic, 313 US 299, 315, 85 L ed 1368, 1377, 61 S Ct 1031; see Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152, Wiley v Sinkler, 179 US 58, 45 L ed 84, 21 S Ct 17; Swafford v Templeton, 185 US 487, 46 L Ed 1005, 22 S Ct 783 Every voter's vote is entitled to be counted once It must be correctly counted and reported As stated in United States v Mosley, 238 US 383, 386, 59 L Ed 1355, 1357, 35 S Ct 904, "the right to have one's vote counted" has the same dignity as "the right

to put a ballot in a box." It can be protected from the diluting effect of illegal ballots Ex parte Siebold, 100 US 371, 25 L ed 717; United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101 And these rights must be recognized in any preliminary election that in fact determines the true weight a vote will have See United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, supra; Smith v Allwright, 321 US 649, 88 L ed 987, 64 S Ct 757, 151 ALR 1110, supra The concept of political equality in the voting booth contained in the Fifteenth Amendment extends to all phases of state elections, see Terry v Adams, 345 US 461, 97 L ed 1152, 73 S Ct 809, supra; and, as previously noted, there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State

The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President Yet when Senators are chosen, the Seventeenth Amendment states the choice must be made "by the people." Minors, felons, and other classes may be excluded. See Lassiter v Northampton County Election Board, supra (360 US p 51). But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded As we stated in Gomillion v Lightfoot, supra (364 US p 347)

"When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right"

The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote

While we agree with the District Court on most phases of the case and think it was right in enjoining the use of the county unit system [12] in tabulating the votes, we vacate its judgment and remand the case so that a decree in conformity with our opinion may be entered.

It is so ordered.

Mr Justice Stewart, whom Mr Justice Clark joins, concurring

In joining the opinion and judgment of the Court, I emphasize what —but for my Brother Harlan's dissent—I should have thought would be apparent to all who read the Court's opinion This case does not involve the validity of a State's apportionment of geographic constituencies from which representatives to the State's legislative assembly are chosen, nor any of the problems under the Equal Protection Clause which such litigation would present We do not deal here with "the basic ground rules implementing Baker v Carr" This case, on the contrary, involves statewide elections of a United States Senator

[12] The county unit system, even in its amended form (see note 3, supra) would allow the candidate winning the popular vote in the county to have the entire unit vote of that county Hence the weighting of votes would continue, even if unit votes were allocated strictly in proportion to population Thus if a candidate won 6,000 of 10,000 votes in a particular county, he would get the entire unit vote, the 4,000 other votes for a different candidate being worth nothing and being counted only for the purpose of being discarded

and of state executive and judicial officers responsible to a statewide constituency. Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031

Mr Justice Harlan, dissenting

When Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, was argued at the last Term we were assured that if this Court would only remove the roadblocks of Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, and its predecessors to judicial review in "electoral" cases this Court in all likelihood would never have to get deeper into such matters State legislatures, it was predicted, would be prodded into taking satisfactory action by the mere prospect of legal proceedings

These predictions have not proved true As of November 1, 1962, the apportionment of seats in at least 30 state legislatures had been challenged in state and federal courts,[1] and, besides this one, 10 electoral cases of one kind or another are already on this Court's docket[2] The present case is the first of these to reach plenary consideration

Preliminary, it is symptomatic of the swift pace of current constitutional adjudication that the majority opinion should have failed to mention any of the four occasions on which Georgia's County Unit System has previously been unsuccessfully challenged in this Court Cook v Fortson, decided with Turman v Duckworth, 329 US 675, 91 L ed 596, 67 S Ct 21 (1946); South v Peters, 339 US 276, 94 L ed 834, 70 S Ct 641 (1950); Cox v Peters, 342 US 936, 96 L ed 697, 72 S Ct 559 (1952); and Hartsfield v Sloan, 357 US 916, 2 L ed 2d 1363, 78 S Ct 1363 (1958).

It is true that none of these cases reached the stage of full plenary consideration but, in light of the judicial history recounted by Mr Justice Frankfurter in his dissenting opinion in Baker v Carr, supra (369 US at 266, 278 et seq), only the guileless could fail to recognize that the prevailing view then was that the validity of this County Unit System was not open to serious constitutional doubt[3] This estimate of the earlier situation is highlighted by the dissenting opinion of Justices Black and Douglas in South v Peters, supra (339 US at 277), in which they unsuccessfully espoused the very views which now become the law Presumably my two Brothers also reflected these same views in noting their dissents in the Cox and Hartsfield Cases See also Cook v Fortson, 329 US 675, 91 L ed 596, 67 S Ct 21, etc , supra, in which Mr Justice Black also noted his dissent.

But even if the Court's present silence about these cases can be deemed justified on the premise that their summary disposition can be

[1] Advisory Commission on Intergovernmental Relations, Report on Apportionment of State Legislatures, December 1962, p A-21 I have been informed by the Administrative Office of the United States Courts that, by December 31, 1962, over 25 suits had been filed in the federal courts alone

[2] No 469, WMCA, Inc , v Simon, No 507, Wesberry v Sanders, No 508, Reynolds v Sims, No 517, Beadle v Scholle, No 540, Vann v Frink, No 554, Maryland Comm for Fair Representation v Tawes, No 610, McConnell v Frink, No 688, Price v Moss, No 689, Oklahoma Farm Bureau v Moss, No 797, Davis v Mann

[3] Although the Solicitor General, as amicus, suggests that the Court's action in South v Peters rested simply on a refusal to exercise federal equity power, it should be noted that the first case cited in the Court's per curiam affirmance is MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1 See infra, p 833

satisfactorily accounted for on grounds not involving the merits, I consider today's decision not supportable

In the context of a nominating primary respecting candidates for statewide office, the Court construes the Equal Protection Clause of the Fourteenth Amendment as requiring that each person's vote be given equal weight The majority says "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote" Ante, pp. 830, 831. The Court then strikes down Georgia's County Unit System *as such*, a holding which the District Court declined to make 203 F Supp, at 170

The Court's holding surely flies in the face of history For, as impressively shown by the opinion of Frankfurter, J , in Baker v Carr (369 US, at 301–324), "one person, one vote" has never been the universally accepted political philosophy in England, the American Colonies, or in the United States The significance of this historical fact seems indeed to be recognized by the Court, for it implies that its new-found formula might not obtain in a case involving the apportionment of seats in the "State Legislature or for the Federal House of Representatives" Ante, pp 827, 828

But, independently of other reasons that will be discussed in a moment, any such distinction finds persuasive refutation in the Federal Electoral College whereby the President of the United States is chosen on principles wholly opposed to those now held constitutionally required in the electoral process for statewide office. One need not close his eyes to the circumstance that the Electoral College was born in compromise, nor take sides in the various attempts that have been made to change the system,[4] in order to agree with the court below that it "could hardly be said that such a system used in a state among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious." 203 F Supp, at 169

Indeed this Court itself some 15 years ago rejected, in a comparable situation, the notion of political equality now pronounced. In MacDougall v Green, 335 US 281, 93 L ed 3, 69 S Ct 1, challenge was made to an Illinois law requiring that nominating petitions of a new political party be signed by at least 25,000 voters, including a minimum of 200 voters from each of at least 50 of the 102 counties in the State The claim was that the "200 requirement" made it possible for "the voters of the less populous counties . to block the nomination of candidates whose support is confined to geographically limited areas" Id. 335 US at 283 In disallowing this claim, the Court said (Id 335 US at 283, 284):

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having

[4] See Wechsler, Presidential Elections and the Constitution A Comment on Proposed Amendment, 35 ABAJ 181 (1949).

concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former The Constitution—a practical instrument of government—makes no such demands on the States."

Certainly no support for this equal protection doctrine can be drawn from the Fifteenth, Seventeenth, or Nineteenth Amendments The Fifteenth Amendment simply assures that the right to vote shall not be impaired "on account of race, color, or previous condition of servitude" The Seventeenth Amendment provides that Senators shall be "elected by the people," with no indication that all people must be accorded a vote of equal weight The Nineteenth Amendment merely gives the vote to women And it is hard to take seriously the argument that "dilution" of a vote in consequence of a legislatively sanctioned electoral system can, without more, be analogized to an impairment of the political franchise by ballot box stuffing or other criminal activity, e g , United States v Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904, United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101, or to the disenfranchisement of qualified voters on purely racial grounds, Gomillion v Lightfoot, 364 US 339, 5 L ed 2d 110, 81 S Ct 125

A violation of the Equal Protection Clause thus cannot be found in the *mere* circumstance that the Georgia County Unit System results in disproportionate vote weighting It "is important for this court to avoid extracting from the very general language of the Fourteenth Amendment a system of delusive exactness . " Louisville & N R Co v Barber Asphalt Paving Co 197 US 430, 434, 49 L ed 819, 821, 25 S Ct 466 (Holmes, J). What then remains of the equal protection claim in this case?

At the core of Georgia's diffusion of voting strength which favors the small as against the large counties is the urban-rural problem, so familiar in the American political scene In my dissent in Baker v Carr, 369 US, at 336, I expressed the view that a State might rationally conclude that its general welfare was best served by apportioning more seats in the legislature to agricultural communities than to urban centers, lest the legitimate interests of the former be submerged in the stronger electoral voice of the latter. In my opinion, recognition of the same factor cannot be deemed irrational in the present situation, even though all of the considerations supporting its use in a legislative apportionment case are not present here

Given the undeniably powerful influence of a state governor on law and policy making,[5] I do not see how it can be deemed irrational for a State to conclude that a candidate for such office should not be one whose choice lies with the numerically superior electoral strength of urban voters By like token, I cannot consider it irrational for Georgia to apply its County Unit System to the selection of candidates for other

[5] The Georgia Constitution vests in the Governor the State's "executive power," and authorizes him to recommend legislation, make reports to and call extraordinary sessions of the State General Assembly, issue writs of election to fill vacancies in the General Assembly, veto or approve bills and resolutions, and require reports from the various departments of the State Ga Const of 1945, Art 5 §§ 2–3001 to 2–3017 Also, by statute, payments cannot be made from the state treasury without a warrant issued by the Governor, Ga Code Ann § 40–204, and in the event of a public emergency the Governor is authorized to promulgate and enforce such rules and regulations as are necessary to prevent, control, or quell violence, threatened or actual, Ga Code Ann § 40–213

statewide offices[6] in order to assure against a predominantly "city point of view" in the administration of the State affairs

On the existing record, this leaves the question of "irrationality" in this case to be judged on the basis of pure arithmetic The Court by its "one person, one vote" theory in effect avoids facing up to that problem, but the District Court did face it, holding that the disparities in voting strength between the largest county (Fulton) and the four smallest counties (Webster, Glascock, Quitman, and Echols), running respectively 8 to 1, 10 to 1, 11 to 1, and 14 to 1 in favor of the latter,[7] were invidiously discriminatory But it did not tell us why I do not understand how, on the basis of these mere numbers, unilluminated as they are by any of the complex and subtle political factors involved, a court of law can say, except by judicial fiat, that these disparities are in themselves constitutionally invidious

The disproportions in the Georgia County Unit System are indeed not greatly out of line with those existing under the Electoral College count for the Presidency The disparity in population per Electoral College vote between New York (the largest State in the 1960 census) and Alaska (the smallest) was about 5 to 1[8] There are only 15 Georgia counties, out of a total of 159, which have a greater disparity per unit vote, and of these 15 counties 4 have disparity of less than 6 to 1 It is thus apparent that a slight modification of the Georgia plan could bring it within the tolerance permitted in the federal scheme

It was of course imponderables like these that lay at the root of the Court's steadfast pre-Baker v Carr refusal "to enter [the] political thicket" Colegrove v Green supra (328 US at 556) Having turned its back on this wise chapter in its history, the Court, in my view, can no longer escape the necessity of coming to grips with the thorny problems it so studiously strove to avoid in Baker v Carr (see concurring opinion of Stewart, J , 369 US 265, and dissenting opinion of Harlan, J., id 369 US at 339) and in two subsequent cases, Scholle v Hare, 369 US 429, 430, 8 L ed 2d 1, 2, 82 S Ct 910 (concurring opinion of Clark, J , and Stewart, J), 430–435 (dissenting opinion of Harlan J), W M C A , Inc v Simon, 370 US 190, 191–194, 8 L ed 2d 430, 431–433, 82 S Ct 1234 (dissenting opinion of Harlan, J) To regard this case as being outside the general stream of electoral cases because only two other States, Maryland and Mississippi, have county unit systems, is to hide one's head in the sand

What then should be the test of "rationality" in this judicially unfamiliar field? My Brother Clark has perhaps given us a clue in the "legislative inactivity—absence of any other remedy—crazy quilt" ap-

[6] Those involved in this case, besides Governor, are United States Senator, Lieutenant Governor, Secretary of State, Justice of the Supreme Court, Judge of the Court of Appeals, Attorney General, Comptroller General, Commissioner of Labor, and Treasurer The Governor has a general power to fill vacancies in such offices, unless otherwise provided by law Ga Const of 1945, Art 5 § 2–3013

[7]

County	*Population*	*Unit Vote*	*Population per Unit Vote*	*Ratio to Fulton County*
Fulton	556,326	40	13,908	
DeKalb	256,782	20	12,839	
Chatham	188,299	16	11,760	
Muscogee	153,623	14	11,330	
Webster	3,247	2	1,623	8 to 1
Glascock	2,672	2	1,336	10 to 1
Quitman	2,432	2	1,216	11 to 1
Echols	1,876	2	938	14 to 1

[8] Statistical Abstract of the United States 10, 366 (1962).

proach contained in his concurring opinion in Baker v Carr, supra, (369 US at 253–262) But I think a formulation of the basic ground rules in this untrod area of judicial competence should await a fully developed record This case is here at an interlocutory stage The temporary injunction before us issued upon a record consisting only of the pleadings, answers to interrogatories, affidavits, statistical material, and what the lower court described as a "liberal use of our right to take judicial notice of matters of common knowledge and public concern " 203 F Supp, at 160 note 1 No full-dress exploration of any of the many intricate questions involved in establishing criteria for judging "rationality" took place, the opinion and decree below issued the day following the hearing, and the District Court observed that, while its standards of equal protection (which this Court now puts aside) "may appear doctrinaire to some extent," it was constrained to act as it did because of the then (but no longer existing)[9] urgency of the situation 203 F Supp, at 170

Surely, if the Court's "one person, one vote" ideology is constitutionally untenable, as I think it clearly is, the basic ground rules implementing Baker v Carr should await the trial of this or some other case in which we have before us a fully developed record Only then can we know what we are doing Cf White Motor Co v United States, — US —, No 54, 9 L ed 2d 738, 83 S Ct 696, decided March 4, 1963 A matter which so profoundly touches the barriers between federal judicial and state legislative authority demands nothing less

I would vacate the judgment of the District Court and remand the case for trial

[9] Following the District Court's injunction, a statewide direct primary was held

JAMES P. WESBERRY, JR., et al., Appellants,

v

CARL E. SANDERS, etc., et al.

(375 U.S. 1)

February 17, 1964.

OPINION OF THE COURT

Mr. Justice Black delivered the opinion of the Court

Appellants are citizens and qualified voters of Fulton County, Georgia, and as such are entitled to vote in congressional elections in Georgia's Fifth Congressional District That district, one of ten created by a 1931 Georgia statute,[1] includes Fulton, DeKalb, and Rockdale Counties and has a population according to the 1960 census of 823,680. The average population of the ten districts is 394,312, less than half that of the Fifth One district, the Ninth, has only 272,154 people, less than one-third as many as the Fifth Since there is only one Congressman for each district, this inequality of population means that the Fifth District's Congressman has to represent from two to three times as many people as do Congressmen from some of the other Georgia districts.

Claiming that these population disparities deprived them and voters similarly situated of a right under the Federal Constitution to have their votes for Congressmen given the same weight as the votes of other Georgians, the appellants brought this action under 42 USC §§ 1983 and 1988 and 28 USC § 1343 (3) asking that the Georgia statute be declared invalid and that the appellees, the Governor and Secretary of State of Georgia, be enjoined from conducting elections under it The complaint alleged that appellants were deprived of the full benefit of their right to vote, in violation of (1) Art I, § 2, of the Constitution of the United States, which provides that "The House of Representatives shall be composed of Members chosen every second year by the People of the several States ", (2) the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment; and (3) that part of Section 2 of the Fourteenth Amendment which provides that "Representatives shall be apportioned among the several States according to their respective numbers "

The case was heard by a three-judge District Court, which found unanimously, from facts not disputed, that

"It is clear by any standard . that the population of the Fifth District is grossly out of balance with that of the other nine congressional districts of Georgia and in fact, so much so that the removal of DeKalb and Rockdale Counties from the District, leaving only Fulton with a population of 556,326, would leave it exceeding the average by slightly more than forty per cent "[2]

[1] Ga Code, § 34-2301

[2] Wesberry v Vandiver, 206 F Supp 276, 279-280

Notwithstanding these findings, a majority of the court dismissed the complaint, citing as their guide Mr Justice Frankfurter's minority opinion in Colegrove v Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, an opinion stating that challenges to apportionment of congressional districts raised only "political" questions, which were not justiciable. Although the majority below said that the dismissal here was based on "want of equity" and not on non-justiciability, they relied on no circumstances which were peculiar to the present case, instead, they adopted the language and reasoning of Mr Justice Frankfurter's Colegrove opinion in concluding that the appellants had presented a wholly "political" question [3] Judge Tuttle, disagreeing with the court's reliance on that opinion, dissented from the dismissal, though he would have denied an injunction at that time in order to give the Georgia Legislature ample opportunity to correct the "abuses" in the apportionment He relied on Baker v Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, which, after full discussion of Colegrove and all the opinions in it, held that allegations of disparities of population in state legislative districts raise justiciable claims on which courts may grant relief We noted probable jurisdiction 374 US 802, 10 L ed 2d 1029, 83 S Ct 1691. We agree with Judge Tuttle that in debasing the weight of appellants' votes the State has abridged the right to vote for members of Congress guaranteed them by the United States Constitution, that the District Court should have entered a declaratory judgment to that effect, and that it was therefore error to dismiss the suit The question of what relief should be given we leave for further consideration and decision by the District Court in light of existing circumstances

I.

Baker v Carr, supra, considered a challenge to a 1901 Tennessee statute providing for apportionment of State Representatives and Senators under the State's constitution, which called for apportionment among counties or districts "according to the number of qualified voters in each." The complaint there charged that the State's constitutional command to apportion on the basis of the number of qualified voters had not been followed in the 1901 statute and that the districts were so discriminatorily disparate in number of qualified voters that the plaintiffs and persons similarly situated were, "by virtue of the debasement of their votes," denied the equal protection of the laws guaranteed them by the Fourteenth Amendment [4] The cause there of the alleged "debasement" of votes for state legislators—districts containing widely varying numbers of people—was precisely that which was alleged to debase votes for Congressmen in Colegrove v Green, supra, and in the present case. The Court in Baker pointed out that the opinion of Mr. Justice Frankfurter in Colegrove, upon the reasoning of which the

[3] "We do not deem [Colegrove v Green] to be a precedent for dismissal based on the nonjusticiability of a political question involving the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance a political question involving a coordinate branch of the federal government, a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state, relief may be forthcoming from a properly apportioned state legislature, and relief may be afforded by the Congress" 206 F Supp, at 285 (footnote omitted)

[4] 369, US, at 188, 7 L ed 2d at 668

majority below leaned heavily in dismissing "for want of equity," was approved by only three of the seven Justices sitting.[5] After full consideration of Colegrove, the Court in Baker held (1) that the District Court had jurisdiction of the subject matter, (2) that the qualified Tennessee voters there had standing to sue, and (3) that the plaintiffs had stated a justiciable cause of action on which relief could be granted.

The reasons which led to these conclusions in Baker are equally persuasive here. Indeed, as one of the grounds there relied on to support our holding that state apportionment controversies are justiciable we said:

"... Smiley v Holm, 285 US 355 [76 L ed 795, 52 S Ct 397], Koenig v Flynn, 285 US 375 [76 L ed 805, 52 S Ct 405], and Carroll v Becker, 285 US 380 [76 L ed 807, 52 S Ct 402], concerned the choice of Representatives in the Federal Congress. Smiley, Koenig and Carroll settled the issue in favor of justiciability on questions of congressional redistricting. The Court followed the precedents in Colegrove although over the dissent of three of the seven Justices who participated in that decision."[6]

This statement in Baker, which referred to our past decisions holding congressional apportionment cases to be justiciable, we believe was wholly correct and we adhere to it. Mr. Justice Frankfurter's Colegrove opinion contended that Art I, § 4, of the Constitution[7] had given Congress "exclusive authority" to protect the right of citizens to vote for Congressmen,[8] but we made it clear in Baker that nothing in the language of that article gives support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction, a power recognized at least since our decision in Marbury v Madison, 1 Cranch 137, 2 L ed 60, in 1803. Cf. Gibbons v Ogden, 9 Wheat 1, 6 L ed 23. The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I. This dismissal can no more be justified on the ground of "want of equity" than on the ground of "non-justiciability." We therefore hold that the District Court erred in dismissing the complaint.

II.

This brings us to the merits. We agree with the District Court that the 1931 Georgia apportionment grossly discriminates against voters in the Fifth Congressional District. A single Congressman represents from two to three times as many Fifth District voters as are represented by each of the Congressmen from the other Georgia congressional districts.

[5] Mr. Justice Rutledge in Colegrove believed that the Court should exercise its equitable discretion to refuse relief because "The shortness of the time remaining [before the next election] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek." 328 US, at 565, 90 L ed at 1443. In a later separate opinion he emphasized that his vote in Colegrove had been based on the "particular circumstances" of that case. Cook v Fortson, 329 US 675, 678, 91 L ed 596, 598, 67 S Ct 21.

[6] 369 US, at 232, 7 L ed 2d at 694. Cf. also Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1.

[7] "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." US Const, Art I, § 4.

[8] 328 US, at 554, 90 L ed at 1435.

The apportionment statute thus contracts the value of some votes and expands that of others If the Federal Constitution intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote, then this statute cannot stand

We hold that, construed in its historical context, the command of Art I, § 2, that Representatives be chosen "by the People of the several States" [9] means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's [10] This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history [11] It would be extraordinary to suggest that in such statewide elections the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta Cf Gray v Sanders, 372 US 368, 9 L ed 2d 821, 83 S Ct 801 We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention The history of the Constitution, particularly that part of it relating to the adoption of Art I, § 2, reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives

During the Revolutionary War the rebelling colonies were loosely allied in the Continental Congress, a body with authority to do little more than pass resolutions and issue requests for men and supplies. Before the war ended the Congress had proposed and secured the ratification by the States of a somewhat closer association under the Articles of Confederation. Though the Articles established a central government for the United States, as the former colonies were even then called, the States retained most of their sovereignty, like inde-

[9] "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed three fifths of all other Persons The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative " US Const, Art 1 § 2

The provisions for apportioning Representatives and direct taxes have been amended by the Fourteenth and Sixteenth Amendments, respectively

[10] We do not reach the arguments that the Georgia statute violates the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment

[11] As late as 1842, seven States still conducted congressional elections at large See Paschal, "The House of Representatives 'Grand Depository of the Democratic Principle'?" 17 Law & Contemprt Prob 276, 281 (1952)

pendent nations bound together only by treaties There were no separate judicial or executive branches: only a Congress consisting of a single house. Like the members of an ancient Greek league, each State, without regard to size or population, was given only one vote in that house. It soon became clear that the Confederation was without adequate power to collect needed revenues or to enforce the rules its Congress adopted. Far sighted men felt that a closer union was necessary if the States were to be saved from foreign and domestic dangers

The result was the Constitutional Convention of 1787, called for "the sole and express purpose of revising the Articles of Confederation "[12] When the Convention met in May, this modest purpose was soon abandoned for the greater challenge of creating a new and closer form of government than was possible under the Confederation Soon after the Convention assembled, Edmund Randolph of Virginia presented a plan not merely to amend the Articles of Confederation but to create an entirely new National Government with a National Executive, National Judiciary, and a National Legislature of two Houses, one house to be elected by "the people," the second house to be elected by the first.[13]

The question of how the legislature should be constituted precipitated the most bitter controversy of the Convention. One principle was uppermost in the minds of many delegates that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress. In support of this principle, George Mason of Virginia "argued strongly for an election of the larger branch by the people It was to be the grand depository of the democratic principle of the Govt." [14]

James Madison agreed, saying "If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all "[15] Repeatedly, delegates rose to make the same point. that it would be unfair, unjust, and contrary to common sense to give a small number of people as many Senators or Representatives as were allowed to much larger groups[16] —in short, as James Wilson of Pennsylvania put it, "equal numbers of people ought to have an equal no of representatives . . ." and representatives "of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other "[17]

Some delegates opposed election by the people The sharpest objection arose out of the fear on the part of small States like Delaware

[12] 3 The Records of the Federal Convention of 1787 (Farrand ed 1911) 14 (hereafter cited as "Farrand")

James Madison, who took careful and complete notes during the Convention, believed that in interpreting the Constitution later generations should consider the history of its adoption

"Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided" Id, at 549

[13] Id, at 20

[14] Id, at 48

[15] Id, at 472

[16] See, e g, id, at 197–198 (Benjamin Franklin of Pennsylvania), id, at 467 (Elbridge Gerry of Massachusetts), id, at 286, 465–466 (Alexander Hamilton of New York) id, at 489–490 (Rufus King of Massachusetts), id, at 322, 446–449, 486, 527–528 (James Madison of Virginia), id, at 180, 456 (Hugh Williamson of North Carolina), id, at 253–254, 406, 449–450, 482–484 (James Wilson of Pennsylvania)

[17] Id, at 180

that if population were to be the only basis of representation the populous States like Virginia would elect a large enough number of representatives to wield overwhelming power in the National Government.[18] Arguing that the Convention had no authority to depart from the plan of the Articles of Confederation which gave each State an equal vote in the National Congress, William Paterson of New Jersey said, "If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people; and we have no power to vary the idea of equal sovereignty "[19] To this end he proposed a single legislative chamber in which each State, as in the Confederation, was to have an equal vote.[20] A number of delegates supported this plan[21]

The delegates who wanted every man's vote to count alike were sharp in their criticism of giving each State, regardless of population, the same voice in the National Legislature. Madison entreated the Convention "to renounce a principle wch was confessedly unjust,"[22] and Rufus King of Massachusetts "was prepared for every event, rather than sit down under a Govt founded in a vicious principle of representation and which must be as shortlived as it would be unjust "[23]

The dispute came near ending the Convention without a Constitution Both sides seemed for a time to be hopelessly obstinate Some delegations threatened to withdraw from the Convention if they did not get their way[24] Seeing the controversy growing sharper and emotions rising, the wise and highly respected Benjamin Franklin arose and pleaded with the delegates on both sides to "part with some of their demands, in order that they may join in some accomodating proposition "[25] At last those who supported representation of the people in both houses and those who supported it in neither were brought together, some expressing the fear that if they did not reconcile their differences, "some foreign sword will probably do the work for us "[26] The deadlock was finally broken when a majority of the States agreed to what has been called the Great Compromise.[27] based on a proposal which had been repeatedly advanced by Roger Sherman and other delegates from Connecticut[28] It provided on the one hand that each State, including little Delaware and Rhode Island, was to have two Senators. As a further guarantee that these Senators would be considered state emissaries, they were to be elected by the state legislatures, Art I, § 3, and

[18] Luther Martin of Maryland declared "that the States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty that the propositions on the table were a system of slavery for 10 States that as Va Masts & Pa have 42/90 of the votes they can do as they please without a miraculous Union of the other ten that they will have nothing to do, but to gain over one of the ten to make them compleat masters of the rest ." Id, at 438

[19] Id, at 251

[20] 3 id, at 613

[21] E g, 1 id, at 324 (Alexander Martin of North Carolina), id, at 437–438, 439–441, 444–445, 453–455 (Luther Martin of Maryland), id, at 490–492 (Gunning Bedford of Delaware)

[22] Id, at 434

[23] Id, at 490

[24] Gunning Bedford of Delaware said "We have been told (with a dictatorial air) that this is the last moment for a fair trial in favor of a good Governmt . The Large States dare not dissolve the confederation If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice " Id, at 492

[25] Id, at 488

[26] Id, at 532 (Elbridge Gerry of Massachusetts) George Mason of Virginia urged an "accommodation" as "preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen " Id, at 533

[27] See id, at 551

[28] See id, at 193, 342–343 (Roger Sherman), id, at 461–462 (William Samuel Johnson)

it was specially provided in Article V that no State should ever be deprived of its equal representation in the Senate The other side of the compromise was that, as provided in Art I, § 2, members of the House of Representatives should be chosen "by the People of the several States" and should be "apportioned among the several States . . according to their respective Numbers" While those who wanted both houses to represent the people had yielded on the Senate, they had not yielded on the House of Representatives William Samuel Johnson of Connecticut had summed it up well· "in *one* branch the *people*, ought to be represented; in the *other*, the *States*" [29]

The debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent "people" they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants.[30] The Constitution embodied Edmund Randolph's proposal for a periodic census to ensure "fair representation of the people," [31] an idea endorsed by Mason as assuring that "numbers of inhabitants" should always be the measure of representation in the House of Representatives [32] The Convention also overwhelmingly agreed to a resolution offered by Randolph to base future apportionment squarely on numbers and to delete any reference to wealth [33] And the delegates defeated a motion made by Elbridge Gerry to limit the number of Representatives from newer Western States so that it would never exceed the number from the original States.[34]

It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others The House of Representatives, the Convention agreed, was to represent the people as individuals, and on a basis of complete equality for each voter The delegates were quite aware of what Madison called the "vicious representation" in Great Britain [35] whereby "rotton boroughs" with few inhabitants were represented in Parliament on or almost on a par with cities of greater population Wilson urged that people must be represented as individuals, so that America would escape the evils of the English system under which one man could send two members to Parliament to represent the borough of Old Sarum while London's million

[29] Id., at 462 (Emphasis in original)
[30] While "free Persons" and those "bound to Service for a Term of Years" were counted in determining representation, Indians not taxed were not counted, and "three fifths of all other Persons" (slaves) were included in computing the States' populations Art I, § 2 Also, every State was to have 'at Least one Representative" Ibid
[31] 1 Farrand, at 580.
[32] Id., at 579
[33] Id., at 606 Those who thought that one branch should represent wealth were told by Roger Sherman of Connecticut that the "number of people alone [was] the best rule for measuring wealth as well as representation, and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers" Id., at 582
[34] 2 id., at 3 The rejected thinking of those who supported the proposal to limit western representation is suggested by the statement of Gouverneur Morris of Pennsylvania that "The Busy haunts of men not the remote wilderness, was the proper School of political Talents" 1 id., at 583
[35] Id., at 464

people sent but four [36] The delegates referred to rotton borough apportionments in some of the state legislatures as the kind of objectionable governmental action that the Constitution should not tolerate in the election of congressional representatives [37]

Madison in The Federalist described the system of division of States into congressional districts, the method which he and others [38] assumed States probably would adopt "The city of Philadelphia is supposed to contain between fifty and sixty thousand souls It will therefore form nearly two districts for the choice of Federal Representatives" [39] "[N]umbers," he said, not only are a suitable way to represent wealth but in any event "are the only proper scale of representation" [40] In the state convention, speakers urging ratification of the Constitution emphasized the theme of equal representation in the House which had permeated the debates in Philadelphia [41] Charles Cotesworth Pinckney told the South Carolina Convention, "the House of Representatives will be elected immediately by the people, and represent them and their personal rights individually" [42] Speakers at the ratifying conventions emphasized that the House of Representatives was meant to be free of the malapportionment then existing in some of the state legislatures—such as those of Connecticut, Rhode Island, and South Carolina—and argued that the power given Congress in Art I, § 4,[43] was meant to be used to vindicate the people's right to equality of representation in the House [44] Congress' power, said John Steele at the North Carolina convention, was not to be used to allow Congress to create rotten boroughs; in answer to another delegate's suggestion that Congress might use its power to favor people living near the seacoast, Steele said that Congress "most probably" would "lay the state off into districts," and if it made laws "inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them." [45]

Soon after the Constitution was adopted, James Wilson of Pennsylvania, by then an Associate Justice of this Court, gave a series of lectures at Philadelphia in which, drawing on his experience as one of the most active members of the Constitutional Convention, he said

[36] Id, at 457 "Rotten boroughs" have long since disappeared in Great Britain Today permanent parliamentary Boundary Commissions recommend periodic changes in the size of constituencies, as population shifts For the statutory standards under which these commissions operate, see House of Commons (Redistribution of Seats) Acts of 1949, 12 & 13 Geo 6, c 66, Second Schedule, and of 1958, 6 & 7 Eliz 2, c 26, Schedule

[37] 2 id, at 241

[38] See, e g, 2 Works of Alexander Hamilton (Lodge ed 1904) 25 (statement to New York ratifying convention)

[39] The Federalist, No 57 (Cooke ed 1961), at 389

[40] Id, No 54, at 368 There has been some question about the authorship of Numbers 54 and 57, see The Federalist (Lodge ed 1908) xviii–xxv, but it is now generally believed that Madison was the author, see e g, The Federalist (Cooke ed 1961) xxvii, The Federalist (Van Doren ed 1945) vi–vii, Brant, "Settling the Authorship of The Federalist," 67 Am Hist Rev 71 (1961)

[41] See, e g, 2 The Debates in the Several State Conventions on the Adoption of the Federal Constitution (2d Elliot ed 1836) 11 (Fisher Ames in the Massachusetts Convention) (hereafter cited as "Elliot"), id, at 202 (Oliver Wolcott, Connecticut), 4 Id, at 21 (William Richardson Davie, North Carolina), id, at 257 (Charles Pinckney, South Carolina)

[42] Id, at 304

[43] "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators " US Const, Art I, § 4

[44] See 2 Elliot, at 49 (Francis Dana, in the Massachusetts Convention), id, at 50–51 (Rufus King, Massachusetts) 3 id, at 367 (James Madison, Virginia)

[45] 4 id, at 71

"[A]ll elections ought to be equal Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state In this manner, the proportion of the representatives and of the constituents will remain invariably the same." [46]

It is in the light of such history that we must construe Art I, § 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen "by the People of the several States" and shall be "apportioned among the several States according to their respective Numbers " It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted United States v Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904; Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152 Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, or diluted by stuffing of the ballot box, see United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101 No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live Other rights, even the most basic, are illusory if the right to vote is undermined Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right In urging the people to adopt the Constitution, Madison said in No 57 of The Federalist.

"Who are to be the electors of the Fœderal Representatives? Not the rich more than the poor; not the learned more than the ignorant, not the haughty heirs of distinguished names more than the humble sons of obscure and unpropitious fortune The electors are to be the great body of the people of the United States " [47]

Readers surely could have fairly taken this to mean, "one person, one vote." Cf Gray v Sanders, 372 US 368, 381, 9 L ed 821, 831, 83 S Ct 801

While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives That is the high standard of justice and common sense which the Founders set for us

Reversed and remanded.

SEPARATE OPINION

Mr Justice Clark, concurring in part and dissenting in part

Unfortunately I can join neither the opinion of the Court nor the dissent of my Brother Harlan It is true that the opening sentence of Art I, § 2, of the Constitution provides that Representatives are to be chosen by the People of the several States " However, in my view, Brother Harlan has clearly demonstrated that both the historical background and language preclude a finding that Art I, § 2, lays down the ipse dixit "one person, one vote" in congressional elections.

[46] 2 The Works of James Wilson (Andrews ed 1896) 15.
[47] The Federalist, No. 57 (Cooke ed 1961), at 385.

On the other hand, I agree with the majority that congressional districting is subject to judicial scrutiny This Court has so held ever since Smiley v Holm, 285 US 355, 76 L ed 795, 52 S Ct 397 (1932), which is buttressed by two companion cases, Koenig v Flynn, 285 US 375, 76 L ed 805 52 S Ct 403 (1932), and Carroll v Becker, 285 US 380, 76 L ed 807, 52 S Ct 402 (1932) A majority of the Court in Colegrove v Green felt, upon the authority of Smiley, that the complaint presented a justiciable controversy not reserved exclusively to Congress Colegrove v Green, 328 US 549, 564, and 568 note 3, 90 L ed 1432, 1442, 1444, 66 S Ct 1198 (1946) Again, in Baker v Carr, 369 US 186, 232, 7 L ed 663, 694, 82 S Ct 691 (1962), the opinion of the Court recognized that Smiley "settled the issue in favor of justiciability of questions of congressional redistricting" I therefore cannot agree with Brother Harlan that the supervisory power granted to Congress under Art I, §4, is the exclusive remedy

I would examine the Georgia congressional districts against the requirements of the Equal Protection Clause of the Fourteenth Amendment As my Brother Black said in his dissent in Colegrove v Green, supra, the "equal protection clause of the Fourteenth Amendment forbids discrimination It does not permit the States to pick out certain qualified citizens or groups of citizens and deny them the right to vote at all No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit" 328 US at 569, 90 L ed at 1445

The trial court, however, did not pass upon the merits of the case, although it does appear that it did make a finding that the Fifth District of Georgia was "grossly out of balance" with other congressional districts of the State. Instead of proceeding on the merits, the court dismissed the case for lack of equity I believe that the court erred in so doing In my view we should therefore vacate this judgment and remand the case for a hearing on the merits At that hearing the court should apply the standards laid down in Baker v Carr, supra.

I would have an additional caveat The General Assembly of the Georgia Legislature has been recently reapportioned [1] as a result of the order of the three-judge District Court in Toombs v Fortson, 205 F Supp 248 (1962) In addition, the Assembly has created a Joint Congressional Redistricting Study Committee which has been working on the problem of congressional redistricting for several months The General Assembly is currently in session If on remand the trial court is of the opinion that there is likelihood of the General Assembly reapportioning the State in an appropriate manner, I believe that coercive relief should be deferred until after the General Assembly has had such an opportunity

Mr. Justice Harlan, dissenting.

I had not expected to witness the day when the Supreme Court of the United States would render a decision which cast grave doubt on the constitutionality of the composition of the House of Representatives

[1] Georgia Laws, Sept -Oct 1962, Extra Sess 7–31

It is not an exaggeration to say that such is the effect of today's decision. The Court's holding that the Constitution requires States to select Representatives either by elections at large or by elections in districts composed "as nearly as is practicable" of equal population places in jeopardy the seats of almost all the members of the present House of Representatives

In the last congressional election, in 1962, Representatives from 42 States were elected from congressional districts [1] In all but five of those States, the difference between the populations of the largest and smallest districts exceeded 100,000 persons [2] A difference of this magnitude in the size of districts the average population of which in each State is less than 500,000 [3] is presumably not equality among districts "as nearly as is practicable," although the Court does not reveal its definition of that phrase [4] Thus, today's decision impugns the validity of the election of 398 Representatives from 37 States, leaving a "constitutional" House of 37 members now sitting [5]

Only a demonstration which could not be avoided would justify this Court in rendering a decision the effect of which, inescapably as I see it, is to declare constitutionally defective the very composition of a coordinate branch of the Federal Government The Court's opinion not only fails to make such a demonstration It is unsound logically on its face and demonstrably unsound historically.

[1] Representatives were elected at large in Alabama (8), Alaska (1), Delaware (1), Hawaii (2), Nevada (1), New Mexico (2), Vermont (1), and Wyoming (1) In addition, Connecticut, Maryland, Michigan, Ohio, and Texas each elected one of their Representatives at large

[2] The five States are Iowa, Maine, New Hampshire, North Dakota, and Rhode Island Together, they elect 15 Representatives

The populations of the largest and smallest districts in each State and the difference between them is contained in an Appendix to this opinion

[3] The only State in which the average population per district is greater than 500,000 is Connecticut, where the average population per district is 507,047 (one Representative being elected at large) The difference between largest and smallest districts in Connecticut is, however, 370,613

[4] The Court's "as nearly as is practicable" formula sweeps a host of questions under the rug How great a difference between the populations of various districts within a state is tolerable? Is the standard an absolute or relative one, and if the latter to what is the difference in population to be related? Does the number of districts within the State have any relevance? Is the number of voters or the number of inhabitants controlling? Is the relevant statistic the greatest disparity between any two districts in the State or the average departure from the average population per district, or a little of both? May the State consider factors such as area or natural boundaries (rivers, mountain ranges) which are plainly relevant to the practicability of effective representation?

There is an obvious lack of criteria for answering questions such as these, which points up the impropriety of the Court's whole-hearted but heavy-footed entrance into the political arena

[5] The 37 "constitutional" Representatives are those coming from the eight States which elected their Representatives at large (plus one each elected at large in Connecticut, Maryland, Michigan, Ohio, and Texas) and those coming from States in which the difference between the populations of the largest and smallest districts was less than 100,000 See notes 1 and 2, supra Since the difference between largest and smallest districts in Iowa is 89,250, and the average population per district in Iowa is only 392,934, Iowa's 7 Representatives might well lose their seats as well This would leave a house of Representatives composed of the 22 Representatives elected at large plus eight elected in congressional districts

These conclusions presume that all the Representatives from a State in which any part of the congressional districting is found invalid would be affected Some of them, of course, would ordinarily come from districts the populations of which were about that which would result from an apportionment based solely on population But a court cannot erase only the districts which do not conform to the standard announced today, since invalidation of those districts would require that the lines of all the districts within the State be redrawn In the absence of a reapportionment, *all* the Representatives from a State found to have violated the standard would presumably have to be elected at large

I.

Before coming to grips with the reasoning that carries such extraordinary consequences, it is important to have firmly in mind the provisions of Article I of the Constitution which control this case

"Section 2 The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature

. . . . . .

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative .

"Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

. . . . . .

"Section 5 Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members "

As will be shown, these constitutional provisions and their "historical context," ante, p. 486, establish·

1 that congressional Representatives are to be apportioned among the several States largely, but not entirely, according to population,

2 that the States have plenary power to select their allotted Representatives in accordance with any method of popular election they please, subject only to the supervisory power of Congress; and

3 that the supervisory power of Congress is exclusive

In short, in the absence of legislation providing for equal districts by the Georgia Legislature or by Congress, these appellants have no right to the judicial relief which they seek It goes without saying that it is beyond the province of this Court to decide whether equally populated districts is the preferable method for electing Representatives, whether state legislatures would have acted more fairly or wisely had they adopted such a method, or whether Congress has been derelict in not requiring state legislatures to follow that course Once it is clear that there is no *constitutional* right at stake, that ends the case

II.

Disclaiming all reliance on other provisions of the Constitution, in particular those of the Fourteenth Amendment on which the appellants

relied below and in this Court, the Court holds that the provision in Art I, § 2, for election of Representatives "by the People" *means* that congressional districts are to be "as nearly as is practicable" equal in population, ante, pp 486, 487 Stripped of rhetoric and a "historical context," ante, p 486, which bears little resemblance to the evidence found in the pages of history, see infra pp 499, 505, the Court's opinion supports its holding only with the bland assertion that "the principle of a House of Representatives elected 'by the People'" would be "cast aside" if "a vote is worth more in one district than in another," ante, p 487, i e, if congressional districts within a State, each electing a single Representative, are not equal in population The fact is, however, that Georgia's 10 Representatives *are* elected "by the People" of Georgia, just as Representatives from other States are elected "by the People of the several States" This is all that the Constitution requires [6]

Although the Court finds necessity for its artificial construction of Article I in the undoubted importance of the right to vote, that right is not involved in this case All of the appellants do vote The Court's talk about "debasement" and "dilution" of the vote is a model of circular reasoning, in which the premises of the argument feed on the conclusion Moreover, by focusing exclusively on numbers in disregard of the area and shape of a congressional district as well as party affiliations within the district, the Court deals in abstractions which will be recognized even by the politically unsophisticated to have little relevance to the realities of political life

In any event, the very sentence of Art I, § 2, on which the Court exclusively relies confers the right to vote for Representatives only on those whom *the State* has found qualified to vote for members of "the most numerous Branch of the State Legislature" Supra, p 495 So far as Article I is concerned, it is within the State's power to confer that right only on persons of wealth or of a particular sex or, if the State chose, living in specified areas of the State [7] Were Georgia to find the residents of the Fifth District unqualified to vote for Representatives

[6] Since I believe that the Constitution expressly provides that state legislatures and the Congress shall have exclusive jurisdiction over problems of congressional apportionment of the kind involved in this case, there is no occasion for me to consider whether, in the absence of such provision, other provisions of the Constitution, relied on by the appellants, would confer on them the rights which they assert

[7] Although it was held in Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152, and subsequent cases, that the right to vote for a member of Congress depends on the Constitution, the opinion noted that the legislatures of the States prescribe the qualifications for electors of the legislatures and thereby for electors of the House of Representatives 110 US, at 663, 28 L ed at 278 See ante, p 492, and infra, pp 507, 508

The States which ratified the Constitution exercised their power A property or taxpaying qualification was in effect almost everywhere See, e g, the New York Constitution of 1777, Art VII, which restricted the vote to freeholders "possessing a freehold of the value of twenty pounds, or [who] have rented a tenement of the yearly value of forty shillings, and been rated and actually paid taxes to this State" The constitutional and statutory qualifications for electors in the various States are set out in tabular form in 1 Thorpe, A Constitutional History of the American People 1776–1850 (1898), 92–96 The progressive elimination of the property qualification is described in Salt, American Parties and Elections (Penniman ed, 1952), 16–17 At the time of the Revolution, "no serious inroads had yet been made upon the privileges of property, which, indeed maintained in most states a second line of defense in the form of high personal-property qualifications required for membership in the legislature" Id, at 16 (footnote omitted)

Women were not allowed to vote Thorpe, op cit, supra, 93–96 See generally Salt, op cit, supra, 49–54 New Jersey apparently allowed women, as "inhabitants," to vote until 1807 See Thorpe, op cit, supra, 93 Compare N J Const, 1776, Art XIII, with the N J Const, 1844, Art II, ¶ 1

to the State House of Representatives, they could not vote for Representatives to Congress, according to the express words of Art I, § 2. Other provisions of the Constitution would, of course, be relevant, *but, so far as Art I, § 2, is concerned,* the disqualification would be within Georgia's power. How can it be, then, that this very same sentence prevents Georgia from apportioning its Representatives as it chooses? The truth is that it does not.

The Court purports to find support for its position in the third paragraph of Art I, § 2, which provides for the apportionment of Representatives among the States The appearance of support in that section derives from the Court's confusion of two issues: direct election of Representatives within the States and the apportionment of Representatives among the States Those issues are distinct, and were separately treated in the Constitution The fallacy of the Court's reasoning in this regard is illustrated by its slide, obscured by intervening discussion (see ante, pp 489, 490), from the intention of the delegates at the Philadelphia Convention "that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants," ante, pp. 489, 490, to a "principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people," ante, p 490 The delegates did have the former intention and made clear provision for it[8] Although many, perhaps most, of them also believed generally—but assuredly not in the precise, formalistic way of the majority of the Court[9]—that within the States representation should be based on population, they did not surreptitiously slip their belief into the Constitution in the phrase "by the People," to be discovered 175 years later like a Shakespearian anagram

Far from supporting the Court, the apportionment of Representatives among the States shows how blindly the Court has marched to its decision Representatives were to be apportioned among the States on the basis of free population plus three-fifths of the slave population. *Since no slave voted, the inclusion of three-fifths of their number in the basis of apportionment gave the favored States representation far in excess of their voting population* If, then, slaves were intended to be without representation, Article I did exactly what the Court now says it prohibited · it "weighted" the vote of voters in the slave States Alternatively, it might have been thought that Representatives elected by free men of a State would speak also for the slaves But since the slaves added to the representation only of their own State, Representatives from the slave States could have been thought to speak only for the slaves of their own States, indicating both that the Convention believed it possible for a Representative elected by one group to speak for an-

[8] Even that is not strictly true unless the word "solely" is deleted The "three-fifths compromise" was a departure from the principle of representation according to the number of inhabitants of a State Cf The Federalist, No 54, discussed infra, pp 604, 605 A more obvious departure was the provision that each State shall have a Representative regardless of its population See infra, pp 498, 499

[9] The fact that the delegates were able to agree on a Senate composed entirely without regard to population and on the departures from a population-based House, mentioned in note 8, supra, indicates that they recognized the possibility that alternative principles combined with political reality might dictate conclusions inconsistent with an abstract principle of absolute numerical equality

On the apportionment of the state legislatures at the time of the Constitutional Convention, see Luce, Legislative Principles (1930), 331–364, Hacker, Congressional Districting (1963), 5

other nonvoting group and that Representatives were in large degree still thought of as speaking for the whole population *of a State*.[10]

There is a further basis for demonstrating the hollowness of the Court's assertion that Article I requires "one man's vote in a congressional election . . to be worth as much as another's, ante, pp 486, 487. Nothing that the Court does today will disturb the fact that although in 1960 the population of an average congressional district was 410,481,[11] the States of Alaska, Nevada, and Wyoming each have a Representative in Congress, although their respective populations are 226,167, 285,278, and 330,066.[12] In entire disregard of population, Art I, § 2, guarantees each of these States and every other State "at Least one Representative." It is whimsical to assert in the face of this guarantee that an absolute principle of "equal representation in the House for equal numbers of people" is solemnly embodied" in Article I. All that there is is a provision which bases representation in the House, generally but not entirely, on the population of the States. The provision for representation of *each State* in the House of Representatives is not a mere exception to the principle framed by the majority; it shows that no such principle is to be found.

Finally in this array of hurdles to its decision which the Court surmounts only by knocking them down is § 4 of Art I which states simply:

"The Times, Places and *Manner* of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." (Emphasis added.)

The delegates were well aware of the problem of "rotten boroughs," as material cited by the Court, ante, pp. 490, 491, and hereafter makes plain. It cannot be supposed that delegates to the Convention would have labored to establish a principle of equal representation only to bury it, one would have thought beyond discovery, in § 2, and omit all mention of it from § 4, which deals explicitly with the conduct of elections. Section 4 states without qualification that the state legislatures shall prescribe regulations for the conduct of elections for Representatives and, equally without qualification, that Congress may make or alter such regulations. There is nothing to indicate any limitation whatsoever on this grant of plenary initial and supervisory power. The Court's holding is, of course, derogatory not only of the power of the state legislatures but also of the power of Congress, both theoretically

[10] It is surely beyond debate that the Constitution did not require the slave States to apportion their Representatives according to the dispersion of slaves within their borders. The above implications of the three-fifths compromise were recognized by Madison. See The Federalist, No. 54, discussed infra, pp. 504, 505.
Luce points to the "quite arbitrary grant of representation proportionate to three fifths of the number of slaves" as evidence that even in the House "the representation of men as men" was not intended. He states "There can be no shadow of question that populations were accepted as a measure of material interests—landed, agricultural, industrial, commercial, in short, property." Legislative Principles (1930), 356–357.

[11] U. S. Bureau of the Census, Census of Population: 1960 (hereafter, Census), xiv. The figure is obtained by dividing the population base (which excludes the population of the District of Columbia, the population of the Territories, and the number of Indians not taxed) by the number of Representatives. In 1960, the population base was 178,559,217, and the number of Representatives was 435.

[12] Census, 1–16.

and as they have actually exercised their power See infra, pp 505–507 [13] It freezes upon both, for no reason other than that it seems wise to the majority of the present Court, a particular political theory for the selection of Representatives

III.

There is dubious propriety in turning to the "historical context" of constitutional provisions which speak so consistently and plainly But, as one might expect when the Constitution itself is free from ambiguity, the surrounding history makes what is already clear even clearer

As the Court repeatedly emphasizes, delegates to the Philadelphia Convention frequently expressed their view that representation should be based on population There were also, however, many statements favoring limited monarchy and property qualifications for suffrage and expressions of disapproval for unrestricted democracy [14] Such expressions prove as little on one side of this case as they do on the other Whatever the dominant political philosophy at the Convention, one thing seems clear, it is in the last degree unlikely that most or even many of the delegates would have subscribed to the principle of "one person, one vote," ante, p 492 [15] Moreover, the statements approving population-based representation were focused on the problem of how representation should be apportioned among the States in the House of Representatives The Great Compromise concerned representation *of the States* in the Congress In all of the discussion surrounding the basis of representation of the House and all of the discussion whether Representatives should be elected by the legislatures or the people of the States, there is nothing which suggests even remotely that the delegates had in mind the problem of districting within a State [16]

The subject of districting within the States is discussed explicitly with reference to the provisions of Art I, § 4, which the Court so pointedly neglects The Court states "The delegates referred to rotten bor-

[13] Section 5 of Article I, which provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members," also points away from the Court's conclusion This provision reinforces the evident constitutional scheme of leaving to the Congress the protection of federal interests involved in the selection of members of the Congress

[14] I Farrand, Records of the Federal Convention (1911) (hereafter Farrand), 48, 86–87, 134–136, 288–289, 299, 533, 534, II Farrand 202

[15] "The assemblage at the Philadelphia Convention was by no means committed to popular government, and few of the delegates had sympathy for the habits or institutions of democracy Indeed, most of them interpreted democracy as mob rule and assumed that equality of representation would permit the spokesmen for the common man to outvote the beleagured deputies of the uncommon man" Hacker, Congressional Districting (1963), 7–8 See Luce, Legislative Principles (1930), 356–357 With respect to apportionment of the House, Luce states "Property was the basis not humanity" Id, at 357

Contrary to the Court's statement, ante, p 492, no leader of The Federalist "could have fairly taken [it] to mean" that the Constitutional Convention had adopted a principle of "one person one vote" in contravention of the qualifications for electors which the States imposed In No 54, Madison said "It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States, is to be determined by a federal rule founded on the aggregate number of inhabitants, *so the right of choosing thus allotted number in each State is to be exercised by such part of the inhabitants, as the State itself may designate* In every State, a certain proportion of inhabitants are deprived of this right by the Constitution of the State, who will be included in the census by which the Federal Constitution apportions the representatives" (Cooke ed 1961) 369 (Italics added) The passage from which the Court quotes, ante, p 492, concludes with the following, overlooked by the Court "They [the electors] are to be the same who exercise the right in every State of electing the correspondent branch of the Legislature of the State" Id, at 385

[16] References to Old Sarum (ante pp 490, 491), for example, occurred during the debate on the method of apportionment of Representatives *among* the States 1 Farrand 449–450, 457

ough apportionments in some of the state legislatures as the kind of objectionable governmental action that the Constitution should not tolerate in the election of congressional representatives" Ante, pp. 490, 491 The remarks of Madison cited by the Court are as follows

"The necessity of a Genl Govt supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. [sic] This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections These were words of great latitude It was impossible to foresee all the abuses that might be made of the discretionary power Whether the electors should vote by ballot or viva voce, should assemble at this place or that place, should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; *these & many other points would depend on the Legislatures* [sic] and might materially affect the appointments Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter *What danger could there be in giving a controuling power to the Natl Legislature?*" [17] (Emphasis added)

These remarks of Madison were in response to a proposal to strike out the provision for congressional supervisory power over the regulation of elections in Art I, § 4 Supported by others at the Convention,[18] and not contradicted in any respect, they indicate as clearly as may be that the Convention understood the state legislatures to have plenary power over the conduct of elections for Representatives, including the power to district well or badly, subject only to the supervisory power of Congress How, then, can the Court hold that Art I, § 2, prevents the state legislatures from districting as they choose? If the Court were correct, Madison's remarks would have been pointless One would expect, at the very least, some reference to Art I, § 2, as a limiting factor on the States This is the "historical context" which the Convention debates provide

Materials supplementary to the debates are as unequivocal In the ratifying conventions, there was no suggestion that the provisions of Art I, § 2, restricted the power of the States to prescribe the conduct of elections conferred on them by Art I, § 4 None of the Court's references to the ratification debates supports the view that the provision for election of Representatives "by the People" was intended to have any application to the apportionment of Representatives within the States, in each instance, the cited passage merely repeats what the

[17] II Farrand 240–241
[18] Ibid

Constitution itself provides. that Representatives were to be elected by the people of the States.[19]

In sharp contrast to this unanimous silence on the issue of this case when Art I, § 2, was being discussed, there are repeated references to apportionment and related problems affecting the States' selection of Representatives in connection with Art. I, § 4. The debates in the ratifying conventions, as clearly as Madison's statement at the Philadelphia Convention, supra, pp. 500, 501, indicate that under § 4, the state legislatures, subject only to the ultimate control of Congress, could district as they chose.

At the Massachusetts convention, Judge Dana approved § 4 because it gave Congress power to prevent a state legislature from copying Great Britain, where "a borough of but two or three cottages has a right to send two representatives to *Parliament*, while Birmingham, a large and populous manufacturing town, lately sprung up, cannot send one" [20] He noted that the Rhode Island Legislature was "about adopting" a plan which would "deprive the towns of Newport and Providence of their weight" [21] Mr King noted the situation in Connecticut, where "Hartford, one of their largest towns, sends no more delegates than one of their smallest corporations," and in South Carolina. "The back parts of Carolina have increased greatly since the adoption of their constitution, and have frequently attempted an alteration of this unequal mode of representation but the members from Charleston, having the balance so much in their favor, will not consent to an alteration, and we see that the delegates from Carolina in Congress have always been chosen by the delegates of that city." [22] King stated that the power of Congress under § 4 was necessary to "control in this case"; otherwise, he said, "The representatives . . . from that state [South Carolina], will not be chosen *by the people*, but will be the representatives of a faction of that state." [23]

Mr. Parsons was as explicit.

"Mr. Parsons contended for vesting in Congress the powers contained in the 4th section [of Art. I], not only as those powers were necessary for preserving the union, but also for securing to the people their equal rights of election. . . [State legislatures] might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors. Without these powers in Congress, the people can have no remedy, but the 4th section provides a remedy, a controlling power in a legislature, composed of senators and representatives of twelve states, without the influence of our commotions and factions, who will hear impartially, and preserve and restore to the people their equal and sacred rights of election Perhaps it then will be objected, that from

[19] See the materials cited in notes 41–42, 44–45 of the Court's opinion, ante, p 491 Ames' remark at the Massachusetts convention is typical "The representatives are to represent the people" II Elliot's Debates on the Federal Constitution (2d ed 1836) (hereafter Elliot's Debates). 11 In the South Carolina Convention, Pinckney stated that the House would "be so chosen as to represent in due proportion the people of the Union " IV Elliot's Debates 257 But he had in mind only that other clear provision of the Constitution that representation would be apportioned *among* the States according to population None of his remarks bears on apportionment *within* the States Id, at 256–257

[20] II Elliot's Debates 49.

[21] Ibid

[22] Id, at 50–51

[23] Id, at 51

the supposed opposition of interests in the federal legislature, they may never agree upon any regulations; but regulations necessary for the interests of the people can never be opposed to the interests of either of the branches of the federal legislature; because that the interests of the people require that the mutual powers of that legislature should be preserved unimpaired, in order to balance the government Indeed, if the Congress could never agree on any regulations, then certainly no objection to the 4th section can remain; for *the regulations introduced by the state legislatures will be the governing rule of elections, until Congress can agree upon alterations* "[24] (Emphasis added)

In the New York convention, during the discussion of § 4, Mr. Jones objected to congressional power to regulate elections because such power "might be so construed as to deprive the states of an essential right, which, in the true design of the Constitution, was to be reserved to them "[25] He proposed a resolution explaining that Congress had such power only if a state legislature neglected or refused or was unable to regulate elections itself[26] Mr. Smith proposed to add to the resolution ". . . that each state shall be divided into as many districts as the representatives it is entitled to, and that each representative shall be chosen by a majority of votes "[27] He stated that his proposal was designed to prevent elections at large, which might result in all the representatives being "taken from a small part of the state "[28] He explained further that his proposal was not intended to impose a requirement on the other States but "to enable the states to act their discretion, without the control of Congress "[29] After further discussion of districting, the proposed resolution was modified to read as follows.

"[Resolved] . . that nothing in this Constitution shall be construed to prevent the legislature of any state to pass laws, from time to time, to divide such state into as many convenient districts as the state shall be entitled to elect representatives for Congress, nor to prevent such legislature from making provision, that the electors in each district shall choose a citizen of the United States, who shall have been an inhabitant of the district, for the term of one year immediately preceding the time of his election, for one of the representatives of such state "[30]

Despite this careful, advertent attention to the problem of congressional districting, Art I, § 2, was never mentioned Equally significant is the fact that the proposed resolution expressly empowering the States to establish congressional districts contains no mention of a requirement that the districts be equal in population

In the Virginia convention, during the discussion of § 4, Madison again stated unequivocally that he looked solely to that section to prevent unequal districting:

". . . [I]t was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity

[24] Id., at 26–27.
[25] Id., at 325.
[26] Id., at 325–326
[27] Id., at 327.
[28] Ibid.
[29] Id., at 328
[30] Id., at 329

would be obviously unjust Elections are regulated now unequally in some states, particularly South Caroina, with respect to Charleston, which is represented by thirty members Should the people of any state by any means be deprived the right of suffrage, it was judged proper that it should be remedied by the general government. *It was found impossible to fix the time, place, and manner, of the election of representatives, in the Constitution It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution* And, considering the state governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter Were they exclusively under the control of the state governments, the general government might easily be dissolved But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution "[31] (Emphasis added)

Despite the apparent fear that § 4 would be abused, no one suggested that it could safely be deleted because § 2 made it unnecessary

In the North Carolina convention, again during discussion of § 4, Mr Steele pointed out that the state legislatures had the initial power to regulate elections, and that the North Carolina legislature would regulate the first election at least "as they think proper "[32] Responding to the suggestion that *the Congress* would favor the seacoast, he asserted that the courts would not uphold nor the people obey "laws inconsistent with the Constitution "[33] (The particular possibilities that Steele had in mind were apparently that Congress might attempt to prescribe the qualifications for electors or "to make the place of elections inconvenient "[34]) Steele was concerned with the danger of *congressional* usurpation under the authority of § 4, of power *belonging to the States* Section 2 was not mentioned

In the Pennsylvania convention, James Wilson described Art I, § 4, as placing "into the hands of the state legislatures" the power to regulate elections, but retaining for Congress "self-preserving power" to make regulations lest "the general government lie prostrate at the mercy of the legislatures of the several states "[35] Without such power, Wilson stated, the state governments might "make improper regulations" or "make no regulations at all "[36] Section 2 was not mentioned.

Neither of the numbers of the Federalist from which the Court quotes, ante, pp 491, 492, fairly supports its holding In No 57, Madison merely stated his assumption that Philadelphia's population would entitle it to two Representatives in answering the argument that congressional constituencies would be too large for good government[37] In No 54, he discussed the inclusion of slaves in the basis of apportion-

[31] III Elliot's Debates 367
[32] IV Elliot s Debates 71
[33] Ibid
[34] Ibid
[35] II Elliot's Debates 440–441
[36] Id , at 441
[37] The Federalist, No 57 (Cooke ed 1961), 389

ment He said "It is agreed on all sides, that numbers are the best scale of wealth and taxation, as they are the only proper scale of representation "[38] This statement was offered simply to show that the slave population could not reasonably be included in the basis of apportionment of direct taxes and excluded from the basis of apportionment of representation Further on in the same number of The Federalist, Madison pointed out the fundamental cleavage which Article I made between apportionment of Representatives among the States and the selection of Representatives within each State

"It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States is to be determined by a federal rule founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such part of the inhabitants, as the State itself may designate The qualifications on which the right of suffrage depend, are not perhaps the same in any two States In some of the States the difference is very material In every State, a certain proportion of inhabitants are deprived of this right by the Constitution of the State, who will be included in the census by which the Federal Constitution apportions the representatives In this point of view, the southern States might retort the complaint, by insisting, that the principle laid down by the Convention required that no regard should be had to the policy of particular States towards their own inhabitants, and consequently, that the slaves as inhabitants should have been admitted into the census according to their full number, in like manner with other inhabitants, who by the policy of other States, are not admitted to all the rights of citizens "[39]

In The Federalist, No 59, Hamilton discussed the provision of § 4 for regulation of elections He justified Congress' power with the "plain proposition, that *every government ought to contain in itself the means of its own preservation* "[40] Further on, he said

"It will not be alleged that an election law could have been framed and inserted into the Constitution, which would have been always applicable to every probable change in the situation of the country, and it will therefore not be denied that a discretionary power over elections ought to exist somewhere *It will, I presume, be as readily conceded, that there were only three ways, in which this power could have been reasonably modified and disposed, that it must either have been lodged wholly in the National Legislature, or wholly in the State Legislatures, or primarily in the latter, and ultimately in the former The last mode has with reason been preferred by the Convention* They have submitted the regulation of elections for the Federal Government in the first instance to the local administrations, which in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory, but they have reserved to the national authority a right to interpose, *whenever extraordinary circumstances might render that interposition necessary to its safety* "[41] (Emphasis added)

Thus, in the number of The Federalist which does discuss the regulation of elections, the view is unequivocally stated that the state legis-

[38] Id, at 368.
[39] Id, at 369
[40] Id, at 398
[41] Id, at 398–399

latures have plenary power over the conduct of congressional elections subject only to such regulations as Congress itself might provide.

The upshot of all this is that the language of Art. I, §§ 2 and 4, the surrounding text, and the relevant history are all in strong and consistent direct contradiction of the Court's holding. The constitutional scheme vests in the States plenary power to regulate the conduct of elections for Representatives, and, in order to protect the Federal Government, provides for congressional supervision of the States' exercise of their power. Within this scheme, the appellants do not have the right which they assert, in the absence of provision for equal districts by the Georgia Legislature or the Congress. The constitutional right which the Court creates is manufactured out of whole cloth

IV.

The unstated premise of the Court's conclusion quite obviously is that the Congress has not dealt, and the Court believes it will not deal, with the problem of congressional apportionment in accordance with what the Court believes to be sound political principles Laying aside for the moment the validity of such a consideration as a factor in constitutional interpretation, it becomes relevant to examine the history of congressional action under Art I, § 4 This history reveals that the Court is not simply undertaking to exercise a power which the Constitution reserves to the Congress, it is also overruling congressional judgment

Congress exercised its power to regulate elections for the House of Representatives for the first time in 1842, when it provided that Representatives from States "entitled to more than one Representative" should be elected by districts of contiguous territory, "no one district electing more than one Representative "[42] The requirement was later dropped,[43] and reinstated[44] In 1872, Congress required that Representatives "be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants, . . . no one district electing more than one Representative "[45] This provision for equal districts which the Court exactly duplicates in effect, was carried forward in each subsequent apportionment statute through 1911.[46] There was no reapportionment following the 1920 census The provision for equally populated districts was dropped in 1929,[47] and has not been revived, although the 1929 provisions for apportionment have twice been amended and, in 1941, were made generally applicable to subsequent censuses and apportionments.[48]

The legislative history of the 1929 Act is carefully reviewed in Wood v Broom, 287 US 1, 77 L ed 131, 53 S Ct 1 As there stated

"It was manifestly the intention of the Congress not to re-enact the provision as to compactness, contiguity, and equality in population with respect to the districts to be created pursuant to the reapportionment under the Act of 1929.

[42] Act of June 25, 1842, § 2, 5 Stat 491
[43] Act of May 23, 1850, 9 Stat 428
[44] Act of July 14, 1862, 12 Stat 572
[45] Act of Feb 2, 1872, § 2, 17 Stat 28
[46] Act of Feb 25, 1882, § 3, 22 Stat 5, 6, Act of Feb 7, 1891, § 3, 26 Stat 735, Act of Jan 16, 1901, § 3, 31 Stat 733, 734, Act of Aug. 8, 1911, § 3, 37 Stat 13, 14
[47] Act of June 18, 1929, 46 Stat 21
[48] Act of Apr 25, 1940, 54 Stat 162, Act of Nov 15, 1941, 55 Stat 761

"This appears from the terms of the act, and its legislative history shows that the omission was deliberate The question was up, and considered " 287 US, at 7, 77 L ed at 134

Although there is little discussion of the reasons for omitting the requirement of equally populated districts, the fact that such a provision was included in the bill as it was presented to the House,[49] and was deleted by the House after debate and notice of intention to do so,[50] leaves no doubt that the omission was deliberate The likely explanation for the omission is suggested by a remark on the floor of the House that "the States ought to have their own way of making up their apportionment when they know the number of Congressmen they are going to have " [51]

Debates over apportionment in subsequent Congresses are generally unhelpful to explain the continued rejection of such a requirement; there are some intimations that the feeling that districting was a matter exclusively for the States persisted [52] Bills which would have imposed on the States a requirement of equally or nearly equally populated districts were regularly introduced in the House.[53] None of them became law

For a period of about 50 years, therefore, Congress, by repeated legislative act, imposed on the States the requirement that congressional districts be equal in population (This, of course, is the very requirement which the Court now declares to have been constitutionally required of the States all along without implementing legislation) Subsequently, after giving express attention to the problem, Congress eliminated that requirement, with the intention of permitting the States to find their own solutions. Since then, despite repeated efforts to obtain congressional action again, Congress has continued to leave the problem and its solution to the States It cannot be contended, therefore, that the Court's decision today fills a gap left by the Congress On the contrary, the Court substitutes its own judgment for that of the Congress

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[49] H R 11725, 70th Cong, 1st Sess, introduced on Mar 3, 1928, 69 Cong Rec 4054

[50] 70 Cong Rec 1499, 1584, 1602, 1604

[51] 70 Cong Rec 1499 (remarks of Mr Dickinson) The Congressional Record reports that this statement was followed by applause At another point in the debates, Representative Lozier stated that Congress lacked "power to determine in what manner the several States exercise their sovereign rights in selecting their Representatives in Congress " 70 Cong Rec 1496 See also the remarks of Mr Graham Ibid

[52] See, e g, 86 Cong Rec 4368 (remarks of Mr Rankin), 4369 (remarks of Mr McLeod), 4371 (remarks of Mr McLeod), 87 Cong Rec 1081 (remarks of Mr Moser)

[53] HR 4820, 76th Cong 1st Sess, HR 5099, 76th Cong, 1st Sess, HR 2648, 83d Cong, 1st Sess, HR 6428, 83d Cong, 1st Sess, HR 111, 85th Cong, 1st Sess, HR 814, 86th Cong, 1st Sess, HR 8266, 86th Cong, 1st Sess, HR 73, 86th Cong, 1st Sess, HR 575, 86th Cong 1st Sess, HR 841, 87th Cong, 1st Sess

Typical of recent proposed legislation is HR 841, 87th Cong, 1st Sess, which amends 2 USC § 2a to provide

"(c) Each State entitled to more than one Representative in Congress under the apportionment provided in subsection (a) of this section, shall establish for each Representative a district composed of contiguous and compact territory, and the number of inhabitants contained within any district so established shall not vary more than 10 per centum from the number obtained by dividing the total population of such States, as established in the last decennial census, by the number of Representatives apportioned to such State under the provisions of subsection (a) of this section

"(d) Any Representative elected to the Congress from a district which does not conform to the requirements set forth in subsection (c) of this section shall be denied his seat in the House of Representatives and the Clerk of the House shall refuse his credentials"

Similar bills introduced in the current Congress are HR 1128, HR 2836, HR 4340, and HR 7343, 88th Cong, 1st Sess.

V.

The extent to which the Court departs from accepted principles of adjudication is further evidenced by the irrelevance to today's issue of the cases on which the Court relies.

Ex parte Yarbrough, 110 US 651, 28 L ed 274, 4 S Ct 152, was a habeas corpus proceeding, in which the Court sustained the validity of a conviction of a group of persons charged with violating federal statutes [54] which made it a crime to conspire to deprive a citizen of his federal rights, and in particular the *right to vote*. The issue before the Court was whether or not the Congress had power to pass laws protecting "the right to vote for a member of Congress from fraud and violence, the Court relied expressly on Art. I, § 4, in sustaining this power. Id., 110 US at 660, 28 L ed at 277. Only in this context, in order to establish that the right to vote in a congressional election was a right protected by federal law, did the Court hold that the right was dependent on the Constitution and not on the law of the States. Indeed, the Court recognized that the Constitution "adopts the qualification" furnished by the States "as the qualification of its own electors for members of Congress." Id., 110 US at 663, 28 L ed at 278. Each of the other three cases cited by the Court, ante, p. 492, similarly involved acts which were prosecuted as violations of federal statutes. The acts in question were filing false election returns, United States v. Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904, alteration of ballots and false certification of votes, United States v. Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, and stuffing the ballot box, United States v. Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101. None of those cases has the slightest bearing on the present situation.[55]

The Court gives scant attention, and that not on the merits, to Colegrove v. Green, 328 US 549, 90 L ed 1432, 66 S Ct 1198, which is directly in point; the Court there affirmed dismissal of a complaint alleging that "by reason of subsequent changes in population the Congressional districts for the election of Representatives in the Congress created by the Illinois Laws of 1901 . . . lacked compactness of territory and approximate equality of population." Id., 328 US at 550–551, 90 L ed at 1433. Leaving to another day the question of what Baker v. Carr, 369 US 186, 7 L ed 2d 663, 82 S Ct 691, did actually decide, it can hardly be maintained on the authority of Baker

[54] RS § 5508. RS § 5520.

* [370 US 467]

[55] Smiley v. Holm, 285 US 355, 76 L ed 795, 52 S Ct 397, and its two companion cases, Koenig v. Flynn, 285 US 375, 76 L ed 805, 52 S Ct 403, Carroll v. Becker, 285 US 380, 76 L ed 807, 52 S Ct 402, on which my Brother Clark relies in his separate opinion, ante, pp. 492, 493, are equally irrelevant. Smiley v. Holm presented two questions: the first, answered in the negative, was whether the provision in Art. I, § 4, which empowered the "Legislature" of a State to prescribe the regulations for congressional elections meant that a State could not by law provide for a Governor's veto over such regulations as had been prescribed by the legislature. The second question, which concerned two congressional apportionment measures, was whether the Act of June 18, 1929, 46 Stat. 21, had repealed certain provisions of the Act of Aug. 8, 1911, 37 Stat. 13. In answering this question, the Court was concerned to *carry out the intention of Congress in enacting the 1929 Act*. See id., 285 US at 374, 76 L ed at 804. Quite obviously, therefore, Smiley v. Holm does *not* stand for the proposition which my Brother Clark derives from it. There was not the slightest intimation in that case that Congress' power to prescribe regulations for elections was subject to judicial scrutiny, ante, p. 493, such that this Court could itself prescribe regulations for congressional elections in disregard and even in contradiction of congressional purpose. The companion cases to Smiley v. Holm presented no different issues and were decided wholly on the basis of the decision in that case.

or anything else, that the Court does not today invalidate Mr Justice Frankfurter's eminently correct statement in Colegrove that "the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people." 328 US, at 554, 90 L ed at 1435 The problem was described by Mr Justice Frankfurter as "an aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution. . " Ibid Mr Justice Frankfurter did not, of course, speak for a majority of the Court in Colegrove; but refusal for that reason to give the opinion precedential effect does not justify refusal to give appropriate attention to the views there expressed.[56]

VI.

Today's decision has portents for our society and the Court itself which should be recognized This is not a case in which the Court vindicates the kind of individual rights that are assured by the Due Process Clause of the Fourteenth Amendment, whose "vague contours," Rochin v California, 342 US 165. 170, 96 L ed 183, 189, 72 S Ct 205, 25 ALR2d 1396, of course leave much room for constitutional developments necessitated by changing conditions in a dynamic society Nor is this a case in which an emergent set of facts requires the Court to frame new principles to protect recognized constitutional rights The claim for judicial relief in this case strikes at one of the fundamental doctrines of our system of government, the separation of powers In upholding that claim, the Court attempts to effect reforms in a field which the Constitution, as plainly as can be, has committed exclusively to the political process

This Court, no less than all other branches of the Government, is bound by the Constitution The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may be thought to have fallen short The stability of this institution ultimately depends not only upon its being alert to keep the other branches of government within constitutional bounds but equally upon recognition of the limitations on the Court's own functions in the constitutional system.

What is done today saps the political process The promise of judicial intervention in matters of this sort cannot but encourage popular inertia in efforts for political reform through the political process, with the inevitable result that the process is itself weakened By yielding to the demand for a judicial remedy in this instance, the Court in my view does a disservice both to itself and to the broader values of our system of government

Believing that the complaint fails to disclose a constitutional claim, I would affirm the judgment below dismissing the complaint

[56] The Court relies in part on Baker v Carr, supra, to immunize its present decision from the force of Colegrove But nothing in Baker is contradictory to the view that, political question and other objections to "justiciability" aside, the Constitution vests exclusive authority to deal with the problem of this case in the state legislatures and the Congress

APPENDIX TO OPINION OF MR. JUSTICE HARLAN [1]

State and Number of Representatives [2]	*Largest District*	*Smallest District*	*Difference Between Largest and Smallest Districts*
Alabama (8)	———	———	———
Alaska (1)	———	———	———
Arizona (3)	663,510	198,236	465,274
Arkansas (4)	575,385	332,844	242,541
California (38)	588,933	301,872	287,061
Colorado (4)	653,954	195,551	458,403
Connecticut (6)	689,555	318,942	370,613
Delaware (1)	———	———	———
Florida (12)	660,345	237,235	423,110
Georgia (10)	823,680	272,154	551,526
Hawaii (2)	———	———	———
Idaho (2)	409,949	257,242	152,707
Illinois (24)	552,582	278,703	273,879
Indiana (11)	697,567	290,596	406,971
Iowa (7)	442,406	353,156	89,250
Kansas (5)	539,592	373,583	166,009
Kentucky (7)	610,947	350,839	260,108
Louisiana (8)	536,029	263,850	272,179
Maine (2)	505,465	463,800	41,665
Maryland (8)	711,045	243,570	467,475
Massachusetts (12)	478,962	376,336	102,626
Michigan (19)	802,994	177,431	625,563
Minnesota (8)	482,872	375,475	107,397
Mississippi (5)	608,441	295,072	313,369
Missouri (10)	506,854	378,499	128,355
Montana (2)	400,573	274,194	126,379
Nebraska (3)	530,507	404,695	125,812
Nevada (1)	———	———	———
New Hampshire (2)	331,818	275,103	56,715
New Jersey (15)	585,586	255,165	330,421
New Mexico (2)	———	———	———
New York (41)	471,001	350,186	120,815
North Carolina (11)	491,461	277,861	213,600
North Dakota (2)	333,290	299,156	34,134
Ohio (24)	726,156	236,288	489,868
Oklahoma (6)	552,863	227,692	325,171
Oregon (4)	522,813	265,164	257,649
Pennsylvania (27)	553,154	303,026	250,128
Rhode Island (2)	459,706	399,782	59,924
South Carolina (6)	531,555	302,235	229,320
South Dakota (2)	497,669	182,845	314,824
Tennessee (9)	627,019	223,387	403,632
Texas (23)	951,527	216,371	735,156
Utah (2)	572,654	317,973	254,681
Vermont (1)	———	———	———
Virginia (10)	539,618	312,890	226,728
Washington (7)	510,512	342,540	167,972
West Virginia (5)	422,046	303,098	118,948
Wisconsin (10)	530,316	236,870	293,446
Wyoming (1)	———	———	———

[1] The populations of the districts are based on the 1960 Census. The districts are those used in the election of the current 88th Congress. The populations of the districts are available in the biographical section of the Congressional Directory, 88th Cong., 2d Sess.

[2] 435 in all.

Mr. Justice Stewart:

I think it is established that "this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable,"[1] and I cannot subscribe to any possible implication to the contrary which may lurk in Mr Justice Harlan's dissenting opinion. With this single qualification I join the dissent because I think Mr Justice Harlan has unanswerably demonstrated that Art I, § 2, of the Constitution gives no mandate to this Court or to any court to ordain that congressional districts within each State must be equal in population.

B. A. Reynolds, etc., et al.,
Appellants,

v.

M. O. Sims et al.

[June 15, 1964.]

MR CHIEF JUSTICE WARREN delivered the opinion of the Court:

Involved in these cases are an appeal and two cross-appeals from a decision of the Federal District Court for the Middle District of Alabama holding invalid, under the Equal Protection Clause of the Federal Constitution, the existing and two legislatively proposed plans for the apportionment of seats in the two houses of the Alabama Legislature, and ordering into effect a temporary reapportionment plan comprised of parts of the proposed but judicially disapproved measures [1]

I

On August 26, 1961, the original plaintiffs (appellees in No 23), residents, taxpayers and voters of Jefferson County, Alabama, filed a complaint in the United States District Court for the Middle District of Alabama, in their own behalf and on behalf of all similarly situated Alabama voters, challenging the apportionment of the Alabama Legislature Defendants below (appellants in No 23), sued in their representative capacities, were various state and political party officials charged with the performance of certain duties in connection with state elections [2] The complaint alleged a deprivation of rights under the Alabama Constitution and under the Equal Protection Clause of the Fourteenth Amendment, and asserted that the District Court had jurisdiction under provisions of the Civil Rights Act, 42 U S C. §§ 1983, 1988, as well as under 28 U. S C § 1343 (3)

The complaint stated that the Alabama Legislature was composed of a Senate of 35 members and a House of Representatives of 106 members It set out relevant portions of the 1901 Alabama Constitution, which prescribe the number of members of the two bodies of the State Legislature and the method of apportioning the seats among the State's 67 counties, and provide as follows·

> "Art IV, Sec 50 The legislature shall consist of not more than thirty-five senators, and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative

[1] *Sims* v *Frink*, 208 F Supp 431 (D C M D Ala 1962) All decisions of the District Court in this litigation are reported *sub nom Sims* v *Frink*

[2] Included among the defendants were the Secretary of State and the Attorney General of Alabama, the Chairmen and Secretaries of the Alabama State Democratic Executive Committee and the State Republican Executive Committee, and three Judges of Probate of three counties, as representatives of all the probate judges of Alabama

"Art. IX, Sec 197 The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives

"Art IX, Sec 198 The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken

"Art IX, Sec. 199 It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively, provided, that each county shall be entitled to at least one representative

"Art IX, Sec 200 It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other

"Art XVIII, Sec 284 Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments"

The maximum size of the Alabama House was increased from 105 to 106 with the creation of a new county in 1903, pursuant to the constitutional provision which states that, in addition to the prescribed 105 House seats, each county thereafter created shall be entitled to one representative Article IX, §§ 202 and 203, of the Alabama Constitution established precisely the boundaries of the State's senatorial and representative districts until the enactment of a new reapportionment plan by the legislature These 1901 constitutional provisions specifically describing the composition of the senatorial districts and detailing the number of House seats allocated to each county, were periodically enacted as statutory measures by the Alabama Legislature,

as modified only by the creation of an additional county in 1903, and provided the plan of legislative apportionment existing at the time this litigation was commenced [3]

Plaintiffs below alleged that the last apportionment of the Alabama Legislature was based on the 1900 federal census, despite the requirement of the State Constitution that the legislature be reapportioned decennially. They asserted that, since the population growth in the State from 1900 to 1960 had been uneven, Jefferson and other counties were now victims of serious discrimination with respect to the allocation of legislative representation. As a result of the failure of the legislature to reapportion itself, plaintiffs asserted, they were denied "equal suffrage in free and equal elections . . and the equal protection of the laws" in violation of the Alabama Constitution and the Fourteenth Amendment to the Federal Constitution The complaint asserted that plaintiffs had no other adequate remedy, and that they had exhausted all forms of relief other than that available through the federal courts. They alleged that the Alabama Legislature had established a pattern of prolonged inaction from 1911 to the present which "clearly demonstrates that no reapportionment shall be effected"; that representation at any future constitutional convention would be established by the legislature, making it unlikely that the membership of any such convention would be fairly representative, and that, while the Alabama Supreme Court had found that the legislature had not complied with the State Constitution in failing to reapportion according to population decennially, that court had nevertheless indicated that it would not interfere with matters of legislative reapportionment.[5]

Plaintiffs requested that a three-judge District Court be convened.[6] With respect to relief, they sought a declaration that the existing constitutional and statutory provisions, establishing the present apportionment of seats in the Alabama Legislature, were unconstitutional under the Alabama and Federal Constitutions, and an injunction against the holding of future elections for legislators until the legislature reapportioned itself in accordance with the State Constitution They further requested the issuance of a mandatory injunction, effective until such time as the legislature properly reapportioned, requiring the conducting of the 1962 election for legislators at large over the entire State, and any other relief which "may seem just, equitable and proper "

A three-judge District Court was convened, and three groups of voters, taxpayers and residents of Jefferson, Mobile, and Etowah Coun-

[3] Provisions virtually identical to those contained in Art IX, §§ 202 and 203, were enacted into the Alabama Codes of 1907 and 1923, and were most recently reenacted as statutory provisions in §§ 1 and 2 of Tit 32 of the 1940 Alabama Code (as recompiled in 1958)

[4] See *Opinion of the Justices*, 263 Ala 158, 164, 81 So 2d 881, 887 (1955), and *Opinion of the Justices*, 254 Ala 185, 187, 47 So 2d 714, 717 (1950), referred to by the District Court in its preliminary opinion 205 F Supp, at 247

[5] See *Ex Parte Rice*, 143 So 2d 848 (Ala Sup Ct 1962), where the Alabama Supreme Court, on May 9, 1962, subsequent to the District Court's preliminary order in the instant litigation as well as our decision in *Baker* v *Carr*, 369 U S 186, refused to review a denial of injunctive relief sought against the conducting of the 1962 primary election until after reapportionment of the Alabama Legislature, stating that "this matter is a legislative function, and the Court has no jurisdiction ' And in *Ward* v *Poole*, 255 Ala 441, 51 So 2d 869 (1951), the Alabama Supreme Court, in a similar suit, had stated that the lower court had properly refused to grant injunctive relief because "appellants are seeking interference by the judicial department of the state in respect to matters committed by the constitution to the legislative deparment " 255 Ala , at 442, 51 So 2d, at 870

[6] Under 28 U S C §§ 2281 and 2284

ties were permitted to intervene in the action as intervenor-plaintiffs. Two of the groups are cross-appellants in Nos 27 and 41 With minor exceptions, all of the intervenors adopted the allegations of and sought the same relief as the original plaintiffs

On March 29, 1962, just three days after this Court had decided *Baker* v. *Carr*, 369 U.S. 186, plaintiffs moved for a preliminary injunction requiring defendants to conduct at large the May 1962 Democratic primary election and the November 1962 general election for members of the Alabama Legislature The District Court set the motion for hearing in an order stating its tentative views that an injunction was not required before the May 1962 primary election to protect plaintiffs' constitutional rights, and that the Court should take no action which was not "absolutely essential" for the protection of the asserted constitutional rights, before the Alabama Legislature had had a "further reasonable but prompt opportunity to comply with its duty" under the Alabama Constitution.

On April 14, 1962, the District Court, after reiterating the views expressed in its earlier order, reset the case for hearing on July 16, noting that the importance of the case, together with the necessity for effective action within a limited period of time, required an early announcement of its views 205 F Supp 245 Relying on our decision in *Baker* v *Carr*, the Court found jurisdiction, justiciability and standing It stated that it was taking judicial notice of the facts that there had been population changes in Alabama's counties since 1901, that the present representation in the State Legislature was not on a population basis, and that the legislature had never reapportioned its membership as required by the Alabama Constitution [7] Continuing, the Court stated that if the legislature complied with the Alabama constitutional provision requiring legislative representation to be based on population there could be no objection on federal constitutional grounds to such an apportionment The Court further indicated that, if the legislature failed to act, or its actions did not meet constitutional standards, it would be under a "clear duty" to take some action on the matter prior to the November 1962 general election. The District Court stated that its "present thinking" was to follow an approach suggested by MR JUSTICE CLARK in his concurring opinion in *Baker* v *Carr* [8]—awarding seats released by the consolidation or revamping of existing districts to counties suffering "the most egregious discrimination," thereby releasing the strangle hold on the legislature sufficiently so as to permit the newly elected body to enact a constitutionally valid and permanent reapportionment plan, and allowing eventual dismissal of the case Subsequently, plaintiffs were permitted to amend their complaint by adding a further prayer for relief, which asked the District Court to reapportion the Alabama Legislature provisionally so that the rural strangle hold would be relaxed enough to permit it to reapportion itself

On July 12, 1962, an extraordinary session of the Alabama Legislature adopted two reapportionment plans to take effect for the 1966 elections. One was a proposed constitutional amendment, referred to

[7] During the over 60 years since the last substantial reapportionment in Alabama, the State's population increased from 1,828,697 to 3,244,286 Virtually all of the population gain occurred in urban counties, and many of the rural counties incurred sizable losses in population

[8] See 369 U S, at 260 (CLARK, J, concurring)

as the "67-Senator Amendment" [9] It provided for a House of Representatives consisting of 106 members, apportioned by giving one seat to each of Alabama's 67 counties and distributing the others according to population by the "equal proportions" method [10] Using this formula, the constitutional amendment specified the number of representatives allotted to each county until a new apportionment could be made on the basis of the 1970 census The Senate was to be composed of 67 members, one from each county The legislation provided that the proposed amendment should be submitted to the voters for ratification at the November 1962 general election

The other reapportionment plan was embodied in a statutory measure adopted by the legislature and signed into law by the Alabama Governor, and was referred to as the "Crawford-Webb Act." [11] It was enacted as standby legislation to take effect in 1966 if the proposed constitutional amendment should fail of passage by a majority of the State's voters, or should the federal courts refuse to accept the proposed amendment (though not rejected by the voters) as effective action in compliance with the requirements of the Fourteenth Amendment The act provided for a Senate consisting of 35 members, representing 35 senatorial districts established along county lines, and altered only a few of the former districts In apportioning the 106 seats in the Alabama House of Representatives, the statutory measure gave each county one seat, and apportioned the remaining 39 on a rough population basis, under a formula requiring increasingly more population for a county to be accorded additional seats The Crawford-Webb Act also provided that it would be effective "until the legislature is reapportioned according to law," but provided no standards for such a reapportionment Future apportionments would presumably be based on the existing provisions of the Alabama Constitution which the statute, unlike the proposed constitutional amendment, would not affect

The evidence adduced at trial before the three-judge panel consisted primarily of figures showing the population of each Alabama county and senatorial district according to the 1960 census, and the number of representatives allocated to each county under each of the three plans at issue in the litigation—the existing apportionment (under the 1901 constitutional provisions and the current statutory measures substantially reenacting the same plan), the proposed 67-Senator constitutional amendment, and the Crawford-Webb Act Under all three plans, each senatorial district would be represented by only one senator

On July 21, 1962, the District Court held that the inequality of the existing representation in the Alabama Legislature violated the Equal Protection Clause of the Fourteenth Amendment, a finding which the Court noted had been "generally conceded" by the parties to the litigation, since population growth and shifts had converted the 1901 scheme, as perpetuated some 60 years later, into an invidiously discrim-

[9] Proposed Constitutional Amendment No 1 of 1962, Alabama Senate Bill No 29, Act No 93, Acts of Alabama, Special Session, 1962, p 124 The text of the proposed amendment is set out as Appendix B to the lower court's opinion. 208 F Supp, at 443–444

[10] For a discussion of this method of apportionment, used in distributing seats in the Federal House of Representatives among the States, and other commonly used apportionment methods see Schmeckebier, The Method of Equal Proportions, 17 Law and Contemp Prob 302 (1952)

[11] Alabama Reapportionment Act of 1962, Alabama House Bill No 59, Act No 91, Acts of Alabama, Special Session, 1962, p 121 The text of the act is reproduced as Appendix C to the lower court's opinion 208 F Supp, at 445–446.

inatory plan completely lacking in rationality 208 F Supp 431 Under the existing provisions, applying 1960 census figures, only 25 1% of the State's total population resided in districts represented by a majority of the members of the Senate, and only 25 7% lived in counties which could elect a majority of the members of the House of Representatives Population-variance ratios of up to about 41-to-1 existed in the Senate, and up to about 16-to-1 in the House Bullock County, with a population of only 13,462, and Henry County, with a population of only 15,286, each were allocated two seats in the Alabama House, whereas Mobile County, with a population of 314,301, was given only three seats, and Jefferson County, with 634,864 people, had only seven representatives [12] With respect to senatorial apportionment, since the pertinent Alabama constitutional provisions had been consistently construed as prohibiting the giving of more than one Senate seat to any one county,[13] Jefferson County, with over 600,000 people, was given only one senator, as was Lowndes County, with a 1960 population of only 15,417, and Wilcox County, with only 18,739 people [14]

The Court then considered both the proposed constitutional amendment and the Crawford-Webb Act to ascertain whether the legislature had taken effective action to remedy the unconstitutional aspects of the existing apportionment. In initially summarizing the result which it had reached, the Court stated

> "This Court has reached the conclusion that neither the '67-Senator Amendment' nor the 'Crawford-Webb Act' meets the necessary constitutional requirements We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the [federal constitutional] test " [15]

The Court stated that the apportionment of one senator to each county, under the proposed constitutional amendment, would "make the discrimination in the Senate even more invidious than at present " Under the 67-Senator Amendment, as pointed out by the court below, "the present control of the Senate by members representing 25 1% of the people of Alabama would be reduced to control by members representing 19 4% of the people of the State," the 34 smallest counties,

[12] A comprehensive chart showing the representation by counties in the Alabama House of Representatives under the existing apportionment provisions is set out as Appendix D to the lower court's opinion 208 F Supp, at 447–449 This chart includes the number of House seats given to each county, and the populations of the 67 Alabama counties under the 1900, 1950, and 1960 censuses

[13] Although cross-appellants in No 27 assert that the Alabama Constitution forbids the division of a county, in forming senatorial districts, only when one or both pieces will be joined with another county to form a multicounty district, this view appears to be contrary to the language of Art IX, § 200, of the Alabama Constitution and the practice under it Cross-appellants contend that counties entitled by population to two or more senators can be split into the appropriate number of districts, and argue that prior to the adoption of the 1901 provisions the Alabama Constitution so provided and there is no reason to believe that the language of the present provision was intended to effect any change However, the only apportionments under the 1901 Alabama Constitution—the 1901 provisions and the Crawford-Webb Act—gave no more than one seat to a county even though by population several counties would have been entitled to additional senatorial representation

[14] A chart showing the composition, by counties, of the 35 senatorial districts provided for under the existing apportionment, and the population of each according to the 1900, 1950, and 1960 censuses, is reproduced as Appendix E to the lower court's opinion 208 F Supp, at 450

[15] 208 F Supp, at 437

with a total population of less than that of Jefferson County, would have a majority of the senatorial seats, and senators elected by only about 14% of the State's population could prevent the submission to the electorate of any future proposals to amend the State Constitution (since a vote of two-fifths of the members of one house can defeat a proposal to amend the Alabama Constitution) Noting that the "only conceivable rationalization" of the senatorial apportionment scheme is that it was based on equal representation of political subdivisions within the State and is thus analogous to the Federal Senate, the District Court rejected the analogy on the ground that Alabama counties are merely involuntary political units of the State created by statute to aid in the administration of state government In finding the so-called federal analogy irrelevant, the District Court stated:

> "The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population Nor can it survive a comparison of the different political natures of states and counties." [16]

The Court also noted that the senatorial apportionment proposal "may not have complied with the State Constitution," since not only is it explicitly provided that the population basis of legislative representation "shall not be changed by constitutional amendments," [17] but the Alabama Supreme Court had previously indicated that that requirement could probably be altered only by constitutional convention.[18] The Court concluded, however, that the apportionment of seats in the Alabama House, under the proposed constitutional amendment, was "based upon reason, with a rational regard for known and accepted standards of apportionment" [19] Under the proposed apportionment of representatives, each of the 67 counties was given one seat and the remaining 39 were allocated on a population basis. About 43% of the State's total population would live in counties which could elect a majority in that body. And, under the provisions of the 67-Senator Amendment, while the maximum population-variance ratio was increased to about 59-to-1 in the Senate, it was significantly reduced to about 4.7-to-1 in the House of Representatives Jefferson County was given 17 House seats, an addition of 10, and Mobile County was allotted eight, an increase of five The increased representation of the urban counties was achieved primarily by limiting the State's 55 least populous counties to one House seat each, and the net effect was to

[16] *Id.*, at 438.

[17] According to the District Court, in the interval between its preliminary order and its decision on the merits, the Alabama Legislature, despite adopting this constitutional amendment proposal, "refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the '67-Senator Amendment proposes" 208 F Supp, at 437

[18] At least this is the reading of the District Court of two somewhat conflicting decisions by the Alabama Supreme Court, resulting in a "manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards " 208 F Supp, at 438 Compare *Opinion of the Justices*, 254 Ala 133, 184, 47 So 2d 713, 714 (1950) with *Opinion of the Justices*, 263 Ala 158, 164, 81 So 2d 881, 887 (1955)

[19] See the later discussion, *infra* at —, and note 68, *infra* where we reject the lower court's apparent conclusion that the apportionment of the Alabama House, under the 67-Senator Amendment, comported with the requirements of the Equal Protection Clause

take 19 seats away from rural counties and allocate them to the more populous counties Even so, serious disparities from a population-based standard remained. Montgomery County, with 169,210 people, was given only four seats, while Coosa County, with a population of only 10,726, and Cleburne County, with only 10,911, were each allocated one representative.

Turning next to the provisions of the Crawford-Webb Act, the District Court found that its apportionment of the 106 seats in the Alabama House of Representatives, by allocating one seat to each county and distributing the remaining 39 to the more populous counties in diminishing ratio to their populations, was "totally unacceptable" [20] Under this plan, about 37% of the State's total population would reside in counties electing a majority of the members of the Alabama House, with a maximum population-variance ratio of about 5-to-1 Each representative from Jefferson and Mobile Counties would represent over 52,000 persons while representatives from eight rural counties would each represent less than 20,000 people The Court regarded the senatorial apportionment provided in the Crawford-Webb Act as "a step in the right direction, but an extremely short step," and but a "slight improvement over the present system of representation" [21] The net effect of combining a few of the less populous counties into two-county districts and splitting up several of the larger districts into smaller ones would be merely to increase the minority which would be represented by a majority of the members of the Senate from 25 1% to only 27 6% of the State's population [22] The Court pointed out that, under the Crawford-Webb Act, the vote of a person in the senatorial district consisting of Bibb and Perry Counties would be worth 20 times that of a citizen in Jefferson County, and that the vote of a citizen in the six smallest districts would be worth 15 or more times that of a Jefferson County voter The Court concluded that the Crawford-Webb Act was "totally unacceptable" as a "piece of permanent legislation" which, under the Alabama Constitution, would have remained in effect without alteration at least until after the next decennial census

Under the detailed requirements of the various constitutional provision relating to the apportionment of seats in the Alabama Senate and House of Representatives, the Court found, the membership of neither house can be apportioned solely on a population basis, despite the provision in Art XVIII, § 284, which states that "representation in the legislature shall be based upon population" In dealing with the conflicting and somewhat paradoxical requirements (under which the number of seats in the House is limited to 106 but each of the 67 coun-

[20] While no formula for the statute's apportionment of representatives is expressly stated, one can be extrapolated Counties with less than 45,000 people are given one seat, those with 45,000 to 90,000 receive two seats, counties with 90,000 to 150,000, three seats, those with 150,000 to 300,000, four seats, counties with 300,000 to 600,000, six seats, and counties with over 600,000 are given 12 seats

[21] Appendix F to the lower court's opinion sets out a chart showing the populations of the 35 senatorial districts provided for under the Crawford-Webb Act and the composition, by counties, of the various districts 208 F Supp, at 451

[22] Cross-appellants in No 27 assert that the Crawford-Webb Act was a "minimum-change measure" which merely redrew new senatorial district lines around the nominees of the May 1962 Democratic primary so as to retain the seats of 34 of the 35 nominees, and resulted, in practical effect, in the shift of only one Senate seat from an overrepresented district to another underpopulated, newly created district

ties is required to be given at least one representative, and the size of the Senate is limited to 35 but it is required to have at least one-fourth of the members of the House, although no county can be given more than one senator), the District Court stated its view that "the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature" is the previously referred to language of § 284. The Court stated that the detailed requirements of Art IX, §§ 197–200,

> "make it obvious that in *neither* the House nor the Senate can representation be based strictly and entirely upon population . . . The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided Indeed, . . . it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions" [23]

The District Court then directed its concern to the providing of an effective remedy It indicated that it was adopting and ordering into effect for the November 1962 election a provisional and temporary reapportionment plan composed of the provisions relating to the House of Representatives contained in the 67-Senator Amendment and the provisions of the Crawford-Webb Act relating to the Senate The Court noted, however, that "the proposed reapportionment of the Senate in the 'Crawford-Webb Act,' unacceptable as a piece of permanent legislation, may not even break the strangle hold" Stating that it was retaining jurisdiction and deferring any hearing on plaintiffs' motion for a permanent injunction "until the Legislature, as provisionally reapportioned , has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature," the Court emphasized that its "moderate" action was designed to break the strangle hold by the smaller counties on the Alabama Legislature and would not suffice as a permanent reapportionment On July 25, 1962, the Court entered its decree in accordance with its previously stated determinations, concluding that "plaintiffs are denied equal protection by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law" It enjoined the defendant state officials from holding any future elections under any of the apportionment plans that it had found invalid, and stated that the 1962 election of Alabama legislators could validly be conducted only under the apportionment scheme specified in the Court's order

After the District Court's decision, new primary elections were held pursuant to legislation enacted in 1962 at the same special session as the proposed constitutional amendment and the Crawford-Webb Act, to be effective in the event the Court itself ordered a particular reapportionment plan into immediate effect The November 1962 general election was likewise conducted on the basis of the District Court's ordered apportionment of legislative seats, as MR JUSTICE BLACK refused to stay the District Court's order Consequently, the present Alabama Legis-

[23] 208 F Supp, at 439

lature is apportioned in accordance with the temporary plan prescribed by the District Court's decree All members of both houses of the Alabama Legislature serve four-year terms, so that the next regularly scheduled election of legislators will not be held until 1966 The 1963 regular session of the Alabama Legislature produced no legislation relating to legislative apportionment, [24] and the legislature, which meets biennially, will not hold another regular session until 1965

No effective political remedy to obtain relief against the alleged malapportionment of the Alabama Legislature appears to have been available [25] No initiative procedure exists under Alabama law Amendment of the State Constitution can be achieved only after a proposal is adopted by three-fifths of the members of both houses of the legislature and is approved by a majority of the people, [26] or as a result of a constitutional convention convened after approval by the people of a convention call initiated by a majority of both houses of the Alabama Legislature [27]

Notices of appeal to this Court from the District Court's decision were timely filed by defendants below (appellants in No 23) and by two groups of intervenor-plaintiffs (cross-appellants in Nos 27 and 41) Appellants in No 23 contend that the District Court erred in holding the existing and the two proposed plans for the apportionment of seats in the Alabama Legislature unconstitutional, and that a federal court lacks the power to affirmatively reapportion seats in a state legislature Cross-appellants in No 27 assert that the court below erred in failing to compel reapportionment of the Alabama Senate on a population basis as allegedly required by the Alabama Constitution and the Equal Protection Clause of the Federal Constitution Cross-appellants in No 41 contend that the District Court should have required and ordered into effect the apportionment of seats in both houses of the Alabama Legislature on a population basis We noted probable jurisdiction on June 10, 1963 374 U S 802

II.

Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, *Ex parte Yarbrough*, 110 U S 651, and to have their votes counted, *United States* v *Mosely*, 238 U S 383 In *Mosely* the Court stated that it is "as equally unquestionable that the right to have one's vote counted is as open to protection as the right to put a ballot in a box" 238 U S, at 386 The right to vote can neither be denied outright *Guinn* v *United States*, 238 U S 347,

[24] Possibly this resulted from an understandable desire on the part of the Alabama Legislature to await a final determination by this Court in the instant litigation before proceeding to enact a permanent apportionment plan

[25] However, a proposed constitutional amendment, which would have made the Alabama House of Representatives somewhat more representative of population but the Senate substantially less so was rejected by the people in a 1956 referendum, with the more populous counties accounting for the defeat

See the discussion in *Lucas* v *The Forty-Fourth General Assembly of the State of Colorado*, — U S —, — — —, decided also this date, with respect to the lack of federal constitutional significance of the presence or absence of an available political remedy

[26] Ala Const, Art XVIII, § 284

[27] Ala Const, Art XVIII, § 286

Lane v *Wilson*, 307 U S 268, nor can it be destroyed by alteration of ballots, see *United States* v *Classic*, 313 U S 299, 315, nor diluted by ballot-box stuffing, *Ex parte Siebold*, 100 U. S 371, *United States* v *Saylor*, 322 U S 385 As the Court stated in *Classic*, "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted . . " 313 U. S , at 315 Racially based gerrymandering, *Gomillion* v *Lightfoot*, 364 U S 339, and the conducting of white primaries *Nixon* v *Herndon*, 273 U S 536, *Nixon* v. *Condon*, 286 U. S 73, *Smith* v. *Allwright*, 321 U. S 649, *Terry* v *Adams*. 345 U S 461, both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible And history has seen a continuing expansion of the scope of the right of suffrage in this country.[28] The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise [29]

In *Baker* v *Carr*, 369 U. S 186, we held that a claim asserted under the Equal Protection Clause challenging the constitutionality of a State's apportionment of seats in its legislature, on the ground that the right to vote of certain citizens was effectively impaired since debased and diluted in effect, presented a justiciable controversy subject to adjudication by federal courts The spate of similar cases filed and decided by lower courts since our decision in *Baker* amply shows that the problem of state legislative malapportionment is one that is perceived to exist in a large number of the States [30] In *Baker*, a suit involving an attack on the apportionment of seats in the Tennessee Legislature, we remanded to the District Court, which had dismissed the action, for consideration on the merits. We intimated no view as to the proper constitutional standards for evaluating the validity of a state legislative apportionment scheme Nor did we give any consideration to the question of appropriate remedies Rather, we simply stated.

> "Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at trial " [31]

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[28] The Fifteenth, Seventeenth, Nineteenth, Twenty-third and Twenty-fourth Amendments to the Federal Constitution all involve expansions of the right of suffrage Also relevant, in this regard, is the civil rights legislation enacted by Congress in 1957 and 1960

[29] As stated by MR JUSTICE DOUGLAS in *South* v *Peters*, 339 U S 276, 279
"There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth The right to vote includes the right to have the ballot counted It also includes the right to have the vote counted at full value without dilution or discount That federally protected right suffers substantial dilution [where a] favored group has full voting strength [and] the groups not in favor have their votes discounted" (DOUGLAS J , dissenting)

[30] Litigation challenging the constitutionality of state legislative apportionment schemes had been instituted in at least 34 States prior to end of 1962—within nine months of our decision in *Baker* v *Carr* See McKay, Political Thickets and Crazy Quilts Reapportionment and Equal Protection, 61 Mich L Rev 645, 706–710 (1963), which contains an appendix summarizing reapportionment litigation through the end of 1962 See also David and Eisenberg, Devaluation of the Urban and Suburban Vote (1961), Goldberg, The Statistics of Malapportionment, 72 Yale L J 90 (1962)

[31] 369 U S , at 198

We indicated in *Baker*, however, that the Equal Protection Clause provides discoverable and manageable standards for use by lower courts in determining the constitutionality of a state legislative apportionment scheme, and we stated:

> "Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action." [32]

Subsequent to *Baker*, we remanded several cases to the courts below for reconsideration in light of that decision.[33]

In *Gray* v. *Sanders*, 372 U. S. 368, we held that the Georgia county unit system, applicable in statewide primary elections, was unconstitutional since it resulted in a dilution of the weight of the votes of certain Georgia voters merely because of where they resided. After indicating that the Fifteenth and Nineteenth Amendments prohibit a State from overweighting or diluting votes on the basis of race or sex, we stated:

> "How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions." [34]

Continuing, we stated that "there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State." And, finally, we concluded: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing—one person, one vote." [35]

We stated in *Gray*, however, that that case,

> "unlike *Baker* v *Carr*, . . . does not involve a question of the degree to which the Equal Protection Clause of the Fourteenth

[32] *Id.*, at 226.
[33] *Scholle* v *Hare*, 369 U. S. 429 (Michigan); *WMCA, Inc.*, v *Simon*, 370 U. S. 190 (New York).
[34] 372 U. S., at 379–380.
[35] *Id.*, at 381.

> Amendment limits the authority of a State legislature in designing the geographical districts from which representatives are chosen either for the State Legislature or for the Federal House of Representatives . . . Nor does it present the question, inherent in the bicameral form of our Federal Government, whether a State may have one house chosen without regard to population "[36]

Of course, in these cases we are faced with the problem not presented in *Gray*—that of determining the basic standards and stating the applicable guidelines for implementing our decision in *Baker* v. *Carr*

In *Wesberry* v *Sanders*, 376 U S 1, decided earlier this Term, we held that attacks on the constitutionality of congressional districting plans enacted by state legislatures do not present nonjusticiable questions and should not be dismissed generally for "want of equity." We determined that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts established by a state legislature for the election of members of the Federal House of Representatives

In that case we decided that an apportionment of congressional seats which "contracts the value of some votes and expands that of others" is unconstitutional since "the Federal Constitution intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote " We concluded that the constitutional prescription for election of members of the House of Representatives "by the People," construed in its historical context, "means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's " We further stated

> "It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others "[37]

We found further, in *Wesberry*, that "our Constitution's plain objective" was that "of making equal representation for equal numbers of people the fundamental goal " We concluded by stating·

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."[38]

Gray and *Wesberry* are of course not dispositive of or directly controlling on our decision in these cases involving state legislative apportionment controversies Admittedly, those decisions, in which we held that, in statewide and in congressional elections, one person's vote must

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[36] *Id*, at 376 Later in the opinion we again stated
"Nor does the question here have anything to do with the composition of the state or federal legislature And we intimate no opinion on the constitutional phases of that problem beyond what we said in *Baker* v *Carr* " *Id*, at 378

[37] 376 U S, at 14

[38] *Id*, at 17–18

be counted equally with those of all other voters in a State, were based on different constitutional considerations and were addressed to rather distinct problems But neither are they wholly inapposite *Gray*, though not determinative here since involving the weighting of votes in statewide elections, established the basic principle of equality among voters within a State, and held that voters cannot be classified, constitutionally, on the basis of where they live, at least with respect to voting in statewide elections. And our decision in *Wesberry* was of course grounded on that language of the Constitution which prescribes that members of the Federal House of Representatives are to be chosen "by the People," while attacks on state legislative apportionment schemes, such as that involved in the instant cases, are principally based on the Equal Protection Clause of the Fourteenth Amendment Nevertheless, *Wesberry* clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State Our problem, then, is to ascertain, in the instant cases, whether there are any constitutionally cognizable principles which would justify departures from the basic standard of equality among voters in the apportionment of seats in state legislatures

III.

A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature. As stated by the Court in *United States* v *Bathgate*, 246 U S. 220, 227, "the right to vote is personal . . ."[39] While the result of a court decision in a state legislative apportionment controversy may be to require the restructuring of the geographical distribution of seats in a state legislature, the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote Like *Skinner* v *Oklahoma*, 316 U. S 535, such a case "touches a sensitive and important area of human rights," and "involves one of the basic civil rights of man," presenting questions of alleged "invidious discriminations against groups or types of individuals in violation of the constitutional guaranty of just and equal laws" 316 U. S , at 536, 541 Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized Almost a century ago, in *Yick Wo* v *Hopkins*, 118 U. S. 356, the Court referred to "the political franchise of voting" as "a fundamental political right, because preservative of all rights" 118 U S , at 370.

Legislators represent people, not trees or acres Legislators are elected by voters, not farms or cities or economic interests As long are ours

[39] As stated by MR JUSTICE DOUGLAS, the rights sought to be vindicated in a suit challenging an apportionment scheme are "personal and individual," *South* v *Peters* 339 U S , at 280, and are "important political rights of the people," *MacDougall* v *Green*, 335 U S 281, 288. (DOUGLAS, J , dissenting)

is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, of 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted It would appear extraordinary to suggest that a state could be constitutionally permitted to enact a law providing that certain of the state's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical [40] Overweighting and overevaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically Their right to vote is simply not the same right to vote as that of those living in a favored part of the State Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination" *Lane* v *Wilson*, 307 U S 268, 275 *Gomillion* v *Lightfoot*, 364 U S 339, 342 As we stated in *Wesberry* v *Sanders*, *supra:*

> "We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants To say that a vote is worth more in one district than in another would . . run counter to our fundamental ideas of democratic government . . ." [41]

[40] As stated by MR JUSTICE BLACK in *Colegrove* v *Green*, 328 U S 549, 569–571
"No one would deny that the equal protection clause would prohibit a law that would expressly give certain citizens a half-vote and others a full vote [T]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast [A] state legislature cannot deny eligible voters the right to vote for Congressmen and the right to have their vote counted It can no more destroy the effectiveness of their vote in part and no more accomplish this in the name of 'apportionment' than under any other name" (BLACK, J., dissenting)

[41] 376 U S., at 8 See also *id.*, at 17, quoting from James Wilson, a delegate to the Constitutional Convention and later an Associate Justice of this Court, who stated
"[A]ll elections ought to be equal Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state In this manner,

State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen has an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment

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the proportion of the representatives and of the constituents will remain invariably the same" 2 The Works of James Wilson (Andrews ed 1896) 15

And, as stated by MR JUSTICE DOUGLAS in *MacDougall v Green*, 335 U S, at 288, 290

"[A] regulation . [which] discriminates against the residents of the populous counties of the state in favor of rural section lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment

"Free and honest elections are the very foundation of our republican form of government Discrimination against any group or class of citizens in the exercise of these constitutionally protected rights of citizenship deprives the electoral process of integrity

"None would deny that a state law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees . The theme of the Constitution is equality among citizens in the exercise of their political rights The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government." (DOUGLAS, J, dissenting)

just as much as invidious discriminations based upon factors such as race. *Brown* v. *Board of Education,* 347 U S 483, or economic status. *Griffin* v *Illinois,* 351 U S 12, *Douglas* v *California,* 372 U. S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future.

We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens We are cautioned about the dangers of entering into political thickets and mathematical quagmires Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us As stated in *Gomillion* v *Lightfoot, supra:*

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right" [42]

To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity A nation once primarily rural in character becomes predominantly urban [43] Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies [44] A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of

[42] 364 U S, at 347

[43] Although legislative apportionment controversies are generally viewed as involving urban-rural conflicts, much evidence indicates that presently it is the fast-growing suburban areas which are probably the most seriously underrepresented in many of our state legislatures And, while currently the thrust of state legislative malapportionment results, in most states, in underrepresentation of urban and suburban areas, in earlier times cities were in fact overrepresented in a number of States In the early 19th century, certain of the seaboard cities in some of the Eastern and Southern States possessed and struggled to retain legislative representation disproportionate to population, and bitterly opposed according additional representation to the growing inland areas Conceivably, in some future time, urban areas might again be in a situation of attempting to acquire or retain legislative representation in excess of that to which, on a population basis, they are entitled Malapportionment can, and has historically, run in various directions However and whenever it does, it is constitutionally impermissible under the Equal Protection Clause

[44] The British experience in eradicating "rotten boroughs" is interesting and enlightening Parliamentary representation is now based on districts of substantially equal population, and periodic reapportionment is accomplished through independent Boundary Commissions For a discussion of the experience and difficulties in Great Britain in achieving fair legislative representation, see Edwards, Theoretical and Comparative Aspects of Reapportionment and Redistricting With Reference to Baker v Carr, 15 Vand L Rev 1265, 1275 (1962) See also the discussion in *Baker* v *Carr* 369 U S, at 302–307 (Frankfurter, J, dissenting)

the concept of a government of laws and not men This is at the heart of Lincoln's vision of "government of the people, by the people, [and] for the people." The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races

IV.

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State Since, under neither the existing apportionment provisions nor under either of the proposed plans was either of the houses of the Alabama Legislature apportioned on a population basis, the District Court correctly held that all three of these schemes were constitutionally invalid. Furthermore, the existing apportionment, and also to a lesser extent the apportionment under the Crawford-Webb Act, presented little more than crazy quilts, completely lacking in rationality, and could be found invalid on that basis alone [45] Although the District Court presumably found the apportionment of the Alabama House of Representatives under the 67-Senator Amendment to be acceptable, we conclude that the deviations from a strict population basis are too egregious to permit us to find that that body, under this proposed plan, was apportioned sufficiently on a population basis so as to permit the arrangement to be constitutionally sustained. Although about 43% of the State's total population would be required to comprise districts which could elect a majority in that body, only 39 of the 106 House seats were actually to be distributed on a population basis, as each of Alabama's 67 counties was given at least one representative, and population-variance ratios of close to 5-to-1 would have existed. While mathematical nicety is not a constitutional requisite, one could hardly conclude that the Alabama House, under the proposed constitutional amendment, had been apportioned sufficiently on a population basis to be sustainable under the requirements of the Equal Protection Clause And none of the other apportionments of seats in either of the bodies of the Alabama Legislature, under the three plans considered by the District Court, came nearly as close to approaching the required constitutional standard as did that of the House of Representatives under the 67-Senator Amendment

Legislative apportionment in Alabama is signally illustrative and symptomatic of the seriousness of this problem in a number of the States At the time this litigation was commenced, there had been no reapportionment of seats in the Alabama Legislature for over 60

[45] Under the existing scheme, Marshall County, with a 1960 population of 48,018, Baldwin County, with 49,088, and Houston County, with 50,713, are each given only one seat in the Alabama House while Bullock County, with only 13,462, Henry County, with 15 286, and Lowndes County, with 15,417, are alloted two representatives each And in the Alabama Senate, under the existing apportionment, a district comprising Lauderdale and Limestone Counties had a 1960 population of 98,135, and another composed of Lee and Russell Counties had 96,105 Conversely, Lowndes County, with only 15,417, and Wilcox County, with 18,739, are nevertheless single-county senatorial districts given one Senate seat each

years [46] Legislative inaction, coupled with the unavailability of any political or judicial remedy,[47] had resulted, with the passage of years, in the perpetuated scheme becoming little more than an irrational anachronism Consistent failure by the Alabama Legislature to comply with state constitutional requirements as to the frequency of reapportionment and the bases of legislative representation resulted in a minority strangle hold on the State Legislature. Inequality of representation in one house added to the inequality in the other With the crazy-quilt existing apportionment virtually conceded to be invalid, the Alabama Legislature offered two proposed plans for consideration by the District Court, neither of which was to be effective until 1966 and neither of which provided for the apportionment of even one of the two houses on a population basis We find that the court below did not err in holding that neither of these proposed reapportionment schemes, considered as a whole, "meets the necessary constitutional requirements." And we conclude that the District Court acted properly in considering these two proposed plans, although neither was to become effective until the 1966 election and the proposed constitutional amendment was scheduled to be submitted to the State's voters in November 1962.[48] Consideration by the court below of the two proposed plans was clearly necessary in determining whether the Alabama Legislature had acted effectively to correct the admittedly existing malapportionment, and in ascertaining what sort of judicial relief, if any, should be afforded.

V.

Since neither of the houses of the Alabama Legislature, under any of the three plans considered by the District Court, was apportioned on a population basis, we would be justified in proceeding no further However, one of the proposed plans, that contained in the so-called 67-Senator Amendment, at least superficially resembles the scheme of legislative representation followed in the Federal Congress Under this plan, each of Alabama's 67 counties is allotted one senator, and no counties are given more than one Senate seat. Arguably, this is analogous to the allocation of two Senate seats, in the Federal Congress, to each of the 50 States, regardless of population. Seats in the Alabama House, under the proposed constitutional amendment, are distributed by giving each of the 67 counties at least one, with the remaining 39 seats being allotted among the more populous counties on a population basis. This scheme, at least at first glance, appears to resemble that prescribed for the Federal House of Representatives, where the 435 seats are distributed among the States on a population basis, although each State, regardless of its population, is given at least one Congressman Thus, although there are substantial differences in underlying rationale

[46] An interesting pre-*Baker* discussion of the problem of legislative malapportionment in Alabama is provided in Comment, Alabama's Unrepresentative Legislature, 14 Ala L Rev 403 (1962)

[47] See the cases cited and discussed in notes 5–6, *supra*, where the Alabama Supreme Court refused even to consider the granting of relief in suits challenging the validity of the apportionment of seats in the Alabama Legislature, although it stated that the legislature had failed to comply with the requirements of the State Constitution with respect to legislative reapportionment

[48] However, since the District Court found the proposed constitutional amendment prospectively invalid, it was never in fact voted upon by the State's electorate

and result,[49] the 67-Senator Amendment, as proposed by the Alabama Legislature, at least arguably presents for consideration a scheme analogous to that used for apportioning seats in Congress

Much has been written since our decision in *Baker* v *Carr* about the applicability of the so-called federal analogy to state legislative apportionment arrangements.[50] After considering the matter, the court below concluded that no conceivable analogy could be drawn between the federal scheme and the apportionment of seats in the Alabama Legislature under the proposed constitutional amendment.[51] We agree with the District Court, and find the federal analogy inapposite and irrelevant to state legislative districting schemes. Attempted reliance on the federal analogy appears often to be little more than an after-the-fact rationalization offered in defense of maladjusted state apportionment arrangements. The original constitutions of 36 of our States provided that representation in both houses of the state legislatures would be based completely, or predominantly, on population.[52] And the Founding Fathers clearly had no intention of establishing a pattern or model for the apportionment of seats in state legislatures when the system of representation in the Federal Congress was adopted.[53] Demonstrative of this is the fact that the Northwest Ordinance, adopted in the same year, 1787, as the Federal Constitution, provided for the apportionment of seats in territorial legislatures solely on the basis of population.[54]

[49] Resemblances between the system of representation in the Federal Congress and the apportionment scheme embodied in the 67-Senator Amendment appear to be more superficial than actual. Representation in the Federal House of Representatives is apportioned by the Constitution among the States in conformity with population. While each State is guaranteed at least one seat in the House, as a feature of our unique federal system, only four States have less than 1/435 of the country's total population, under the 1960 census. Thus, only four seats in the Federal House are distributed on a basis other than strict population. In Alabama, on the other hand, 40 of the 67 counties have less than 1/106 of the State's total population. Thus, under the proposed amendment, over ⅓ of the total number of seats in the Alabama House would be distributed on a basis other than strict population. States with almost 50% of the Nation's total population are required in order to elect a majority of the members of the Federal House, though unfair districting within some of the States presently reduces to about 42% the percentage of the country's population which reside in districts electing individuals comprising a majority in the Federal House. Cf *Wesberry* v *Sanders*, *supra*, holding such congressional districting unconstitutional. Only about 43% of the population of Alabama would live in districts which could elect a majority in the Alabama House, under the proposed constitutional amendment. Thus, it could hardly be argued that the proposed apportionment of the Alabama House was based on population in a way comparable to the apportionment of seats in the Federal House among the States.

[50] For a thorough statement of the arguments against holding the so-called federal analogy applicable to state legislative apportionment matters, see, *e. g.*, McKay, Reapportionment and the Federal Analogy (National Municipal League pamphlet 1963), McKay, The Federal Analogy and State Apportionment Standards, 38 Notre Dame Law. 487 (1963). See also Merrill, Blazes for a Trail Through the Thicket of Reapportionment, 16 Okla. L. Rev. 59, 67–70 (1963).

[51] 208 F. Supp., at 438. See the discussion of the District Court's holding as to the applicability of the federal analogy earlier in this opinion, *ante*, at ____.

[52] Report of Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures 10–11, 35, 69 (1962).

[53] Thomas Jefferson repeatedly denounced the inequality of representation provided for under the 1776 Virginia Constitution and frequently proposed changing the State Constitution to provide that both houses be apportioned on the basis of population. In 1816 he wrote that "a government is republican in proportion as every member composing it has his equal voice in the direction of its concerns, by representatives chosen by himself. . . ." Letter to Samuel Kercheval, 10 Writings of Thomas Jefferson (Ford ed. 1899) 38. And a few years later, in 1819, he stated: "Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation because the prejudices themselves cannot be justified." Letter to William King, Jefferson Papers, Library of Congress, Vol. 216, p. 38616.

[54] Article II, § 14, of the Northwest Ordinance of 1787 stated quite specifically: "The inhabitants of the said territory shall always be entitled to the benefits of a proportional representation of the people in the Legislature."

The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land It is one conceived out of compromise and concession indispensable to the establishment of our federal republic [55] Arising from unique historical circumstances, it is based on the consideration that in establishing our type of federalism a group of formerly independent States bound themselves together under one national government Admittedly, the original 13 States surrendered some of their sovereignty in agreeing to join together "to form a more perfect Union" But at the heart of our constitutional system remains the concept of separate and distinct governmental entities which have delegated some, but not all, of their formerly held powers to the single national government The fact that almost three-fourths of our present States were never in fact independently sovereign does not detract from our view that the so-called federal analogy is inapplicable as a sustaining precedent for state legislative apportionments The developing history and growth of our republic cannot cloud the fact that, at the time of the inception of the system of representation in the Federal Congress, a compromise between the larger and smaller States on this matter averted a deadlock in the constitutional convention which had threatened to abort the birth of our Nation In rejecting an asserted analogy to the federal electoral college in *Gray* v *Sanders*, *supra*, we stated·

> "We think the analogies to the electoral college, to districting and redistricting, and to other phases of the problems of representation in state or federal legislatures or conventions are inapposite The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, but implied nothing about the use of an analogous system by a State in a statewide election No such specific accommodation of the latter was ever undertaken, and therefore no validation of its numerical inequality ensued." [56]

Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions As stated by the Court in *Hunter* v *City of Pittsburgh*, 207 U S 161, 178, these governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them," and the "number, nature and duration of the powers conferred upon [them] . . and the territory over which they shall be exercised rests in the absolute discretion of the State" The relationship of the States to the Federal Government could hardly be less analogous

Thus, we conclude that the plan contained in the 67-Senator Amendment for apportioning seats in the Alabama Legislature cannot be sustained by recourse to the so-called federal analogy Nor can any other inequitable state legislative apportionment scheme be justified on such an asserted basis This does not necessarily mean that such a plan is

[55] See the discussion in *Wesberry* v *Sanders*, 376 U S , at 9–14
[56] 372 U S , at 378

irrational or involves something other than a "republican form of government" We conclude simply that such a plan is impermissible for the States under the Equal Protection Clause, since perforce resulting, in virtually every case, in submergence of the equal-population principle in at least one house of a state legislature

Since we find the so-called federal analogy inapposite to a consideration of the constitutional validity of state legislative apportionment schemes, we necessarily hold that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis. The right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens in the election of members of one house of a bicameral state legislature would amount to little if States could effectively submerge the equal-population principle in the apportionment of seats in the other house If such a scheme were permissible, an individual citizen's ability to exercise an effective voice in the only instrument of state government directly representative of the people might be almost as effectively thwarted as if neither house were apportioned on a population basis Deadlock between the two bodies might result in compromise and concession on some issues But in all too many cases the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the State's citizens on a nondiscriminatory basis In summary, we can perceive no constitutional difference, with respect to the geographical distribution of state legislative representation, between the two houses of a bicameral state legislature

We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same—population A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies Different constituencies can be represented in the two houses One body could be composed of single-member districts while the other could have at least some multimember districts The length of terms of the legislators in the separate bodies could differ The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis

VI.

By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean

that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters Mathematical exactness or precision is hardly a workable constitutional requirement [57]

In *Wesberry* v. *Sanders, supra,* the Court stated that congressional representation must be based on population as nearly as is practicable. In implementing the basic constitutional principle of representative government as enunciated by the Court in *Wesberry*—equality of population among districts—some distinctions may well be made between congressional and state legislative representation Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a State than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State To do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in any significant way Somewhat more flexibility may therefore be constitutionally permissible with respect to state legislative apportionment than in congressional districting. Lower courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment Cf. *Slaughter-House Cases,* 16 Wall 36, 78–79 Thus, we proceed to state here only a few rather general considerations which appear to us to be relevant.

A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multimember [58] or floterial districts [59] Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any

[57] As stated by the Court in *Bain Peanut Co* v *Pinson,* 282 U S 499, 501, "We must remember that the machinery of government would not work if it were not allowed a little play in its joints."

[58] But cf the discussion of some of the practical problems inherent in the use of multimember districts in *Lucas* v *The Forty-Fourth General Assembly of the State of Colorado,* __ U S, at __, decided also this date

[59] See the discussion of the concept of floterial districts in *Davis* v *Mann,* ___ U S ___, ___ ___, n 2, decided also this date

citizen is approximately equal in weight to that of any other citizen in the State.

History indicates, however, that many States have deviated, to a greater or lesser degree, from the equal-population principle in the apportionment of seats in at least one house of their legislatures.[60] So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature. But neither history alone,[61] nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.

A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subver-

[60] For a discussion of the formal apportionment formulae prescribed for the allocation of seats in state legislatures, see Dixon, Apportionment Standards and Judicial Power, 38 Notre Dame Law. 367, 398–400 (1963). See also The Council of State Governments, The Book of the States 1962–1963, 58–62 (1962).

[61] In rejecting a suggestion that the representation of the newer Western States in Congress should be limited so that it would never exceed that of the original States, the Constitutional Convention plainly indicated its view that history alone provided an unsatisfactory basis for differentiations relating to legislative representation. See *Wesberry v. Sanders*, 376 U. S., at 14. Instead, the Northwest Ordinance of 1787, in explicitly providing for population-based representation of those living in the Northwest Territory in their territorial legislatures, clearly implied that, as early as the year of the birth of our federal system, the proper basis of legislative representation was regarded as being population.

sion of the equal-population principle in that legislative body.[62] This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties.[63] Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired.

VII.

One of the arguments frequently offered as a basis for upholding a State's legislative apportionment arrangement, despite substantial disparities from a population basis in either or both houses, is grounded on congressional approval, incident to admitting States into the Union, of state apportionment plans containing deviations from the equal-population principle. Proponents of this argument contend that congressional approval of such schemes, despite their disparities from population-based representation, indicate that such arrangements are plainly sufficient as establishing a "republican form of government." As we stated in *Baker* v *Carr*, some questions raised under the Guaranty Clause are nonjusticiable, where "political" in nature and where there is a clear absence of judicially manageable standards.[64] Nevertheless, it is not inconsistent with this view to hold that, despite congressional approval of state legislative apportionment plans at the time of admission into the Union, even though deviating from the equal-population principle here enunciated, the Equal Protection Clause can and does require more. And an apportionment scheme in which both houses are based on population can hardly be considered as failing to satisfy the Guaranty Clause requirement. Congress presumably does not assume, in admitting States into the Union, to pass on all constitutional questions relating to the character of state governmental organization. In any event, congressional approval, however well-considered, could hardly validate an unconstitutional state legislative apportionment. Congress simply lacks the constitutional power to insulate States from attack with respect to alleged deprivations of individual constitutional rights.

VIII.

That the Equal Protection Clause requires that both houses of a state legislature be apportioned on a population basis does not mean that States cannot adopt some reasonable plan for periodic revision of

[62] See McKay, Political Thickets and Crazy Quilts: Reapportionment and Equal Protection, 61 Mich. L. Rev. 645, 698–699 (1963).

[63] Determining the size of its legislative bodies is of course a matter within the discretion of each individual State. Nothing in this opinion should be read as indicating that there are any federal constitutional maximums or minimums on the size of state legislative bodies.

[64] See 369 U. S., at 217–232, discussing the nonjusticiability of malapportionment claims asserted under the Guaranty Clause.

their apportionment schemes Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth. Reallocation of legislative seats every 10 years coincides with the prescribed practice in 41 of the States,[65] often honored more in the breach than the observance, however. Illustratively, the Alabama Constitution requires decennial reapportionment, yet the last reapportionment of the Alabama Legislature, when this suit was brought, was in 1901 Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period and also to the development of resistance to change on the part of some incumbent legislators In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation And we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable But if reapportionment were accomplished with less frequency, it would assuredly be constitutionally suspect.

IX.

Although general provisions of the Alabama Constitution provide that the apportionment of seats in both houses of the Alabama Legislature should be on a population basis, other more detailed provisions clearly make compliance with both sets of requirements impossible With respect to the operation of the Equal Protection Clause, it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions In those States where the alleged malapportionment has resulted from noncompliance with state constitutional provisions which, if complied with, would result in an apportionment valid under the Equal Protection Clause, the judicial task of providing effective relief would appear to be rather simple We agree with the view of the District Court that state constitutional provisions should be deemed violative of the Federal Constitution only when validly asserted constitutional rights could not otherwise be protected and effectuated Clearly, courts should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions insofar as is possible But it is also quite clear that a state legislative apportionment scheme is no less violative of the Federal Constitution when it is based on state constitutional provisions which have been consistently complied with than when resulting from a noncompliance with state constitutional requirements When there is an unavoidable

[65] Report of Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures 56 (1962) Additionally, the constitutions of seven other States either require or permit reapportionment of legislative representation more frequently than every 10 years See also The Council of State Governments, The Book of the States 1962–1963, 58–62 (1962)

conflict between the Federal and a State Constitution, the Supremacy Clause of course controls

X.

We do not consider here the difficult question of the proper remedial devices which federal courts should utilize in state legislative apportionment cases.[66] Remedial technique in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree As stated by MR JUSTICE DOUGLAS, in concurring in *Baker* v. *Carr*, "any relief accorded can be fashioned in the light of well-known principles of equity."[67]

We feel that the District Court in this case acted in a most proper and commendable manner. It initially acted wisely in declining to stay the impending primary election in Alabama, and properly refrained from acting further until the Alabama Legislature had been given an opportunity to remedy the admitted discrepancies in the State's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate quate opportunity to do so Additionally, the court below acted with proper judicial restraint, after the Alabama Legislature had failed to act effectively in remedying the constitutional deficiencies in the State's legislative apportionment scheme, in ordering its own temporary reapportionment plan into effect, at a time sufficiently early to permit the holding of elections pursuant to that plan without great difficulty, and in prescribing a plan admittedly provisional in purpose so as not to usurp the primary responsibility for reapportionment which rests with the legislature.

We find, therefore, that the action taken by the District Court in this case, in ordering into effect a reapportionment of both houses of

[66] Cf *Baker* v *Carr*, 369 U S 186, 198 See also 369 U S, at 250–251 (DOUGLAS, J., concurring), and passages from *Baker* quoted in this opinion, *ante* at ___, and *infra* at ___

[67] 369 U S, at 250

the Alabama Legislature for purposes of the 1962 primary and general elections, by using the best parts of the two proposed plans which it had found, as a whole, to be invalid,[68] was an appropriate and well-considered exercise of judicial power Admittedly, the lower court's ordered plan was intended only as a temporary and provisional measure and the District Court correctly indicated that the plan was invalid as a permanent apportionment In retaining jurisdiction while deferring a hearing on the issuance of a final injunction in order to give the provisionally reapportioned legislature an opportunity to act effectively, the court below proceeded in a proper fashion. Since the District Court evinced its realization that its ordered reapportionment could not be sustained as the basis for conducting the 1966 election of Alabama legislators, and avowedly intends to take some further action should the reapportioned Alabama Legislature fail to enact a constitutionally valid, permanent apportionment scheme in the interim, we affirm the judgment below and remand the cases for further proceedings consistent with the views stated in this opinion

It is so ordered

MR. JUSTICE CLARK, concurring in the reversal

The Court goes much beyond the necessities of this case in laying down a new "equal population" principle for state legislative apportionment. This principle seems to be an offshoot of *Gray* v *Sanders*, 372 U. S. 368, 381 (1963), *i. e.*, "one person, one vote," modified by the "nearly as is practicable" admonition of *Wesberry* v *Sanders*, 376 U. S 1, 8 (1964).* Whether "nearly as is practicable" means "one person, one vote" qualified by "approximately equal" or "some deviations" or by the impossibility of "mathematical nicety" is not clear from the majority's use of these vague and meaningless phrases But whatever the standard, the Court applies it to each house of the State Legislature

It seems to me that all that the Court need say in this case is that each plan considered by the trial court is "a crazy quilt," clearly revealing invidious discrimination in each house of the Legislature and therefore violative of the Equal Protective Clause See my concurring opinion in *Baker* v *Carr*, 369 U. S. 186, 253–258 (1962).

I, therefore, do not reach the question of the so-called "federal analogy." But in my view, if one house of the State Legislature meets the population standard, representation in the other house might include some departure from it so as to take into account, on a rational basis, other factors in order to afford some representation to the various elements of the State. See my dissenting opinion in *Lucas* v. *The Forty-fourth General Assembly of Colorado*, —— U. S. ——, decided this date

[68] Although the District Court indicated that the apportionment of the Alabama House under the 67-Senator Amendment was valid and acceptable, we of course reject that determination, which we regard as merely precatory and advisory since the court below found the overall plan, under the proposed constitutional amendment, to be unconstitutional See 208 F Supp., at 440–441 See the discussion earlier in this opinion *ante* at

* Incidentally, neither of these cases, upon which the Court bases its opinion, is apposite *Gray* involved the use of Georgia's county unit rule in the election of United States Senators and *Wesberry* was a congressional apportionment case

MR JUSTICE STEWART:

In this case all of the parties have agreed with the District Court's finding that legislative inaction for some 60 years in the face of growth and shifts in population has converted Alabama's legislative apportionment plan enacted in 1901 into one completely lacking in rationality. Accordingly, for the reasons stated in my dissenting opinion in *Lucas* v *The Forty-Fourth General Assembly of the State of Colorado, ante,* p ——, I would affirm the judgment of the District Court holding that this apportionment violated the Equal Protection Clause.

I also agree with the Court that it was proper for the District Court, in framing a remedy, to adhere as closely as practicable to the apportionments approved by the representatives of the people of Alabama, and to afford the State of Alabama full opportunity, consistent with the requirements of the Federal Constitution, to devise its own system of legislative apportionment.

WMCA, Inc., et al.,
Appellants,

v.

John P. Lomenzo, Secretary of State of the State of New York, et al.

[June 15, 1964]

MR CHIEF JUSTICE WARREN delivered the opinion of the Court.

At issue in this litigation is the constitutional validity, under the Fourteenth Amendment to the Federal Constitution, of the apportionment of seats in the New York Legislature.

I.

Appellants initially brought this action on May 1, 1961, in the Federal District Court for the Southern District of New York. Plaintiffs below included individual citizens and voters residing in five of the six most populous New York counties (Bronx, Kings, Nassau, New York and Queens), suing in their own behalf and on behalf of all New York citizens similarly situated. Appellees, sued in their representative capacities, are various state and local officials charged with duties in connection with reapportionment and the conducting of state elections. The complaint claimed rights under the Civil Rights Act, 42 U. S. C. §§ 1983, 1988, and asserted jurisdiction under 28 U. S. C. § 1343 (3).

Plaintiffs below sought a declaration that those provisions of the State Constitution which establish the formulas for apportioning seats in the two houses of the New York Legislature, and the statutes implementing them, are unconstitutional since violative of the Fourteenth Amendment to the Federal Constitution. The complaint further asked the District Court to enjoin defendants from performing any acts or duties in compliance with the allegedly unconstitutional legislative apportionment provisions. Plaintiffs asserted that they had no adequate remedy other than the judicial relief sought, and requested the court to retain jurisdiction until the New York Legislature, "freed from the fetters imposed by the Constitutional provisions invalidated by this

Court, provides for such apportionment of the State legislature as will insure to the urban voters of New York State the rights guaranteed them by the Constitution of the United States."

In attacking the existing apportionment of seats in the New York Legislature, plaintiffs below stated, more particularly, that:

> "The provisions of the New York State Constitution, Article III, §§ 2–5, violate the XIV Amendment of the Constitution of the United States because the apportionment formula contained therein results, and must necessarily result, when applied to the population figures of the State in a grossly unfair weighting of both houses in the State legislature in favor of the lesser populated rural areas of the state to the great disadvantage of the densely populated urban centers of the state . . .
>
> "As a result of the constitutional provisions challenged herein, the Plaintiffs' votes are not as effective in either house of the legislature as the votes of other citizens residing in rural areas of the state. Plaintiffs and all others similarly situated suffer a debasement of their votes by virtue of the arbitrary, obsolete and unconstitutional apportionment of the legislature and they and all others similarly situated are denied the equal protection of the laws required by the Constitution of the United States."

The complaint asserted that the legislative apportionment provisions of the 1894 New York Constitution, as amended, are not only presently unconstitutional, but also were invalid and violative of the Fourteenth Amendment at the time of their adoption, and that "the population growth in the State of New York and the shifts of population to urban areas have aggravated the violation of Plaintiffs' rights under the XIV Amendment."

As requested by plaintiffs, a three-judge District Court was convened [1] The New York City defendants admitted the allegations of the complaint and requested the Court to grant plaintiffs the relief they were seeking. The remaining defendants moved to dismiss On January 11, 1962, the District Court announced its initial decision It held that it had jurisdiction but dismissed the complaint, without reaching the merits, on the ground that it failed to state a claim upon which relief could be granted, since the issues raised were nonjusticiable. 202 F. Supp. 741. In discussing the allegations made by plaintiffs, the Court stated:

> "The complaint specifically cites as the cause of this allegedly unconstitutional distribution of state legislative representation the New York Constitutional provisions requiring that
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> "(a) '. . . the total of fifty Senators established by the Constitution of 1894 shall be increased by those Senators to which any of the larger counties become entitled in addition to their allotment as of 1894, but without effect for decreases in other large counties . . .'
>
> "(b) no county may have 'four or more Senators unless it has a full ratio for each Senator . . .' and

[1] See 196 F Supp 758, where the District Court concluded that the suit presented issues warranting the convening of a three-judge court, over defendants' motions to dismiss the complaint for lack of jurisdiction and for failure to state a claim on which relief could be granted

"(c) ' . . every county except Hamilton shall always be entitled [in the Assembly] to one member coupled with the limitation of the entire membership to 150 members . . . .' "[2]

Noting that the 1894 Constitution, containing the present apportionment provisions, was approved by a majority of the State's electorate before becoming effective, and that subsequently the voters had twice disapproved proposals for a constitutional convention to amend the constitutional provisions relating to legislative apportionment, the District Court concluded that, in any event, there was a "want of equity in the relief sought, or, to view it slightly differently, want of justiciability, [which] clearly demands dismissal."

Plaintiffs appealed to this Court from the District Court's dismissal of their complaint. On June 11, 1962, we vacated the judgment below and remanded for further consideration in the light of *Baker* v. *Carr*, 369 U. S. 186, which had been decided subsequent to the District Court's dismissal of the suit below. 370 U. S. 190. In vacating and remanding, we stated:

"Our well-established practice of a remand for consideration in light of a subsequent decision therefore applies . . . . [W]e believe that the court below should be the first to consider the merits of the federal constitutional claim, free from any doubts as to its justiciability and as to the merits of alleged arbitrary and invidious geographical discrimination."[3]

On August 16, 1962, the District Court, after conducting a hearing,[4] dismissed the complaint on the merits, concluding that plaintiffs had not shown by a preponderance of the evidence that there was any invidious discrimination, that the apportionment provisions of the New York Constitution were rational and not arbitrary, that they were of historical origin and contained no improper geographical discrimination, that they could be amended by an electoral majority of the citizens of New York, and that therefore the apportionment of seats in the New York Senate and Assembly was not unconstitutional.

[2] 202 F. Supp., at 748. All decisions of the District Court, and also this Court's initial decision in this litigation, are reported *sub nom. WMCA, Inc.* v. *Simon*.

[3] 370 U. S., at 191. Shortly after we remanded the case, the District Court ordered defendants to answer or otherwise move in respect to the complaint. Another of the defendants, a Nassau County official, joined the New York City defendants in admitting most of the allegations, and requested the Court to grant plaintiffs the relief which they were seeking. The remaining defendants, presently appellees, denied the material allegations of the complaint and asserted varied defenses.

[4] At the hearing on the merits a large amount of statistical evidence was introduced showing the population and citizen population of New York under various censuses, including the populations of the State's 62 counties and the Senate and Assembly districts established under the various apportionments. The 1953 apportionment of Senate and Assembly seats under the 1950 census was shown, and other statistical computations showing the apportionment to be made by the legislature under the 1960 census figures, as a result of applying the pertinent constitutional provisions, were also introduced into evidence.

The District Court refused to receive evidence showing the effect of the alleged malapportionment on citizens of several of the most populous counties with respect to financial matters such as the collection of state taxes and the disbursement of state assistance. The Court also excluded evidence offered to show that the State Constitution's apportionment formulas were devised for the express purpose of creating a class of citizens whose representation was inferior to that of a *more preferred* class, and that there had *been intentional discrimination against* the citizens of New York City in the designing of the legislative apportionment provisions of the 1894 Constitution. Since we hold that the court below erred in finding the New York legislative apportionment scheme here challenged to be constitutionally valid, we express no view on the correctness of the District Court's exclusion of this evidence.

208 F. Supp. 368 Finding no failure by the New York Legislature to comply with the state constitutional provisions requiring and establishing the formulas for periodic reapportionment of Senate and Assembly seats, the court below relied on the presumption of constitutionality attaching to a state constitutional provision and the necessity for a clear violation "before a federal court of equity will lend its power to the disruption of the state election processes ." After postulating a number of "tests" for invidious discrimination, including the "rationality of state policy and whether or not the system is arbitrary," "whether or not the present complexion of the legislature has a historical basis," whether the electorate has an available political remedy, and "geography, including accessibility of legislative representatives to their electors," the Court concluded that none of the relevant New York constitutional provisions were arbitrary or irrational in giving weight to, in addition to population, "the ingredient of area, accessibility and character of interest" Stating that in New York "the county is a classic unity of governmental organization and administration," the District Court found that the allocation of one Assembly seat to each county was grounded on a historical basis The Court noted that the 1957 vote on whether to call a constitutional convention was "heralded as an issue of apportionment" by the then Governor, but that nevertheless a majority of the State's voters chose not to have a constitutional convention convened The Court also noted that "if strict population standards were adopted certain undesirable results might follow such as an increase in the size of the legislature to such an extent that effective debate may be hampered or an increase in the size of districts to such an extent that contacts between the individual legislator and his constituents may become impracticable" [5] As a result of the District Court's dismissal of the complaint, the November 1962 election of New York legislators was conducted pursuant to the existing apportionment scheme A timely appeal to this Court was filed, and we noted probable jurisdiction on June 10, 1963 374 U S 802.

II.

Apportionment of seats in the two houses of the New York Legislature is prescribed by certain formulas contained in the 1894 State Constitution, as amended Reapportionment is effected periodically by statutory provisions,[6] enacted in compliance with the constitutionally established formulas The county is the basic unit of area for apportionment purposes, except that two sparsely populated counties, Fulton and Hamilton, are treated as one New York uses citizen population instead of total population, excluding aliens from consideration, for purposes of legislative apportionment The number of assemblymen is fixed at 150, while the size of the Senate is prescribed as not less than 50 and may vary with each apportionment [7] All members of both houses

[5] A concurring opinion stated that, while the six counties where plaintiffs reside contain 56 2% of the State's population, they comprise only 3 1% of its area, and, if legislative apportionment were "based solely on population, 8% of the State's area would dominate the rest of New York"

[6] The existing plan of apportionment of Senate and Assembly seats is provided for in McKinney's N Y Laws, 1962 (Supp 1963), State Law, §§ 120–124, enacted by the New York Legislature in 1953

[7] Article III, § 2, of the 1894 New York Constitution provided for a 50-member Senate and a 150-member Assembly Article III, § 3, of the 1894 Constitution prescribed a detailed plan for the apportionment of the 50 Senate seats, subject to periodic alteration by the legislature under the formula provided for in Art III, § 4

of the New York Legislature are elected for two-year terms only, in even-numbered years

With respect to the Senate, after providing that that body should initially have 50 seats and creating 50 senatorial districts, the New York Constitution, in Art III, § 4, as amended, provides for decennial readjustment of the size of the Senate and reapportionment of senatorial seats, beginning in 1932 and every decade thereafter, in the following manner:

> "Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county . . .
>
> "No county shall have four or more senators unless it shall have a full ratio for each senator No county shall have more than one-third of all the senators, and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators
>
> "The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent "[8]

As interpreted by practice and judicial decision, reapportionment and readjustment of senatorial representation is accomplished in several stages First, the total population of the State, excluding aliens, as determined by the last federal census, is divided by 50 (the minimum number of Senate seats) in order to obtain a so-called "ratio" figure The counties on account of which the size of the Senate might have to be increased are then ascertained—counties having three or more ratios, *i e*, more than 6% of the State's total citizen population each Under the existing apportionment, only five counties are in the 6%-or-more class, four of New York City's five counties and upstate Erie County (Buffalo and environs). Nassau County (suburban New York City) will be added to this class in the pending reapportionment based on the 1960 census After those counties that come within the "populous" category, so defined, have been ascertained they are then allocated one senatorial seat for each full ratio Fractions of a ratio are disregarded, and each populous county is thereafter divided into the appropriate number of Senate districts In ascertaining the size of the Senate, the total number of additional seats resulting from the growth of the populous counties since 1894 is added to the 50 original seats And, while the total number of seats which any of the populous counties has gained

[8] N Y Const, Art III, § 4,

since 1894 is added to the 50 original seats, the number of seats which any of them has lost since 1894 is not deducted from the total number of seats to be added. Currently the New York Senate, as reapportioned in 1953, has 58 seats From that total, the number allocated to the populous counties is subtracted—27 under the 1953 apportionment—and the remaining seats—31 under the 1953 scheme—are then apportioned among the less populous counties When reapportioned on the basis of 1960 census figures, the Senate will have 57 seats, with 26 allotted to the populous counties, as a result of applying the constitutionally prescribed ratio and the requirement of a full ratio in order for a populous county to be given more than three Senate seats.

The second stage of applying the senatorial apportionment formula involves the allocation of seats to the less populous counties, *i. e.*, those having less than 6% of the State's total citizen population (less than three full ratios) After the number of Senate seats allocated to the populous counties (and thus the size of the Senate) has been determined, a second population ratio figure is obtained by dividing the number of seats available for distribution to the less populous counties, 31 under both the 1950 and 1960 censuses, into the total citizen population of the less populous counties Less populous counties which are entitled to two or three seats, as determined by comparing a county's population with the second ratio figure thus ascertained, are then divided into senatorial districts A less populous county is entitled to three seats if it has less than three full first ratios, but has more than three, or has two and a large fraction, second ratios Since the first ratio is significantly larger than the second, a county can have less than three first ratios but more than three second ratios Finally, counties with substantially less than one second ratio are combined into multicounty districts

The result of applying this complicated apportionment formula is to give the populous counties markedly less senatorial representation, when compared with respective population figures, than the less populous counties Under the 1953 apportionment, based on the 1950 census, a senator from one of the less populous counties represented, on the average, 195,859 citizens, while a senator from a populous county represented an average of 301,178. The constitutionally prescribed first ratio figure was 284,069, while the second ratio was, of course, only 195,859 Under the pending apportionment based on the 1960 census, the first ratio figure is 324,816, and the average population of the senatorial districts in the populous counties will be 366,128 On the other hand, the second ratio, and the average population of the senatorial districts in the less populous counties, is only 216,822 Thus, a citizen in a less populous county had, under the 1953 apportionment, over 1 5 times the representation, on the average, of a citizen in a populous county, and, under the apportionment based on the 1960 census, this ratio will be about 1 7-to-1 [9]

The 1894 New York Constitution also provided for an Assembly composed of 150 members, in Art III, § 2 Under the formula pre-

[9] For an extended discussion of the apportionment of seats in the New York Senate under the pertinent state constitutional provisions, see Silva, Apportionment of the New York Senate, 30 Ford L Rev 595 (1962) See also Silva, Legislative Representation—With Special Reference to New York, 27 Law & Contemp Prob 408 (1962)

scribed by Art. III, § 5, of the New York Constitution, each of the State's 62 counties, except Hamilton County which is combined with Fulton County for purposes of Assembly representation, is initially given one Assembly seat. The remaining 89 seats are then allocated among the various counties in accordance with a "ratio" figure obtained by dividing the total number of seats, 150, into the State's total citizen population Applying the constitutional formula, a county whose population is at least 1½ times this ratio (1% of the total citizen population) is given one additional assemblyman The remaining Assembly seats are then apportioned among those counties whose citizen populations total two or more whole ratios, with any remaining seats being allocated among the counties on the basis of "highest remainders" Finally, those counties receiving more than one seat are divided into the appropriate number of Assembly districts In allocating 61 of the 150 Assembly seats on a basis wholly unrelated to population, and in establishing three separate categories of counties for the apportionment of Assembly representation, the constitutional provisions relating to the apportionment of Assembly seats plainly result in a favoring of the less populous counties Under the new reapportionment based on 1960 census figures, the smallest 44 counties will each be given one seat for an average of 62,765 citizen inhabitants per seat, three counties will receive two seats each, with a total of six assemblymen representing an average of 93,478 citizen inhabitants, and the 14 most populous counties will be given the remaining 100 seats, resulting in an average representation figure of 129,183 citizen inhabitants each [10]

Although the New York Legislature has not yet reapportioned on the basis of 1960 census figures,[11] the outlines of the forthcoming apportionment can be predicted with assurance Since the rules prescribed in the New York Constitution for apportioning the Senate are so explicit and detailed, the New York Legislature has little discretion, in decennially enacting implementing statutory reapportionment provisions, except in determining which of the less populous counties are to be joined together in multicounty districts and in districting within counties having more than one senator Similarly, the legislature has little discretion in reapportioning Assembly seats [12] A number of other rather detailed rules, some mandatory and some only directive, are included in the constitutional provisions prescribing the system for ap-

[10] For a thorough discussion of the apportionment of seats in the New York Assembly pursuant to the relevant state constitutional provisions, see Silva, Apportionment of the New York Assembly, 21 Pol L Rev 1 (1962)

[11] Article III, § 4, of the New York Constitution requires the legislature to reapportion and redistrict Senate seats no later than 1966, and Art III, § 5, provides that the members of the Assembly shall be chosen by single districts and shall be apportioned by the legislature at each regular session at which the senate districts are readjusted or altered, and by the same law, as nearly as may be according to the number of their respective inhabitants, excluding aliens"

[12] While the legislature has the sole power to apportion Assembly seats among the State's counties, in accordance with the constitutional formula, the New York Constitution gives local governmental authorities the exclusive power to divide their respective counties into Assembly districts A county having only one assemblyman constitutes one Assembly district by itself, of course, and therefore cannot be divided into Assembly districts But, with respect to counties given more than one Assembly seat the New York Constitution, Art III, § 5, provides "In any county entitled to more than one member [of the Assembly], the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be . . . "

portioning seats in the two houses of the New York Legislature, and are set out in Art. III, §§ 2–5, of the New York Constitution [15]

When the New York Legislature was reapportioned in 1953, on the basis of 1950 census figures, assemblymen representing 37 1% of the State's citizens constituted a majority in that body, and senators representing 40 9% of the citizens comprised a majority in the Senate Under the still effective 1953 apportionment, applying 1960 census figures, assemblymen representing 34 7% of the citizens constitute a majority in the Assembly, and senators representing 41 8% of the citizens constitute a majority in that body If reapportionment were carried out under the existing constitutional formulas, applying 1960 census figures, 37 5% of the State's citizens would reside in districts electing a majority in the Assembly, and 38 1% would live in areas electing a majority of the members of the Senate When the State was reapportioned in 1953 on the basis of the 1950 census, the most populous Assembly district had 11 9 as many citizens as the least populous one, and a similar ratio in the Senate was about 2 4-to-1 Under the current apportionment, applying 1960 census figures, the citizen population-variance ratio between the most populous and least populous Assembly districts is about 21-to-1, and a similar ratio in the Senate is about 3 9-to-1 If the Assembly were reapportioned under the existing constitutional formulas, the most populous Assembly district would have about 12 7 times as many citizens as the least populous one, and a similar ratio in the Senate would be about 2 6-to-1

According to 1960 census figures, the six counties where the six individual appellants reside had a citizen population of 9,129,780, or 56 2% of the State's total citizen population of 16,240,786 They are currently represented by 72 assemblymen and 28 senators—48% of the Assembly and 48 3% of the Senate When the legislature reapportions on the basis of the 1960 census figures, these six counties will have 26 Senate seats and 69 Assembly seats, or 45 6% and 46%, respectively, of the seats in the two houses The 10 most heavily populated counties in New York, with about 73 5% of the total citizen population, are given, under the current apportionment, 38 Senate seats, 65 5% of the membership of that body, and 93 Assembly seats, 62% of the seats in that house When the legislature reapportions on the basis of the 1960 census figures, these same 10 counties will be given 37 Senate seats and 92 Assembly seats, 64 9% and 61 3%, respectively, of the membership of the two houses The five counties comprising New York City have 45 7% of the State's total citizen population, and are given, under the current apportionment, 43 1% of the Senate seats and 43 3% of the seats in the Assembly When the legislature reapportions on the basis of the 1960 census figures, these same counties will be given 36 8% and 37 3%, respectively, of the membership of the two houses

[15] Under these specific provisions, while more than one Senate or Assembly district can be contained within the whole of a single county, and while a Senate district may consist of more than one county, no county border line can be broken in the formation of either type of district Both Senate and Assembly districts are required to consist of contiguous territory, and each Assembly district is required to be wholly within the same senatorial district Each Assembly district in the same county shall contain, as nearly as may be, an equal number of citizen inhabitants, and shall consist of "convenient" territory and be as compact as practicable Further detailed provisions relate to the division of towns between adjoining districts, and the equalization of population among Senate districts in the same county and Assembly districts in the same Senate district

Under the existing senatorial apportionment, applying 1960 census figures, Suffolk County's one senator represents a citizen population of 650,112, and Nassau County's three senators represent an average of 425,267 citizens each The least populous senatorial district, on the other hand, comprising Saratoga, Warren, and Essex Counties, has a total population of only 166,715 [14] Under the forthcoming reapportionment based on the 1960 census, Nassau County will again be allocated only three Senate seats, with an average population of 425,267, while the least populous senatorial district, which will probably comprise Putnam and Rockland Counties, will have a citizen population of only 162,840 [15] Onondaga County, with a total citizen population of 414,770, less than the average population of *each* Nassau County district, will nevertheless be given *two* Senate seats Because of the effect of the full-ratio requirement applicable only to the populous counties, Nassau County, despite the fact that its citizen population increased from 655,690 to 1,275,801, will not obtain a single additional senatorial seat as a result of the reapportionment based on 1960 census figures And Monroe County, with a citizen population of 571,029, since not having more than 6% of the State's total citizen population, will have the same number of senators under the new apportionment, three, as Nassau County, although it has less than half that county's population New York City's 20 senators will represent an average citizen population of 360,193, while the 15 multicounty senatorial districts to be created upstate will have an average of only 207,528 citizens per district Because of the operation of the full-ratio rule with respect to counties having more than 6% of the State's total citizen population each, the unrepresented remainders (above a full first ratio but short of another full first ratio which is required for an additional Senate seat) in three of the urban counties will be as follows: Nassau, 301,353; New York, 284,805, and Kings, 244,798 Thus, over 800,000 citizens will not be counted in the apportionment of Senate seats, even though the unrepresented remainders in two of these three counties equal or exceed the statewide average population of 284,926 citizens per district Furthermore, the effect of the rule requiring an increase in the number of Senate seats because of the entitlement of populous counties to added senatorial representation, coupled with the failure to reduce the size of the Senate because of reductions in the number of seats to which a populous county is entitled (as compared with its senatorial representation in 1894), is that the comparative voting power of the populous counties in the Senate decreases as their share of the State's total population increases

With respect to the Assembly, the six assemblymen currently elected from Nassau County represent an average citizen population of 212,634, and one of that county's current Assembly districts has a citizen population of 314,721 Suffolk County's three assemblymen presently represent an average of 216,704 citizens On the other hand, the least

[14] Included as Appendix D to the District Court's opinion on the merits is a map of the State of New York showing the 58 senatorial districts under the existing apportionment 208 F Supp, at 383 Appendix E contains a chart which includes census figures showing the 1960 population of each of New York's 62 counties *Id*, at 384

[15] Appendix A to the District Court's opinion of the merits is a chart showing the apportionment of senatorial seats which would result if the Senate were reapportioned on the basis of the present constitutional formula, using 1960 census figures, including the citizen populations of the 13 most populous counties, the number of senators to be allocated to each, and the average citizen population per senator in each of the projected senatorial districts 208 F Supp, at 380

populous Assembly district, Schuyler County, has a citizen population, according to the 1960 census, of only 14,974, and yet, in accordance with the constitutional formula, is allocated one Assembly seat [16] Under the new apportionment, Schuyler County will again be given one Assembly seat, while one projected Monroe County district will have a citizen population of 190,343 and an Assembly district in Suffolk County will have over 170,000 citizens [17] Additionally, the average population of the 54 Assembly districts in New York City's four populous counties will be in excess of 132,000 citizens each

Under the 1953 apportionment, based on 1950 census figures, the most populous Assembly district, in Onondaga County, had a citizen population of 167,226, while the least populous district was that comprising Schuyler County, with only 14,066 citizens In the Senate, the most populous districts were the four in Bronx County, averaging 344,545 citizens each, while the least populous district had a citizen population of only 146,666

No adequate political remedy to obtain relief against alleged legislative malapportionment appears to exist in New York [18] No initiative procedure exists under New York law A proposal to amend the State Constitution can be submitted to a vote by the State's electorate only after approval by a majority of both houses of two successive sessions of the New York Legislature [19] A majority vote of both houses of the legislature is also required before the electorate can vote on the calling of a constitutional convention [20] Additionally, under New York law the question of whether a constitutional convention should be called must be submitted to the electorate every 20 years, commencing in 1957 [21] But even if a constitutional convention were convened, the same alleged discrimination which currently exists in the apportionment of Senate seats against each of the counties having 6% or more of a State's citizen population would be perpetrated in the election of convention delegates [22] And, since the New York Legislature has rather consistently complied with the state constitutional requirement for decennial legislative reapportionment in accordance with the rather explicit constitutional rules, enacting effective apportionment statutes

[16] Included as Appendix C to the District Court's opinion on the merits is a map of the State of New York showing the number of Assembly seats apportioned to each county under the existing apportionment 208 F Supp, at 333 Appendix E contains a chart which includes census figures showing the 1960 population of each of New York's 62 counties *Id*, at 384

[17] Appendix B to the District Court's opinion on the merits is a chart showing the apportionment of Assembly seats which would result if the Assembly were reapportioned under the present constitutional formula, using 1960 census figures, including the number of Assembly seats to be given to each county and the approximate citizen population in each projected Assembly district 208 F Supp, at 381–382

[18] For a discussion of the lack of federal constitutional significance of the presence or absence of an available political remedy, see *Lucas v The Forty-Fourth General Assembly of the State of Colorado*, — U S —, — — —, decided also this date

[19] Under Art XIX, § 1, of the New York Constitution

[20] According to Art XIX, § 2, of the New York Constitution, which provides that the question of whether a constitutional convention should be called can be submitted to the electorate 'at such times as the legislature may by law provide '

[21] Pursuant to Art XIX, § 2, of the New York Constitution In 1957 the State's electorate, by a close vote, disapproved the calling of a constitutional convention, and the question is not required to be submitted to the people again until 1977

[22] Under Art XIX, § 2, of the New York Constitution, delegates to a constitutional convention are elected three per senatorial district, plus 15 delegates elected at large

in 1907, 1917, 1943, and 1953, judicial relief in the state courts to remedy the alleged malapportionment was presumably unavailable.[23]

III.

In *Reynolds* v *Sims*, 377 U S 695, decided also this date, we held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis. Neither house of the New York Legislature, under the state constitutional formulas and the implementing statutory provisions here attacked, is presently or, when reapportioned on the basis of 1960 census figures, will be apportioned sufficiently on a population basis to be constitutionally sustainable. Accordingly, we hold that the District Court erred in upholding the constitutionality of New York's scheme of legislative apportionment.

We have examined the state constitutional formulas governing legislative apportionment in New York in a detailed fashion in order to point out that, as a result of following these provisions, the weight of the votes of those living in populous areas is of necessity substantially diluted in effect. However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside. New York's constitutional formulas relating to legislative apportionment demonstrably include a built-in bias against voters living in the State's more populous counties. And the legislative representation accorded to the urban and suburban areas becomes proportionately less as the population of those areas increases. With the size of the Assembly fixed at 150, with a substantial number of Assembly seats distributed to sparsely populated counties without regard to population, and with an additional seat given to counties having 1½ population ratios, the population-variance ratios between the more populous and the less populous counties will continually increase so long as population growth proceeds at a disparate rate in various areas of the State. With respect to the Senate, significantly different population ratio figures are used in determining the number of Senate seats to be given to the more populous and the less populous counties, and the more populous counties are required to have full first ratios in order to be entitled to additional senatorial representation. Also, in ascertaining the size of the Senate, the number of seats by which the senatorial representation of the more populous counties has increased since 1894 is added to 50, but the number of Senate seats that some of the more populous counties have lost since 1894 is not subtracted from that figure. Thus, an increasingly smaller percentage of the State's population will, in all probability, reside in senatorial districts electing a majority of the members of that body. Despite the opaque intricacies of New York's constitutional formulas relating to legislative apportionment, when the effect of these provisions, and the statutes implementing them, on the right to vote of those individuals living in the disfavored areas of the

[23] Decisions by the New York Court of Appeals indicate that state courts will do no more than determine whether the New York Legislature has properly complied with the state constitutional provisions relating to legislative apportionment in enacting implementing statutory provisions. See, *e. g.*, *In re Sherrill*, 188 N Y 185, 81 N E 124 (1907), *In re Dowling*, 219 N Y 44, 113 N E 545 (1916), and *In re Fay*, 291 N Y 198, 52 N E 2d 97 (1943).

State is considered, we conclude that neither the existing scheme nor the forthcoming one can be constitutionally condoned

We find it inappropriate to discuss questions relating to remedies at the present time, beyond what we said in our opinion in *Reynolds*.[24] Since all members of both houses of the New York Legislature will be elected in November 1964, the court below, acting under equitable principles, must now determine whether, because of the imminence of that election and in order to give the New York Legislature an opportunity to fashion a constitutionally valid legislative apportionment plan, it would be desirable to permit the 1964 election of legislators to be conducted pursuant to the existing provisions, or whether under the circumstances the effectuation of appellants' right to a properly weighted voice in the election of state legislators should not be delayed beyond the 1964 election We therefore reverse the decision below and remand the case to the District Court for further proceedings consistent with the views stated here and in our opinion in *Reynolds* v. *Sims*

It is so ordered

Andres Lucas et al., etc.,
Appellants,
v.
The Forty-Fourth General Assembly of the State of Colorado et al.
[June 15, 1964.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court:

Involved in this case is an appeal from a decision of the Federal District Court for the District of Colorado upholding the validity, under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, of the apportionment of seats in the Colorado Legislature pursuant to the provisions of a constitutional amendment approved by the Colorado electorate in 1962

I.

Appellants, voters, taxpayers and residents of counties in the Denver metropolitan area, filed two separate actions, consolidated for trial and disposition, on behalf of themselves and all others similarly situated, in March and July 1962, challenging the constitutionality of the apportionment of seats in both houses of the Colorado General Assembly. Defendants below, sued in their representative capacities, included various officials charged with duties in connection with state elections Plaintiffs below asserted that Art V, §§ 45, 46, and 47, of the Colorado Constitution, and the statutes [1] implementing those constitutional provisions, result in gross inequities and disparities with respect to their voting rights They alleged that "one of the inalienable rights of citizenship . . is equality of franchise and vote, and that the concept of

[24] See *Reynolds* v *Sims*,
[1] Colo Rev Stat 1953, c 63, §§ 63-1-1—63-1-6

equal protection of the laws requires that every citizen be equally represented in the legislature of his State" Plaintiffs sought declaratory and injunctive relief, and also requested the court to order a constitutionally valid apportionment plan into effect for purposes of the 1962 election of Colorado legislators. Proponents of the current apportionment scheme, which was then to be voted upon in a November 1962 referendum as proposed Amendment No. 7 to the Colorado Constitution, were permitted to intervene A three-judge court was promptly convened.

On August 10, 1962, the District Court announced its initial decision.[2] *Lisco* v *McNichols*, 208 F. Supp 471. After holding that it had jurisdiction, that the issues presented were justiciable, and that grounds for abstention were lacking,[3] the court below stated that the population disparities among various legislative districts under the existing apportionment "are of sufficient magnitude to make out a *prima facie* case of invidious discrimination . . . ." However, because of the imminence of the primary and general elections, and since two constitutional amendments, proposed through the initiative procedure and prescribing rather different schemes for legislative apportionment, would be voted upon in the impending election, the District Court continued the cases without further action until after the November 1962 election Colorado legislators were thus elected in 1962 pursuant to the provisions of the existing apportionment scheme

At the November 1962 general election, the Colorado electorate adopted proposed Amendment No 7 by a vote of 305,700 to 172,725, and defeated proposed Amendment No 8 by a vote of 311,749 to 149,822 Amendment No 8, rejected by a majority of the voters, prescribed an apportionment plan pursuant to which seats in both houses of the Colorado Legislature would purportedly be apportioned on a

[2] The District Court wisely refrained from acting at all until a case pending in the Colorado Supreme Court was decided without that court passing on the federal constitutional questions relating to Colorado's scheme of legislative apportionment which were raised in that suit *In re Legislative Reapportionment* 374 P 2d 66 (Colo Sup Ct 1962) After accepting jurisdiction, the Colorado Supreme Court, over a vigorous dissent, ignored the federal constitutional issues and instead discussed only the matter of when the Colorado Legislature was required, pursuant to the State Constitution, to reapportion seats in the General Assembly The Court concluded that a reapportionment measure enacted during the 1963 session of the Colorado Legislature, on the basis of 1960 census figures, would, if neither of the proposed constitutional amendments relating to legislative apportionment was approved by the voters in November 1962, be in sufficient compliance with the constitutional requirement of periodic legislative reapportionment See also 208 F Supp, at 474, discussing the Colorado Supreme Court's decision in that case

[3] In its initial opinion, the District Court properly concluded that the argument that "the Colorado Supreme Court has preempted jurisdiction by first hearing the controversy, is without merit in view of the fact that the Supreme Court of Colorado has refrained from even considering the issue of the plaintiffs' federally-guaranteed constitutional rights." 208 F Supp, at 475 Continuing, the court below correctly held that, under the circumstances, it was not required to abstain, and stated

"The considerations which demand abstinence are not present in the instant case Here, the General Assembly of the State of Colorado has repeatedly refused to perform the mandate imposed by the Colorado Constitution to apportion the legislature The likelihood that the unapportioned General Assembly will ever apportion itself now appears remote The Supreme Court of Colorado, while retaining jurisdiction of the subject matter of the controversy presented to it, has postponed further consideration of the cause until June, 1963 Under these circumstances, we must conclude that the parties do not, at least at present, have an adequate, speedy and complete remedy apart from that asserted in the case at bar and thus grounds for abstention are at this time lacking" 208 F Supp, at 476 See also *Davis* v *Mann*, ___ U S ___, ___ ___, decided also this date, where we discussed the question of abstention by a federal court in a state legislative apportionment controversy

population basis [4] Amendment No 7, on the other hand, provided for the apportionment of the House of Representatives on the basis of population, but essentially maintained the existing apportionment in the Senate, which was based on a combination of population and various other factors

After the 1962 election the parties amended their pleadings so that the cases involved solely a challenge to the apportionment scheme established in the newly adopted Amendment No 7 Plaintiffs below requested a declaration that Amendment No 7 was unconstitutional under the Fourteenth Amendment since resulting in substantial disparities from population-based representation in the Senate, and asked for a decree reapportioning both houses of the Colorado Legislature on a population basis After an extended trial, at which a variety of statistical and testimonial evidence regarding legislative apportionment in Colorado, past and present, was introduced, the District Court, on July 16, 1963, announced its decision on the merits *Lisco* v *Love*, 219 F Supp. 922 Splitting 2-to-1, the court below concluded that the apportionment scheme prescribed by Amendment No 7 comported with the requirements of the Equal Protection Clause, and thus dismissed the consolidated actions In sustaining the validity of the senatorial apportionment provided for in Amendment No 7, despite deviations from population-based representation, the District Court stated that the Fourteenth Amendment does not require "equality of population within representation districts for each house of a bicameral state legislature" Finding that the disparities from a population basis in the apportionment of Senate seats were based upon rational considerations, the court below stated that the senatorial apportionment under Amendment No 7 "recognizes population as a prime, but not controlling, factor and gives effect to such important considerations as geography, compactness and contiguity of territory, accessibility, observance of natural boundaries, [and] conformity to historical divisions such as county lines and prior representation districts" [5] Stressing also

[4] As stated succinctly by the District Court, in its opinion on the merits,

"The defeated Amendment No 8 proposed a three-man commission to apportion the legislature periodically The commission was to have the duty of delineating, revising and adjusting senatorial and representative districts Its actions were to be reviewed by the Colorado Supreme Court The districting was to be on a strict population ratio for both the Senate and the House with limited permissible variations therefrom" 219 F Supp, at 935

Additionally, under proposed Amendment No 8, the commission would determine a strict population ratio for both the Senate and the House by dividing the State's total population, as ascertained in each decennial federal census, by the number of seats assigned to the Senate and the House, respectively No legislative district should contain a population per senator or representative of 33⅓% more or less than the strict population ratio, except certain mountainous senatorial districts of more than 5,500 square miles in area, but no senatorial district was to contain a population of less than 50% of the strict population ratio Senatorial districts should consist of one county or two or more contiguous counties, but no county should be divided in the formation of a senatorial district Representative districts should consist of one county or two or more contiguous counties Any county apportioned two or more representatives could be divided into representative subdistricts, but only after a majority of the voters in the county had approved, in a general election, the exact method of subdivision and the specific apportionment of representatives among the subdistricts and the county at large A proposal to divide a county into subdistricts could be placed on the ballot only by initiative petition in accordance with state law, and only at the general elections in 1966 and 1974, and at the general elections held each 10 years thereafter Amendment No 8, like Amendment No 7, would have required implementing legislation and would not have become effective, if adopted, until the 1964 elections

[5] 219 F Supp, at 932

that the apportionment plan had been recently adopted by popular vote in a statewide referendum, the Court stated:

> "[Plaintiffs'] argument that the apportionment of the Senate by Amendment No. 7 is arbitrary, invidiously discriminatory, and without any rationality . [has been answered by] the voters of Colorado . . . By adopting Amendment No. 7 and by rejecting Amendment No 8, which proposed to apportion the legislature on a per capita basis, the electorate has made its choice between the conflicting principles "[6]

Concluding, the District Court stated:

> "We believe that no constitutional question arises as to the actual, substantive nature of apportionment if the popular will has expressed itself. . . In Colorado the liberal provisions for initiation of constitutional amendments permit the people to act—and they have done so If they become dissatisfied with what they have done, a workable method of change is available The people are free, within the framework of the Federal Constitution, to establish the governmental forms which they desire and when they have acted the courts should not enter the political wars to determine the rationality of such action."[7]

In dissenting, District Judge Doyle stated that he regarded the senatorial apportionment under Amendment No 7 as irrational and invidiously discriminatory, and that the constitutional amendment had not sufficiently remedied the gross disparities previously found by the District Court to exist in Colorado's prior apportionment scheme. Instead, he stated, the adopted plan freezes senatorial apportionment and merely retains the former system with certain minor changes Equality of voting power in both houses is constitutionally required, the dissent stated, since there is no logical basis for distinguishing between the two bodies of the Colorado Legislature In rejecting the applicability of the so-called federal analogy, Judge Doyle relied on this Court's decision in *Gray* v. *Sanders*, 372 U S 368 He concluded that, although ab-

[6] *Ibid* Continuing, the court below stated

"The initiative gives the people of a state no power to adopt a constitutional amendment which violates the Federal Constitution Amendment No 7 is not valid just because the people voted for it [But] the traditional and recognized criteria of equal protection are arbitrariness, discrimination, and lack of rationality The actions of the electorate are material to the application of the criteria The contention that the voters have discriminated against themselves appalls rather than convinces Difficult as it may be at times to understand mass behavior of human beings, a proper recognition of the judicial function precludes a court from holding that the free choice of the voters between two conflicting theories of apportionment is irrational or the result arbitrary

"The electorate of every county from which the plaintiffs come preferred Amendment No 7 In the circumstances it is difficult to comprehend how the plaintiffs can sue to vindicate a public right At the most they present a political issue which they lost On the questions before us we shall not substitute any views which we may have for the decision of the electorate [W]e decline to act as a superelectorate to weigh the rationality of a method of legislative apportionment adopted by a decisive vote of the people" *Id*, at 932–933

And, earlier in its opinion on the merits, the District Court stated "With full operation of the one-man, one-vote principle, the Colorado electorate by an overwhelming majority approved a constitutional amendment creating a Senate, the membership of which is not apportioned on a strict population basis By majority process the voters have said that minority process in the Senate is what they want A rejection of their choice is a denial of the will of the majority If the majority becomes dissatisfied with that which it has created, it can make a change at an election in which each vote counts the same as every other vote" *Id*, at 926–927

[7] *Id*, at 933

solute equality is a practical impossibility, legislative districting based substantially on population is constitutionally required, and that the disparities in the apportionment of Senate seats under Amendment No 7's provisions cannot be rationalized [8]

Notices of appeal from the District Court's decision were timely filed, and we noted probable jurisdiction on December 9, 1963 375 U S 938

II.

When this litigation was commenced, apportionment of seats in the Colorado General Assembly was based on certain provisions of the State Constitution and statutory provisions enacted to implement them. Article V, § 45, of the Colorado Constitution provided that the legislature "shall revise and adjust the apportionment for senators and representatives . . according to ratios to be fixed by law," at the sessions following the state enumeration of inhabitants in 1885 and every 10 years thereafter, and following each decennial federal census Article V, § 46, as amended in 1950, stated that "the senate shall consist of not more than thirty-five and the house of not more than sixty-five members" Article V, § 47, provided that

> "Senatorial and representative districts may be altered from time to time, as public convenience may require When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be No county shall be divided in the formation of a senatorial or representative district."

Article V, § 3, provides that senators shall be elected for four-year terms, staggered so that approximately one-half of the members of the Senate are elected every two years, and that all representatives shall be elected for two-year terms.

Pursuant to these general constitutional provisions, the Colorado General Assembly has periodically enacted detailed statutory provisions establishing legislative districts and prescribing the apportionment to such districts of seats in both houses of the Colorado Legislature Since the adoption of the Colorado Constitution in 1876, the General Assembly has been reapportioned or redistricted in the following years 1881, 1891, 1909, 1913, 1932, 1953, and, with the adoption of Amendment

[8] Additionally, Judge Doyle correctly stated that "a properly apportioned state legislative body must at least approximate by bonafide attempt the creation of districts substantially related to population" 219 F Supp, at 941 With respect to the relatively easy availability of the initiative procedure in Colorado, the dissent perceptively pointed out that "it is of little consolation to an individual voter who is being deprived of his rights that he can start a popular movement to change the Constitution This possible remedy is not merely questionable, it is for practical purposes impossible" *Id*, at 942 Judge Doyle referred to Amendment No 7 s provisions relating to senatorial apportionment as "the product of a mechanical and arbitrary freezing accomplished by adoption, with slight modification, of the unlawful alignments which had existed in the previous statute" *Id*, at 943 Discussing the majority's view that geographic and economic considerations were relevant in explaining the disparities from population-based senatorial representation, he discerningly stated that geographic and area factors carry "little weight when considered in the light of modern methods of electronic communication, modern highways, automobiles and airplanes,' and, with regard to economic considerations, that "economic interests are remarkably well represented without special representation," that "it is dangerous to build into a political system a favored position for a segment of the population of the state," that "there exists no practical method of ridding ourselves of them," and that, "long after the institutions pass, the built-in advantage remains even though it is at last only a vestige of the dead past" *Ibid*

No 7, in 1962[9] The 1932 reapportionment was an initiated measure, adopted because the General Assembly had neglected to perform its duty under the State Constitution In 1933 the legislature attempted to thwart the initiated measure by enacting its own legislative reapportionment statute, but the latter measure was held unconstitutional by the Colorado Supreme Court[10]

The 1953 apportionment scheme, implementing the existing state constitutional provisions and in effect immediately prior to the adoption of Amendment No 7, was contained in several statutory provisions which provided for a 35-member Senate and a 65-member House of Representatives Section 63–1–2 of the Colorado Revised Statutes established certain population "ratio" figures for the apportionment of Senate and House seats among the State's 63 counties One Senate seat was to be allocated to each senatorial district for the first 19,000 population, with one additional senator for each senatorial district for each additional 50,000 persons or fraction over 48,000 One House seat was to be given to each representative district for the first 8,000 population, with one additional representative for each House district for each additional 25,000 persons or fraction over 22,400 Sections 63–1–3 and 63–1–6 established 25 senatorial districts and 35 representative districts, respectively, and allocated the 35 Senate seats and 65 House seats among them according to the prescribed population ratios No counties were divided in the formation of senatorial or representative districts, in compliance with the constitutional prescription Thus, senators and representatives in those counties entitled to more than one seat in one or both bodies were elected at large by all of the county's voters The City and County of Denver was given eight Senate seats and 17 House seats, and Pueblo County was allocated two Senate seats and four House seats Other populous counties were also given more than one Senate and House seat each Certain counties were entitled to separate representation in either or both of the houses, and were given one seat each Sparsely populated counties were combined in multicounty districts

Under the 1953 apportionment scheme, applying 1960 census figures, 29 8% of the State's total population lived in districts electing a majority of the members of the Senate, and 32 1% resided in districts electing a majority of the House members. Maximum population-variance ratios of approximately 8-to-1 existed between the most populous and least populous districts in both the Senate and the House One senator represented a district containing 127,520 persons, while another senator had only 17,481 people in his district The smallest representa-

[9] Admittedly, the Colorado Legislature has never complied with the state constitutional provision requiring the conducting of a decennial state census in 1885 and every 10 years thereafter, and of course has never reapportioned seats in the legislature based upon such a census Under Amendment No 7, sole reliance is placed on the federal census, and there is no longer any requirement for the conducting of a decennial state census

In its initial opinion, the District Court stated that there had been only a "modicum of apportionment, either real or purported," as well as "several abortive attempts," since Colorado first achieved statehood However, in its later opinion on the merits, the court below viewed the situation rather differently, and stated that "apportionment of the Colorado legislature has not remained static" As indicated by the District Court, in addition to the reapportionments which were effected, "in 1954 the voters rejected a referred apportionment measure and in 1956 rejected an initiated constitutional amendment proposing the reapportionment of both chambers of the legislature on a straight population basis" 219 F Supp , at 930

[10] *Armstrong* v *Mitten*, 95 Colo 426, 37 P 2d 757 (1934) See note 24, *infra*

tive district had a population of only 7,867, while another district was given only two House seats for a population of 127,520 In discussing the 1953 legislative apportionment scheme, the District Court, in its initial opinion, stated that "factual data presented at the trial reveals the existence of gross and glaring disparity in voting strength as between the several representative and senatorial districts," and that "the inevitable effect [of the existing apportionment provisions] has been to develop severe disparities in voting strength with the growth and shift of population " [11]

Amendment No 7 provides for the establishment of a General Assembly composed of 39 senators and 65 representatives, with the State divided geographically into 39 senatorial and 65 representative districts, so that all seats in both houses are apportioned among single-member districts [12] Responsibility for creating House districts "as nearly equal in population as may be" is given to the legislature Allocation of senators among the counties follows the existing scheme of districting and apportionment, except that one sparsely populated county is detached from populous Arapahoe County and joined with four others in forming a senatorial district, and one additional senator is apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within counties given more than one Senate seat, senatorial districts are to be established by the legislature "as nearly equal in population as may be " [13] Amendment No 7 also provides for a revision of representative districts, and of senatorial districts within counties given more than one Senate seat, after each federal census, in order to maintain conformity with the prescribed requirements [14] Pursuant to this constitutional mandate, the Colorado Legislature, in early 1963, enacted a statute establishing 65 representative districts and creating senatorial districts in counties given more than one Senate seat [15] Under the newly adopted House apportionment plan, districts in which about 45 1% of the State's total population reside are represented by a majority of the members of that body The maximum population-variance ratio, between the most populous and least populous House districts, is approximately 1 7-to-1 The court below concluded that the

[11] 208 F Supp, at 474, 475

[12] Amendment No 7 is set out as Appendix A to the District Court's opinion on the merits, 219 F Supp, at 932–934, and provides for the repeal of the existing Art V, § § 45, 46 and 47, and the adoption of "new Sections 45, 46, 47 and 48 of Article V" which are set out verbatim in the Appendix to this opinion

Additionally, the provisions of proposed Amendment No 8, rejected by the Colorado electorate, are set out as Appendix B to the District Court's opinion on the merits 219 F Supp, at 934–935 See the discussion of Amendment No 8's provisions in note 4 *supra*

[13] In addition to establishing House districts, the legislation enacted by the Colorado General Assembly in early 1963, in implementation of Amendment No 7's provisions also divided counties apportioned more than one Senate seat into single-member districts Amendment No 7, in contrast to Amendment No 8, explicitly provided for districting, with respect to both Senate and House seats, in multi-member counties The rejected amendment, on the other hand, made no provision at all for districting within counties given more than one Senate seat, and allowed subdistricting of House seats only upon specific approval of such a plan by a county's voters Thus, Amendment No 8 would at least in part have perpetuated the extremely objectionable feature of the existing apportionment scheme, under which legislators in multimember counties were elected at large from the county as a whole

[14] As stated by the District Court, "Mandatory provisions [of Amendment No 7] require the revisions of representative districts and of senatorial districts within counties apportioned more than one senator after each Federal Census" 219 F Supp, at 925 Under the provisions of Amendment No 7, eight counties are given more than one Senate seat, and 14 of the 39 senatorial districts are comprised of more than one county

[15] Colo Laws 1963, c 143, pp 520–532, referred to as House Bill No, 65,

House was apportioned as nearly on a population basis as was practicable, consistent with Amendment No 7's requirement that "no part of one county shall be added to another county or part of another county" in the formation of a legislative district, and directed its concern solely to the question of whether the deviations from a population basis in the apportionment of Senate seats were rationally justifiable.[16]

Senatorial apportionment, under Amendment No 7, involves little more than adding four new Senate seats and distributing them to four populous counties in the Denver area, and in substance perpetuates the existing senatorial apportionment scheme.[17] Counties containing only 33 2% of the State's total population elect a majority of the 39-member Senate under the provisions of Amendment No 7 Las Animas County, with a 1960 population of only 19,983, is given one Senate seat, while El Paso County, with 143,742 persons, is alloted only two Senate seats Thus the maximum population-variance ratio, under the revised senatorial apportionment, is about 3 6-to-1.[18] Denver and the three adjacent suburban counties contain about one-half of the State's total 1960 population of 1,753 947, but are given only 14 out of 39 senators The Denver, Pueblo, and Colorado Springs metropolitan areas, containing 1,191,832 persons, about 68%, or over two-thirds of Colorado's population, elect only 20 of the State's 39 senators, barely a majority The average population of Denver's eight senatorial districts, under Amendment No 7, is 61,736, while the five least populous districts contain less than 22,000 persons each Divergences from population-based representation in the Senate are growing continually wider since the underrepresented districts in the Denver, Pueblo, and Colorado Springs metropolitan areas are rapidly gaining in population, while many of the overrepresented rural districts have tended to decline in population continuously in recent years.[19]

[16] As stated by the court below, "The Colorado legislature met in January, 1963, and passed a statute H B 65, implementing Amendment No 7 No question is raised concerning the implementing legislation" 219 F Supp , at 924–925 Again the District Court stated 'The cases now before the court do not present the issues as they existed prior to the apportionment made by Amendment No 7 [T]he then-existing disparities in each chamber were severe, the defendants presented no evidence to sustain the rationality of the apportionment, and witnesses for the intervenors, while defending the apportionment of the Senate, recognized the malapportionment of the House The change by Amendment No 7 was such as to require a trial de novo and we are concerned with the facts as finally presented" *Id* at 928

[17] Appendix C to the District Court's opinion on the merits contains a chart of the senatorial districts created under Amendment No 7's provisions, showing the population of and the counties included in each 219 F Supp, at 935–938

[18] Included as Appendix D to the District Court's opinion on the merits is a chart showing the ratios of population per senator in each district to the population of the least populous senatorial district, as established by Amendment No 7 and the implementing statutory provisions dividing counties given more than one Senate seat into separate senatorial districts 219 F Supp , at 939

[19] Appellants have repeatedly asserted that equality of population among districts has been the traditional basis of legislative apportionment in both houses of the Colorado General Assembly They pointed out that both houses of the territorial legislature established by Congress in the organic act creating the territory of Colorado in 1861 were expressly required to be apportioned on a population basis And, they contended, the legislative districts established for the apportionment of the 26 Senate and 49 House seats in the first General Assembly after Colorado became a State were virtually all substantially equal in population Referring to the language of the Colorado Supreme Court in *Armstrong* v *Mitten*, 95 Colo 425, 37 P 2d 757 (1934), they urged that no basis other than population has ever been recognized for apportioning representation in either house of the Colorado Legislature Appellees, on the other hand, have consistently contended that population "ratio" figures have been used in apportioning seats in both houses since 1881, requiring proportionately more population to obtain additional legislative representation Since the Colorado Supreme Court's statements in *Armstrong* regarding population as the basis of legislative representation plainly assumed the existence of an underlying population ratio scheme, its language can hardly be read

III.

Several aspects of this case serve to distinguish it from the other cases involving state legislative apportionment also decided this date Initially, one house of the Colorado Legislature is at least arguably apportioned substantially on a population basis under Amendment No 7 and the implementing statutory provisions Under the apportionment schemes challenged in the other cases, on the other hand, clearly neither of the houses in any of the state legislatures is apportioned sufficiently on a population basis so as to be constitutionally sustainable Additionally, the Colorado scheme of legislative apportionment here attacked is one adopted by a majority vote of the Colorado electorate almost contemporaneously with the District Court's decision on the merits in this litigation Thus, the plan at issue did not result from prolonged legislative inaction. However, the Colorado General Assembly, in spite of the state constitutional mandate for periodic reapportionment, has enacted only one effective legislative apportionment measure in the past 50 years [20]

As appellees have correctly pointed out, a majority of the voters in every county of the State voted in favor of the apportionment scheme embodied in Amendment No 7's provisions, in preference to that contained in proposed Amendment No 8, which, subject to minor deviations, would have based the apportionment of seats in both houses on a population basis. However, the choice presented to the Colorado electorate, in voting on these two proposed constitutional amendments, was hardly as clear-cut as the court below regarded it One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them Rather, each legislator elected from a multimember county represented the county as a whole [21] Amendment No 8, as distinguished from Amendment

out of context to support the proposition that absolute equality of population among districts has been the historical basis of legislative apportionment in Colorado For a short discussion of legislative apportionment in Colorado, including the adoption of Amendment No 7 and the instant litigation, see Note, 35 U of Colo L Rev 431 (1963)

[20] In 1953 the Colorado General Assembly enacted the legislative apportionment scheme in effect when this litigation was commenced Prior to 1953, the last effective apportionment of legislative representation by the General Assembly itself was accomplished in 1913 The 1932 measure was an initiated act, adopted by a vote of the Colorado electorate Although the legislature enacted a statutory plan in 1933, in an attempt to nullify the effect of the 1932 initiated act, that measure was held invalid and unconstitutional as a matter of state law, by the Colorado Supreme Court See note 24 *infra* And the 1962 adoption of the apportionment scheme contained in proposed constitutional Amendment No 7 resulted, of course, not from legislative action, but from a vote of the Colorado electorate approving the initiated measure The 1963 statutory provisions were enacted by the General Assembly simply in order to comply with Amendment No 7's mandate for legislative implementation

[21] We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective Rather, we merely point out that there are certain aspects of electing legislators at large from a county as a whole that might well make the adoption of such a scheme undesirable to many voters residing in multimember counties.

No 7, while purportedly basing the apportionment of seats in both houses on a population basis, would have perpetuated, for all practical purposes, this debatable feature of the existing scheme Under Amendment No 8, senators were to be elected at large in those counties given more than one Senate seat, and no provision was made for subdistricting within such counties for the purpose of electing senators Representatives were also to be elected at large in multimember counties pursuant to the provisions of Amendment No 8, at least initially, although subdistricting for the purpose of electing House members was permitted if the voters of a multimember county specifically approved a representative subdistricting plan for that county Thus, neither of the proposed plans was, in all probability, wholly acceptable to the voters in the populous counties, and the assumption of the court below that the Colorado voters made a definitive choice between two contrasting alternatives and indicated that "minority process in the Senate is what they want" does not appear to be factually justifiable

Finally, this case differs from the others decided this date in that the initiative device provides a practicable political remedy to obtain relef against alleged legislative malapportionment in Colorado [22] An initiated measure proposing a constitutional amendment or a statutory enactment is entitled to be placed on the ballot if the signatures of 8% of those voting for the Secretary of State in the last election are obtained No geographical distribution of petition signers is required Initiative and referendum has been frequently utilized throughout Colorado's history [23] Additionally, Colorado courts have traditionally not been hesitant about adjudicating controversies relating to legislative apportionment [24] However, the Colorado Supreme Court, in its 1962

[22] Article V, § 1, of the Colorado Constitution provides that "the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly ," and further establishes the specific procedures for initiating proposed constitutional amendments or legislation

Twenty-one States make some provision for popular initiative Fourteen States provide for the amendment of state constitutional provisions through the process of initiative and referendum See The Council of State Governments, The Book of the States, 1962–1963, 14 (1962) Seven States allow the use of popular initiative for the passage of legislation but not constitutional amendments Both types of initiative and referendum may, of course, be relevant to legislative reapportionment See Report of Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures 57 (1962) In some States the initiative process is ineffective and cumbersome, while in others, such as Colorado, it is a practicable and frequently utilized device

In addition to the initiative device, Art V §1, of the Colorado Constitution provides that, upon the timely filing of a petition signed by 5% of the State's voters or at the instance of the legislature, the Colorado electorate reserves the power of voting upon legislative enactments in a statewide referendum at the next general election

[23] Amendment of the Colorado Constitution can be accomplished, in addition to resort to the initiative and referendum device, through a majority vote of the electorate on an amendment proposed by the General Assembly following a favorable vote thereon "by two-thirds of all the members elected to each house" of the Colorado Legislature, pursuant to Art XIX, § 2, of the Colorado Constitution Additionally, a constitutional convention can be convened, upon the favorable recommendation of two-thirds of the members elected to each house of the General Assembly, if the electorate approves of the calling of such a convention to "revise, alter or amend" the State Constitution, under Art XIX § 1, of the Colorado Constitution Pursuant to Art XIX, § 1, "the number of members of the convention shall be twice that of the senate and they shall be elected in the same manner, at the same places, and in the same districts"

[24] See *Armstrong v Matton*, 95 Colo 425, 37 P 2d 757 (1934), where the Colorado Supreme Court held that a 1923 statute, enacted by the legislature to effectively nullify the 1932 initiated act reapportioning legislative representation, was void under the state constitutional provisions In finding the legislative measure invalid, the Colorado court stated that 'redistricting must be done with due regard to the requirement that representation in the General Assembly shall be based upon population,' and that "the legislative act in question is void because it violates section 45 of article 5 of the Constitution, which requires the reappor-

decision discussed previously in this opinion,[25] refused to consider or pass upon the federal constitutional questions, but instead held only that the Colorado General Assembly was not required to enact a reapportionment statute until the following legislative session.[26]

IV.

In *Reynolds* v. *Sims*, decided also this date, we held that the Equal Protection Clause requires that both houses of a bicameral state legislature must be apportioned substantially on a population basis. Of course, the court below assumed, and the parties apparently conceded, that the Colorado House of Representatives, under the statutory provisions enacted by the Colorado Legislature in early 1963 pursuant to Amendment No 7's dictate that the legislature should create 65 House districts "as nearly equal in population as may be," is now apportioned sufficiently on a population basis to comport with federal constitutional requisites We need not pass on this question, since the apportionment of Senate seats, under Amendment No 7, clearly involves departures from population-based representation too extreme to be constitutionally permissible, and there is no indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable.[27] We therefore conclude that the District Court erred in holding the legislative apportionment plan embodied in Amendment No 7 to be constitutionally valid Under neither Amendment No 7's plan, nor, of course, the previous statutory scheme, is the overall legislative representation in the two houses of the Colorado Legislature sufficiently grounded on population to be constitutionally sustainable under the Equal Protection Clause.[28]

tionment to be made on the basis of population, as disclosed by the census, and according to ratios to be fixed by law ' Stating that "it is clear that ratios, after having been fixed under section 45, cannot be changed until after the next census," the Colorado Supreme Court concluded that "the legislative act attempts to confer upon some districts a representation that is greater, and upon others a representation that is less, than they are entitled to under the Constitution" *Id*., at 438, 37 P 2d, at 758

[25] See note 2, *supra*

[26] *In re Legislative Reapportionment*, 374 P 2d 66 (Colo Sup Ct 1962) Even so, the Colorado court stated that "it is abundantly clear that this court has jurisdiction " *Id*., at 69 See note 2, *supra*

[27] See *The Maryland Committee for Fair Representation* v *Tawes*, ___ U S ___ ___, decide also this date, where we discussed the need for considering the apportionment of seats in both houses of an bicameral state legislature in evaluating the constitutionality of a state legislative apportionment scheme, regardless of what matters were raised by the parties and decided by the court below Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole Only after an evaluation of an opportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause Deviations from a strict population basis, so long rationally justifiable, may be utilized to balance a slight overrepresentation of a particular area in one house with a minor underrepresentation of that area in the other house But on the other hand, disparities from population-based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect Of course, the court below can properly take into consideration the present apportionment of seats in the House in determining what steps must be taken in order to achieve a plan of legislative apportionment in Colorado that sufficiently comports with federal constitutional requirements

[28] See *Reynolds* v *Sims* ___ U S, at ___, where we discussed some of the underlying reasons for our conclusion that the Equal Protection Clause requires that seats in both houses of a state legislature must be apportioned substantially on a population basis in order to comport with federal constitutional requisites

Except as an interim remedial procedure justifying a court in staying its hand temporarily, we find no significance in the fact that a nonjudicial, *political* remedy may be available for the effectuation of asserted rights to equal representation in a state legislature Courts sit to adjudicate controversies involving alleged denials of constitutional rights While a court sitting as a court of equity might be justified in temporarily reframing from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act As stated by this Court in *West Virginia State Bd of Educ* v *Barnette*, 319 U S 624, 638, "One's right to life, liberty, and property and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections " [29] A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so [30] We hold *that the fact that* a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in *Reynolds* v *Sims* And we conclude that the fact that a practicably available political remedy, such as initiative and referendum, exists under state law provides justification only for a court of equity to stay its hand temporarily while recourse to such a remedial device is attempted or while proposed initiated measures relating to legislative apportionment are pending and will be submitted to the State's voters at the next election

[29] And, as stated by the court in *Hall* v *St Helena Parish School Bd*, 197 F Supp 649, 659 (D C E D La 1961), aff'd, 368 U S 515, "No plebiscite can legalize an unjust discrimination "

[30] In refuting the majority's reliance on the fact that Amendment No 7 had been adopted by a vote of the Colorado electorate, Judge Doyle, in dissenting below, stated

"The protection of constitutional rights is not to be approached either pragmatically or expediently, and though the fact of enactment of a constitutional provision by heavy vote of the electorate produces pause and generates restraint we can not, true to our oath, uphold such legislation in the face of palpable infringement of rights Thus, state racial legislation would unquestionably enjoy overwhelming electorate approval in certain of our states, yet no one would argue that this factor could compensate for manifest inequality It is too clear for argument that constitutional law is not a matter of majority vote Indeed, the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority The rights which are here asserted are the rights of the individual plaintiffs to have their votes counted equally with those of other voters [T]o say that a majority of the voters today indicate a desire to be governed by a minority, is to avoid the issue which this court is asked to resolve It is no answer to say that the approval of the polling place necessarily evidences a rational plan The plaintiffs have a right to expect that the cause will be determined in relation to the standards of equal protection Utilization of other or different standards denies them full measure of justice " 219 F Supp, at 944

Because of the imminence of the November 1962 election, and the fact that two initiated proposals relating to legislative apportionment would be voted on by the State's electorate at that election, the District Court properly stayed its hand and permitted the 1962 election of legislators to be conducted pursuant to the existing statutory scheme But appellees' argument, accepted by the court below, that the apportionment of the Colorado Senate, under Amendment No 7, is rational because it takes into account a variety of geographical, historical, topographic and economic considerations fails to provide an adequate justification for the substantial disparities from population-based representation in the allocation of Senate seats to the disfavored populous areas [31] And any attempted reliance on the so-called federal analogy is factually as well as constitutionally without merit.[32]

Since the apportionment of seats in the Colorado Legislature, under the provisions of Amendment No 7, fails to comport with the requirements of the Equal Protection Clause, the decision below must be reversed Beyond what we said in our opinion in *Reynolds*,[33] we express no view on questions relating to remedies at the present time On remand, the District Court must now determine whether the imminence of the 1964 primary and general elections requires that utilization of the apportionment scheme contained in the constitutional amendment be permitted, for purposes of those elections, or whether the circumstances in Colorado are such that appellants' right to cast adequately weighted votes for members of the State Legislature can practicably be effectuated in 1964. Accordingly, we reverse the decision of the court below and remand the case for further proceedings consistent with the views stated here and in our opinion in *Reynolds* v *Sims*

It is so ordered

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[31] In its opinion on the merits, the District Court stated "By the admission of states into the Union with constitutions creating bicameral legislatures, membership to which is not apportioned on a population basis, Congress has rejected the principle of equal representation as a constitutional requirement" 219 F Supp, at 927–928 For the reasons stated in our opinion in *Reynolds* v *Sims*, ___ U S, at ___, we find this argument unpersuasive as a justification for the deviations from population in the apportionment of seats in the Colorado Senate under the provisions of Amendment No 7 Also, the court below stated that the disparities from population-based senatorial representation were necessary in order to protect "insular minorities" and to accord recognition to "the state's heterogeneous characteristics" Such rationales are, of course, insufficient to justify the substantial deviations from population in the apportionment of seats in the Colorado Senate under Amendment in No 7, under the views stated in our opinion in *Reynolds*

[32] See *Reynolds* v *Sims*, ___ U S at ___ ___, discussing and rejecting the applicability of the so-called federal analogy to state legislative apportionment matters As stated in the dissent below, "It would appear that there is no logical basis for distinguishing between the lower and the upper house—that the equal protection clause applies to both since no valid analogy can be drawn between the United States Congress" and state legislatures 219 F Supp, at 940–941 Additionally, the apportionment scheme embodied in the provisions of Amendment No 7 differs significantly from the plan for allocating congressional representation among the states Although the Colorado House of Representatives is arguably apportioned on a population basis, and therefore resembles the Federal House, senatorial seats are not apportioned to counties or political subdivisions in a manner that at all compares with the allocation of two seats in the Federal Senate to each state

[33] See *Reynolds* v *Sims*, ___ U S at ___

APPENDIX

Amendment No 7, approved by a vote of the Colorado electorate in November 1962, appears in Colo Laws 1963, c 312, p 1045 *et seq*, and, in relevant part, provides as follows

"Sections 45, 46, and 47 of Article V of the Constitution of Colorado are hereby repealed and new sections 45, 46, 47 and 48 of Article V are adopted, to read as follows

"Section 45 GENERAL ASSEMBLY The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district Districts of the same house shall not overlap All districts shall be as compact as may be and shall consist of contiguous whole general election precincts No part of one county shall be added to another county or part of another county in forming a district When a district includes two or more counties they shall be contiguous

"Section 46 HOUSE OF REPRESENTATIVES The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be

"Section 47 SENATE The state shall be divided into 39 senatorial districts The apportionment of senators among the counties shall be the same as now provided by 63–1–3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be

"Section 48 REVISION OF DISTRICTS At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the State, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law."

Andres Lucas et al., etc.,
Appellants,
v.
The Forty-Fourth General Assembly of the State of Colorado et al.

WMCA, Inc., et al.,
Appellants,
v.
John P. Lomenzo, Secretary of State of the State of New York, et al.

[June 15, 1964.]

MR JUSTICE STEWART, whom MR JUSTICE CLARK joins, dissenting

It is important to make clear at the outset what these cases are not about. They have nothing to do with the denial or impairment of any person's right to vote. Nobody's right to vote has been denied. Nobody's right to vote has been restricted. Nobody has been deprived of the right to have his vote counted. The voting right cases which the Court cites are, therefore, completely wide of the mark.[1] Secondly, these cases have nothing to do with the "weighting" or "diluting" of votes cast within any electoral unit. The rule of *Gray* v *Sanders*, 372 U. S. 368, is, therefore, completely without relevance here.[2] Thirdly, these cases are not concerned with the election of members of the Congress of the United States, governed by Article I of the Constitution. Consequently, the Court's decision in *Wesberry* v *Sanders*, 376 U. S. 1, throws no light at all on the basic issue now before us.[3]

The question involved in these cases is quite a different one. Simply stated, the question is to what degree, if at all, the Equal Protection Clause of the Fourteenth Amendment limits each sovereign State's freedom to establish appropriate electoral constituencies from which representatives to the State's bicameral legislative assembly are to be chosen. The Court's answer is a blunt one, and, I think, woefully wrong. The Equal Protection Clause, says the Court, "requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."[4]

After searching carefully through the Court's opinions in these and their companion cases, I have been able to find but two reasons offered in support of this rule. First, says the Court, it is "established that the fundamental principle of representative government in this country is

[1] See *Reynolds* v *Sims*, *ante*, pp. ___–___, citing *Ex parte Yarbrough*, 110 U. S. 651; *United States* v *Mosley*, 238 U. S. 383; *Guinn* v *United States*, 238 U. S. 347; *Lane* v *Wilson*, 307 U. S. 268; *United States* v *Classic*, 313 U. S. 299; *Ex parte Siebold*, 100 U. S. 371; *United States* v *Saylor*, 322 U. S. 385; *Gomillion* v *Lightfoot*, 364 U. S. 339; *Nixon* v *Herndon*, 273 U. S. 536; *Nixon* v *Condon*, 286 U. S. 73; *Smith* v *Allwright*, 321 U. S. 649; *Terry* v *Adams*, 345 U. S. 461.

[2] "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote. . . ." *Gray* v *Sanders*, 372 U. S., at 379. The Court carefully emphasized in *Gray* that the case did *not* "involve a question of the degree to which the Equal Protection Clause of the Fourteenth Amendment limits the authority of a State Legislature in designing the geographical districts from which representatives are chosen for the State Legislature. . . ." 372 U. S., at 376.

[3] In *Wesberry* v *Sanders* the Court held that Article I of the Constitution (which ordained that members of the United States Senate shall represent grossly disparate constituencies in terms of numbers, U. S. Const., Art. I, § 3, cl. 1, see U. S. Const., Amend. XVII) ordained that members of the United States House of Representatives shall represent constituencies as nearly as practicable of equal size in terms of numbers. U. S. Const., Art. I, § 2.

[4] See *Reynolds* v *Sims*, *ante*, p. ___.

one of equal representation for equal numbers of people ..."[5] With all respect, I think that this is not correct, simply as a matter of fact. It has been unanswerably demonstrated before now that this "was not the colonial system, it was not the system chosen for the national government by the Constitution, it was not the system exclusively or even predominantly practiced by the States at the time of adoption of the Fourteenth Amendment, it is not predominantly practiced by the States today."[6] Secondly, says the Court, unless legislative districts are equal in population, voters in the more populous districts will suffer a "debasement" amounting to a constitutional injury. As the Court explains it, "To the extent that a citizen's right to vote is debased, he is that much less a citizen."[7] We are not told how or why the vote of a person in a more populated legislative district is "debased," or how or why he is less a citizen, nor is the proposition self-evident. I find it impossible to understand how or why a voter in California, for instance, either feels or is less a citizen than a voter in Nevada, simply because, despite their population disparities, each of those States is represented by two United States Senators.[8]

To put the matter plainly, there is nothing in all the history of this Court's decisions which supports this constitutional rule. The Court's draconian pronouncement, which makes unconstitutional the legislatures of most of the 50 States, finds no support in the words of the Constitution, in any prior decision of this Court, or in the 175-year political history of our Federal Union.[9] With all respect, I am convinced these

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[5] Id., at ___

[6] *Baker* v *Carr*, 369 U. S. 186, 266, 301 (Frankfurter, J., dissenting).
See also the excellent analysis of the relevant historical materials contained in MR. JUSTICE HARLAN'S dissenting opinion filed this day in these and their companion cases, *ante*, p. ___.

[7] *Reynolds* v *Sims*, *ante*, p. ___.

[8] On the basis of the 1960 Census, each Senator from Nevada represents fewer than 150,000 constituents, while each Senator from California represents almost 8,000,000. As will become clear later in this opinion, I do not mean to imply that a state legislative apportionment system modeled precisely upon the Federal Congress would necessarily be constitutionally valid in every State.

[9] It has been the broad consensus of the state and federal courts which, since *Baker* v *Carr*, 369 U. S. 186, have been faced with the basic question involved in these cases, that the rule which the Court announces today has no basis in the Constitution and no root in reason. See, *e. g.*, *Sobel* v *Adams*, 208 F. Supp. 316, 214 F. Supp. 811; *Thigpen* v *Meyers*, 211 F. Supp. 826; *Sims* v *Frink*, 205 F. Supp. 245, 208 F. Supp. 431, *ante*, p. ___; *W. M. C. A., Inc.* v *Simon*, 208 F. Supp. 368, *ante*, p. ___; *Baker* v *Carr*, 206 F. Supp. 341; *Mann* v *Davis*, 213 F. Supp. 577, *ante*, p. ___; *Toombs* v *Fortson*, 205 F. Supp. 248; *Davis* v *Synhorst*, 217 F. Supp. 492; *Nolan* v *Rhodes*, 218 F. Supp. 953; *Moss* v *Burkhart*, 207 F. Supp. 885; *Lisco* v *Love*, 219 F. Supp. 922, *ante*, p. ___; *Wisconsin* v *Zimmerman*, 209 F. Supp. 133; *Marshall* v *Hare*, 227 F. Supp. 980; *Hearne* v *Smylie*, 225 F. Supp. 645; *Land* v *Mathas*, 145 So. 2d 871 (Fla.); *Caesar* v *Williams*, 84 Idaho 254, 371 P. 2d 241; *Maryland Committee for Fair Representation* v *Tawes*, 228 Md. 412, 180 A. 2d 656, 182 A. 2d 877, 229 Md. 406, 184 A. 2d 715, *ante*, p. ___; *Levitt* v *Maynard*, 182 A. 2d 807 (N. H.); *Jackman* v *Bodine*, 78 N. J. Super. 414, 188 A. 2d 642; *Sweeney* v *Notte*, 183 A. 2d 296 (R. I.); *Mikell* v *Rousseau*, 183 A. 2d 817 (Vt.).
The writings of scholars and commentators have reflected the same view. See, *e. g.*, De Grazia, Apportionment and Representative Government; Neal, Baker v. Carr: Politics in Search of Law, 1962 Supreme Court Review 252; Dixon, Legislative Apportionment and the Federal Constitution, 27 Law and Contemporary Prob. 329; Dixon, Apportionment Standards and Judicial Power, 38 Notre Dame Lawyer 367; Israel, On Charting a Course Through the Mathematical Quagmire: The Future of Baker v. Carr, 61 Mich. L. Rev. 107; Israel, Nonpopulation Factors Relevant to an Acceptable Standard of Apportionment, 38 Notre Dame Lawyer 499; Lucas, Legislative Apportionment and Representative Government: The Meaning of Baker v. Carr, 61 Mich. L. Rev. 711; Friedelbaum, Baker v. Carr: The New Doctrine of Judicial Intervention and its Implications for American Federalism, 39 U. of Chi. L. Rev. 673; Bickel, The Durability of Colgrove v. Green, 72 Yale L. J. 30; McCloskey, The Reapportionment Case, 76 Harv. L. Rev. 54; Freund, New Vistas in Constitutional Law, 112 U. of Pa. L. Rev. 631, 639; Comment, Baker v. Carr and Legislative Apportionments: A Problem of Standards, 72 Yale L. J. 968.

decisions mark a long step backward into that unhappy era when a majority of the members of this Court were thought by many to have convinced themselves and each other that the demands of the Constitution were to be measured not by what it says, but by their own notions of wise political theory. The rule announced today is at odds with long-established principles of constitutional adjudication under the Equal Protection Clause, and it stifles values of local individuality and initiative vital to the character of the Federal Union which it was the genius of our Constitution to create

I.

What the Court has done is to convert a particular political philosophy into a constitutional rule, binding upon each of the 50 States, from Maine to Hawaii, from Alaska to Texas, without regard and without respect for the many individualized and differentiated characteristics of each State, characteristics stemming from each State's distinct history, distinct geography, distinct distribution of population, and distinct political heritage My own understanding of the various theories of representative government is that no one theory has ever commanded unanimous assent among political scientists, historians, or others who have considered the problem [10] But even if it were thought that the rule announced today by the Court is, as a matter of political theory, the most desirable general rule which can be devised as a basis for the make-up of the representative assembly of a typical State, I could not join in the fabrication of a constitutional mandate which imports and forever freezes one theory of political thought into our Constitution, and forever denies to every State any opportunity for enlightened and progressive innovation in the design of its democratic institutions, so as to accommodate within a system of representative government the interests and aspirations of diverse groups of people, without subjecting any group or class to absolute domination by a geographically concentrated or highly organized majority

Representative government is a process of accommodating group interests through democratic institutional arrangements Its function is to channel the numerous opinions, interests, and abilities of the people of a State into the making of the State's public policy Appropriate legislative apportionment, therefore, should ideally be designed to insure effective representation in the State's legislature, in cooperation with other organs of political power, of the various groups and interests making up the electorate. In practice, of course, this ideal is approximated in the particular apportionment system of any State by a realistic accommodation of the diverse and often conflicting political forces operating within the State.

I do not pretend to any specialized knowledge of the myriad of individual characteristics of the several States, beyond the records in the cases before us today But I do know enough to be aware that a system of legislative apportionment which might be best for South Dakota, might be unwise for Hawaii with its many islands, or Michigan with its Northern Peninsula I do know enough to realize that

[10] See, *e g*, DeGrazia, Apportionment and Representative Government, pp 19–63, Ross, Elections and Electors, pp 21–127, Lakeman and Lambert, Voting in Democracies, pp 19–37, 149–156, Hogan, Election and Representation, Dahl, A Preface to Democratic Theory

Montana with its vast distances is not Rhode Island with its heavy concentrations of people I do know enough to be aware of the great variations among the several States in their historic manner of distributing legislative power—of the Governors' Councils in New England, of the broad powers of initiative and referendum retained in some States by the people, of the legislative power which some States give to their Governors, by the right of veto or otherwise, of the widely autonomous home rule which many States give to their cities.[11] The Court today declines to give any recognition to these considerations and countless others, tangible and intangible, in holding unconstitutional the particular systems of legislative apportionment which these States have chosen Instead, the Court says that the requirements of the Equal Protection Clause can be met in any State only by the uncritical, simplistic, and heavy-handed application of sixth-grade arithmetic

But legislators do not represent faceless numbers They represent people, or, more accurately, a majority of the voters in their districts—people with identifiable needs and interests which require legislative representation, and which can often be related to the geographical areas in which these people live The very fact of geographic districting, the constitutional validity of which the Court does not question, carries with it an acceptance of the idea of legislative representation of regional needs and interests Yet if geographical residence is irrelevant, as the Court suggests, and the goal is solely that of equally "weighted" votes, I do not understand why the Court's constitutional rule does not require the abolition of districts and the holding of all elections at large[12]

The fact is, of course, that population factors must often to some degree be subordinated in devising a legislative apportionment plan which is to achieve the important goal of ensuring a fair, effective, and balanced representation of the regional, social, and economic interests within a State And the further fact is that throughout our history the apportionments of State Legislatures have reflected the strongly felt American tradition that the public interest is composed of many diverse interests, and that in the long run it can better be expressed by a medley of component voices than by the majority's monolithic command What constitutes a rational plan reasonably designed to achieve this objective will vary from State to State, since each State is unique, in terms of topography, geography, demography, history, heterogeneity and concentration of population, variety of social and economic interests, and in the operation and interrelation of its political institutions But so long as a State's apportionment plan reasonably achieves, in the light of the State's own characteristics, effective and balanced repre-

[11] See, *e g*, Sandalow, The Limits of Municipal Power Under Home Rule A Role for the Courts, 43 Minnesota L Rev 643, Klemme, The Powers of Home Rule Cities in Colorado, 36 U of Colo L Rev 321

[12] Even with legislative districts of exactly equal voter population, 26% of the electorate (a bare majority of the voters in a bare majority of the districts) can, as a matter of the kind of theoretical mathematics embraced by the Court, elect a majority of the legislature under our simple majority electoral system Thus, the Court's constitutional rule permits minority rule

Students of the mechanics of voting systems tell us that if all that matters is that votes count equally, the best vote-counting electoral system is proportional representation in state-wide elections See, *e g*, Lakeman and Lambert, *supra*, n 10 It is just because electoral systems are intended to serve functions other than satisfying mathematical theories, however, that the system of proportional representation has not been widely adopted. *Ibid.*

sentation of all substantial interests, without sacrificing the principle of effective majority rule, that plan cannot be considered irrational.

II.

This brings me to what I consider to be the proper constitutional standards to be applied in these cases. Quite simply, I think the cases should be decided by application of accepted principles of constitutional adjudication under the Equal Protection Clause A recent expression by the Court of these principles will serve as a generalized compendium

> "[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it " *McGowan* v *Maryland*, 366 U. S. 420, 425–426.

These principles reflect an understanding respect for the unique values inherent in the Federal Union of States established by our Constitution They reflect, too, a wise perception of this Court's role in that constitutional system. The point was never better made than by Mr Justice Brandeis, dissenting in *New State Ice Co* v. *Liebmann*, 285 U S 262, 280 The final paragraph of that classic dissent is worth repeating here:

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. . . . But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles If we would guide by the light of reason, we must let our minds be bold." 285 U. S , at 311.

That cases such as the ones now before us were to be decided under these accepted Equal Protection Clause standards was the clear import of what was said on this score in *Baker* v. *Carr*, 369 U S. 186, 226.

> "Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that

a discrimination reflects *no* policy, but simply arbitrary and capricious action."

It is to be remembered that the Court in *Baker* v. *Carr* did not question what had been said only a few years earlier in *MacDougall* v. *Green*, 335 U S 281, 284:

"It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

Moving from the general to the specific, I think that the Equal Protection Clause demands but two basic attributes of any plan of state legislative apportionment First, it demands that, in the light of the State's own characteristics and needs, the plan must be a rational one. Secondly, it demands that the plan must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State [13] I think it is apparent that any plan of legislative apportionment which could be shown to reflect no policy, but simply arbitrary and capricious action or inaction, and that any plan which could be shown systematically to prevent ultimate effective majority rule, would be invalid under accepted Equal Protection Clause standards But, beyond this, I think there is nothing in the Federal Constitution to prevent a State from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people. In the light of these standards, I turn to the Colorado and New York plans of legislative apportionment.

III.

COLORADO.

The Colorado plan creates a General Assembly composed of a Senate of 39 members and a House of 65 members The State is divided into 65 equal population representative districts, with one representative to be elected from each district, and 39 senatorial districts, 14 of which include more than one county In the Colorado House, the majority unquestionably rules supreme, with the population factor untempered by other considerations In the Senate rural minorities do not have effective control, and therefore do not have even a veto power over the will of the urban majorities It is true that, as a matter of theoretical arithmetic, a minority of 36% of the voters could elect a majority of

[13] In *Baker* v *Carr*, 369 U S 186, it was alleged that a substantial numerical majority had an effective voice in neither legislative house of Tennessee Failure to reapportion for 60 years in flagrant violation of the Tennessee Constitution and in the face of intervening population growth and movement had created enormous disparities among legislative districts—even among districts seemingly identical in composition—which, it was alleged, perpetuated minority rule and could not be justified on any rational basis It was further alleged that all other means of modifying the apportionment had proven futile, and that the Tennessee legislators had such a vested interest in maintaining the *status quo* that reapportionment by the legislature was not a practical possibility See generally, the concurring opinion of MR JUSTICE CLARK, 369 U. S 261.

the Senate, but this percentage has no real meaning in terms of the legislative process [14] Under the Colorado plan, no possible combination of Colorado senators from rural districts, even assuming *arguendo* that they would vote as a bloc, could control the Senate To arrive at the 36% figure, one must include with the rural districts a substantial number of urban districts, districts with substantially dissimilar interests There is absolutely no reason to assume that this theoretical majority would ever vote together on any issue so as to thwart the wishes of the majority of the voters of Colorado Indeed, when we eschew the world of numbers, and look to the real world of effective representation, the simple fact of the matter is that Colorado's three metropolitan areas, Denver, Pueblo, and Colorado Springs, elect a majority of the Senate.

The State of Colorado is not an economically or geographically homogeneous unit The Continental Divide crosses the State in a meandering line from north to south, and Colorado's 104,247 square miles of area are almost equally divided between high plains in the east and rugged mountains in the west. The State's population is highly concentrated in the urbanized eastern edge of the foothills, while farther to the east lies that agricultural area of Colorado which is a part of the Great Plains The area lying to the west of the Continental Divide is largely mountainous, with two-thirds of the population living in communities of less than 2,500 inhabitants or on farms Livestock raising, mining and tourism are the dominant occupations This area is further subdivided by a series of mountain ranges containing some of the highest peaks in the United States, isolating communities and making transportation from point to point difficult and in some places during the winter months almost impossible The fourth district region of the State is the South Central region, in which is located the most economically depressed area in the State A scarcity of water makes a state-wide water policy a necessity, with each region affected differently by the problem.

The District Court found that the people living in each of these four regions have interests unifying themselves and differentiating them from those in other regions Given these underlying facts, certainly it was not irrational to conclude that effective representation of the interests of the residents of each of these regions was unlikely to be achieved if the rule of equal population districts were mechanically imposed, that planned departures from a strict per capita standard of representation were a desirable way of assuring some representation of distinct localities whose needs and problems might have passed unnoticed if districts had been drawn solely on a per capita basis; a desirable way of assuring that districts should be small enough in area, in a mountainous State like Colorado, where accessibility is affected by configuration as well as compactness of districts, to enable each

[14] The theoretical figure is arrived at by placing the legislative districts for each house in rank order of population and by counting down the smallest population end of the list a sufficient distance to accumulate the minimum population which could elect a majority of the house in question It is a meaningless abstraction as applied to a multimembered body because the factors of political party alignment and interest representation make such theoretical bloc voting a practical impossibility For example, 31 000,000 people in the 26 least populous States representing only 17% of United States population having 52% of the Senators in the United States Senate But no one contends that this bloc controls the Senate's legislative process

senator to have firsthand knowledge of his entire district and to maintain close contact with his constituents; and a desirable way of avoiding the drawing of district lines which would submerge the needs and wishes of a portion of the electorate by grouping them in districts with larger numbers of voters with wholly different interests.

It is clear from the record that if per capita representation were the rule in both houses of the Colorado Legislature, counties having small populations would have to be merged with larger counties having totally dissimilar interests Their representatives would not only be unfamiliar with the problems of the smaller county, but the interests of the smaller counties might well be totally submerged to the interests of the larger counties with which they are joined Since representatives representing conflicting interests might well pay greater attention to the views of the majority, the minority interests could be denied any effective representation at all Its votes would not be merely "diluted," an injury which the Court considers of constitutional dimensions, but rendered totally nugatory

The findings of the District Court speak for themselves:

> "The heterogeneous characteristics of Colorado justify geographic districting for the election of the members of one chamber of the legislature In no other way may representation be afforded to insular minorities. Without such districting the metropolitan areas could theoretically, and no doubt practically, dominate both chambers of the legislature.
>
> . . . . .
>
> "The realities of topographic conditions with their resulting effect on population may not be ignored. For an example, if [the rule of equal population districts] was to be accepted, Colorado would have one senator for approximately every 45,000 persons Two contiguous Western Region senatorial districts, Nos 29 and 37, have a combined population of 51,675 persons inhabiting an area of 20,514 square miles The division of this area into two districts does not offend any constitutional provisions Rather, it is a wise recognition of the practicalities of life.
>
> "We are convinced that the apportionment of the Senate by Amendment No 7 recognizes population as a prime, but not controlling, factor and gives effect to such important considerations as geography, compactness and contiguity of territory, accessibility, observance of natural boundaries, conformity to historical divisions such as county lines and prior representation districts, and 'a proper diffusion of political initiative as between a state's thinly populated counties and those having concentrated masses ' " 219 F. Supp., at 932

From 1954 until the adoption of Amendment 7 in 1962, the issue of apportionment had been the subject of intense public debate The present apportionment was proposed and supported by many of Colorado's leading citizens. The factual data underlying the apportionment were prepared by the wholly independent Denver Research Institute of the University of Denver Finally, the apportionment was adopted by a popular referendum in which not only a 2–1 majority of all the voters

in Colorado, but a majority in each county, including those urban counties allegedly discriminated against, voted for the present plan in preference to an alternative proposal providing for equal representation per capita in both legislative houses. As the District Court said.

> "The contention that the voters have discriminated against themselves appalls rather than convinces Difficult as it may be at times to understand mass behaviour of human beings, a proper recognition of the judicial function precludes a court from holding that the free choice of the voters between two conflicting theories of apportionment is irrational or the result arbitrary " *Ibid*

The present apportionment, adopted overwhelmingly by the people in a 1962 popular referendum as a state constitutional amendment, is entirely rational, and the amendment by its terms provides for keeping the apportionment current [15] Thus the majority has consciously chosen to protect the minority's interests, and under the liberal initiative provisions of the Colorado Constitution, it retains the power to reverse its decision to do so. Therefore, there can be no question of frustration of the basic principle of majority rule.

IV.
NEW YORK.

"Constitutional statecraft often involves a degree of protection for minorities which limits the principle of majority rule Perfect numerical equality in voting rights would be achieved if an entire State legislature were elected at large but the danger is too great that the remote and less populated sections would be neglected or that, in the event of a conflict between two parts of the State, the more populous region would elect the entire legislature and in its councils the minority would never be heard.

"Due recognition of geographic and other minority interests is also a comprehensible reason for reducing the weight of votes in great cities If seventy percent of a State's population lived in a single city and the remainder was scattered over wide country areas and small towns, it might be reasonable to give the city voters somewhat smaller representation than that to which they would be entitled by a strictly numerical apportionment in order to reduce the danger of total neglect of the needs and wishes of rural areas "

The above two paragraphs are from the brief which the United States filed in *Baker* v *Carr*, 369 U S 186 [16] It would be difficult to find words more aptly to describe the State of New York, or more clearly to justify the system of legislative apportionment which that State has chosen

[15] Within the last 12 years, the people of Michigan, California, Washington, and Nebraska (unicameral legislature) have expressed their will in popular referenda in favor of apportionment plans departing from the Court's rule See Dixon, 38 Notre Dame Lawyer *supra*, at 383–385

[16] Brief for the United States as *amicus curiae* on reargument, No 6, 1961 Term, pp 29–30

The Solicitor General, appearing as *amicus* in the present cases, declined to urge this Court to adopt the rule of per capita equality in both houses, stating that "[s]uch an interpretation would press the Equal Protection Clause to an extreme, as applied to State legislative apportionment, would require radical changes in three-quarters of the State governments, and would eliminate the opportunities for local variation " Brief for the United States as *amicus curiae*, No 508, 1963 Term, p 32

Legislative apportionment in New York follows a formula which is written into the New York Constitution and which has been a part of its fundamental law since 1894. The apportionment is not a crazy quilt; it is rational, it is applied systematically, and it is kept reasonably current The formula reflects a policy which accords major emphasis to population, some emphasis to region and community, and a reasonable limitation upon massive overcentralization of power In order to effectuate this policy, the apportionment formula provides that each county shall have at least one representative in the Assembly, that the smaller counties shall have somewhat greater representation in the legislature than representation based solely on numbers would accord, and that some limits be placed on the representation of the largest counties in order to prevent one megalopolis from completely dominating the legislature.

New York is not unique in considering factors other than population in its apportionment formula Indeed, the inclusion of such other considerations is more the rule than the exception throughout the states Two-thirds of the States have given effect to factors other than population in apportioning representation in both houses of their legislatures, and over four-fifths of the States give effect to nonpopulation factors in at least one house [17] The typical restrictions are those like New York's affording minimal representation to certain political subdivisions, or prohibiting districts composed of parts of two or more counties, or requiring districts to be composed of contiguous and compact territory, or fixing the membership of the legislative body All of these factors tend to place practical limitations on apportionment according to population, even if the basic underlying system is one of equal population districts for representation in one or both houses of the legislature

That these are rational policy considerations can be seen from even a cursory examination of New York's political makeup In New York many of the interests which a citizen may wish to assert through the legislative process are interests which touch on his relation to the government of his county as well as to that of the State, and consequently these interests are often peculiar to the citizens of one county As the District Court found, counties have been an integral part of New York's governmental structure since early colonial times, and the many functions performed by the counties today reflect both the historic gravitation toward the county as the central unit of political activity and the realistic fact that the county is usually the most efficient and practical unit for carrying out many governmental programs [18]

[17] See Dixon, 38 Notre Dame Lawyer, *supra*, at 399

[18] The following excerpts from the brief of the Attorney General of New York in this case are instructive

"For example, state aid is administered by the counties in the following areas educational extension work (N Y Education Law §§ 6301, 6302, 6304), assistance to physically handicapped children (N Y Education Law § 4403), social welfare such as medical and other aid for the aged, the blind, dependent children, the disabled, and other needy persons (N Y Social Welfare Law §§ 154, 154, 257, 499), public health (N Y Public Health Law §§ 608, 620, 636, 650, 660), mental health (N Y Mental Hygiene Law, Art 8-A, § 191-a), probation work (N Y Correction Law § 14-a), highway construction, improvement and maintenance (N Y Highway Law §§ 12, 112, 112-a, 279), conservation (N Y County Law § 214, 293-w, N Y Conservation Law §§ 205, 879), and civil defense preparations (State-Defense Emergency Act §§ 23-b, 25-a)

"County governments, are, of course, far more than instrumentalities for the administration of state aid They have extensive powers to adopt, amend or repeal local laws affecting the county (N Y. County Law §§ 301–308), and also

A policy guaranteeing minimum representation to each county is certainly rational, particularly in a State like New York It prevents less densely populated counties from being merged into multi-county districts where they would receive no effective representation at all Further, it may be only by individual county representation that the needs and interests of all the areas of the State can be brought to the attention of the legislative body The rationality of individual county representation becomes particularly apparent in States where legislative action applicable only to one or more particular counties is the permissible tradition

Despite the rationality of according at least one representative to each county, it is clear that such a system of representation, coupled with a provision fixing the maximum number of members in the legislative body—a necessity if the body is to remain small enough for manageably effective action—has the result of creating some population disparities among districts But since the disparity flows from the effectuation of a rational state policy, the mere existence of the disparity itself can hardly be considered an invidious discrimination

In addition to ensuring minimum representation to each county, the New York apportionment formula, by allocating somewhat greater representation to the smaller counties while placing limitations on the representation of the largest counties, is clearly designed to protect against overcentralization of power To understand fully the practical importance of this consideration in New York, one must look to its unique characteristics New York is one of the few States in which the central cities can elect a majority of representatives to the legislature As the District Court found, the 10 most populous counties in the State control both houses of the legislature under the existing apportionment system. Each of these counties is heavily urban, each is in a metropolitan area Together they contain 73 5% of the citizen population, and are represented by 65 5% of the seats in the Senate and 62% of the seats in the Assembly Moreover, the nine counties comprising one metropolitan area—New York City, Nassau, Rockland, Suffolk and Westchester—contain 63 2% of the total citizen population and elect a clear majority of both houses of the legislature under the existing system which the Court today holds invalid Obviously, therefore, the existing system of apportionment clearly guarantees effective majority representation and control in the State Legislature

But this is not the whole story New York City, with its seven million people and a budget larger than that of the State, has, by virtue of its concentration of population, homogeneity of interest, and political cohesiveness, acquired an institutional power and political influence of its own hardly measureable simply by counting the number of its representatives in the legislature Elihu Root, a delegate to the New York Constitutional Convention of 1894, which formulated the basic structure of the present apportionment plan, made this very point at that time

play a vital part in the enactment of state laws which affect only a particular county or counties (see N Y Const, Art IX, §§ 1, 2) The enactment in 1959 of a new County Charter Law (N Y County Law, Art 6-A), providing opportunity for the fundamental reorganization of county governments by county residents, has given the counties an even greater role to play in the social, economic and political life of modern New York." Brief for appellees Secretary of State and Attorney General, No 20, 1963 Term, pp 42–43

> "The question is whether thirty separate centers of 38,606 each scattered over the country are to be compared upon the basis of absolute numerical equality with one center of thirty times 38,606 in one city, with all the multiplications of power that comes from representing a single interest, standing together on all measures against a scattered and disunited representation from the thirty widely separated single centers of 38,606 Thirty men from one place owing their allegiance to one political organization representing the interest of one community, voting together, acting together solidly, why they are worth double the scattered elements of power coming from hundreds of miles apart" 3 Revised Record of the New York State Constitutional Convention of 1894, p 1215

Surely it is not irrational for the State of New York to be justifiably concerned about balancing such a concentration of political power, and certainly there is nothing in our Federal Constitution which prevents a State from reasonably translating such a concern into its apportionment formula See *MacDougall* v *Green*, 335 U. S 281

The State of New York is large in area and diverse in interests The Hudson and Mohawk Valleys, the farm communities along the southern belt, the many suburban areas throughout the State, the upstate urban and industrial centers, the Thousand Islands, the Finger Lakes, the Berkshire Hills, the Adirondacks—the people of all these and many other areas, with their aspirations and their interests, just as surely belong to the State as does the giant metropolis which is New York City What the State has done is to adopt a plan of legislative apportionment which is designed in a rational way to ensure that minority voices may be heard, but that the will of the majority shall prevail

V.

In the allocation of representation in their State Legislature, Colorado and New York have adopted completely rational plans which reflect an informed response to their particularized characteristics and needs The plans are quite different, just as Colorado and New York are quite different But each State, while clearly ensuring that in its legislative councils the will of the majority of the electorate shall rule, has sought to provide that no identifiable minority shall be completely silenced or engulfed The Court today holds unconstitutional the considered governmental choices of these two Sovereign States By contrast, I believe that what each State has achieved fully comports with the letter and the spirit of our constitutional traditions

I would affirm the judgments in both cases

MR JUSTICE CLARK, dissenting:

While I join my Brother STEWART'S opinion, it is well that additional observations be recorded with reference to the Colorado case

The parties concede that the Colorado House of Representatives is now apportioned "as nearly equal in population as may be" The Court does not disturb this stipulation though it seems to accept it in niggardly fashion. The fact that 45 1% of the State's population resides in the area which selects a majority of the House indicates

rather conclusively that the apportionment comes within the test laid down in *Reynolds* v *Sims,* 377 U. S. 695, decided this date, *viz* : " 'one person, one vote.' " that is, "approximately equal" or " 'as nearly as is practicable' " with only "some deviations ." Indeed, the Colorado House is within 4.9% of being perfect. Moreover, the fact that the apportionment follows political subdivision lines to some extent is also a teaching of *Reynolds* v *Sims, supra.* But the Court strikes down Colorado's apportionment, which was adopted by the majority vote of every political subdivision in the State, because the Senate's majority is elected by 33.2% of the population, a much higher percentage than that which elects a majority of the Senate of the United States.

I would refuse to interfere with this apportionment for several reasons. First, Colorado enjoys the initiative and referendum system which it often utilizes and which, indeed, produced the present apportionment. As a result of the action of the Legislature and the use of initiative and referendum, the State Assembly has been reapportioned eight times since 1881. This indicates the complete awareness of the people of Colorado to apportionment problems and their continuing efforts to solve them. The courts should not interfere in such a situation. See my concurring opinion in *Baker* v *Carr,* 369 U. S. 186, 258–259 (1962). Next, as my Brother STEWART has pointed out, there are rational and most persuasive reasons for some deviations in the representation in the Colorado Assembly. The State has mountainous areas which divide it into four regions, some parts of which are almost impenetrable. There are also some depressed areas, diversified industry and varied climate, as well as enormous recreational regions and difficulties in transportation. These factors give rise to problems indigenous to Colorado, which only its people can intelligently solve. This they have done in the present apportionment.

Finally, I cannot agree to the arbitrary application of the "one man, one vote" principle for both houses of a State Legislature. In my view, if one house is fairly apportioned by population (as is admitted here) then the people should have some latitude in providing, on a rational basis, for representation in the other house. The Court seems to approve the federal arrangement of two Senators from each State on the ground that it was a compromise reached by the framers of our Constitution and is a part of the fabric of our national charter. But what the Court overlooks is that Colorado, by an overwhelming vote, has likewise written the organization of its legislative body into its Constitution,* and our dual federalism requires that we give it recognition. After all, the Equal Protection Clause is not an algebraic formula. Equal protection does not rest on whether the practice assailed "results in some inequality" but rather on whether "any state of facts reasonably can be conceived that would sustain it"; and one who attacks it must show "that it does not rest upon any reasonable basis, but is essentially arbitrary." Mr. Justice Van Devanter in *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 78–79 (1911). Certainly Colorado's arrangement is not arbitrary. On the contrary, it rests on

* The Court says that the choice presented to the electorate was hardly "clear-cut." The short answer to this is that if the voters had desired other choices, they could have accomplished this easily by filing initiative petitions, since in Colorado 8% of the voters can force an election.

reasonable grounds which, as I have pointed out, are peculiar to that State It is argued that the Colorado apportionment would lead only to a legislative stalemate between the two houses, but the experience of the Congress completely refutes this argument Now in its 176th year, the federal plan has worked well It is further said that in any event Colorado's apportionment would substitute compromise for the legislative process. But most legislation is the product of compromise between the various forces acting for and against its enactment.

In striking down Colorado's plan of apportionment, the Court, I believe, is exceeding its powers under the Equal Protection Clause, it is invading the valid functioning of the procedures of the States, and thereby commits a grievous error which will do irreparable damage to our federal-state relationship I dissent

The Maryland Committee for Fair Representation et al , Appellants, v. J. Millard Tawes, Governor, et al.
[June 15, 1964.]

MR CHIEF JUSTICE WARREN delivered the opinion of the Court:

This case involves an appeal from a decision of the Maryland Court of Appeals upholding the validity, under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, of the apportionment of seats in the Maryland Senate

I.

Appellants, residents, taxpayers and voters in four populous Maryland counties (Anne Arundel, Baltimore, Montgomery and Prince George's) and the City of Baltimore, and an unincorporated association, originally brought an action in the Circuit Court of Anne Arundel County, in August 1960, challenging the apportionment of the Maryland Legislature Defendants below, sued in their representative capacities, were various officials charged with duties in connection with state elections Plaintiffs below alleged that the apportionment of both houses of the Maryland Legislature, pursuant to Art III, §§ 2 and 5, of the 1867 Maryland Constitution, as amended, discriminated against inhabitants of the more populous counties and the City of Baltimore by according these persons substantially less representation than that given to persons residing in other areas of the State They contended that the alleged legislative malapportionment violated the Equal Protection Clause of the Fourteenth Amendment since that provision prohibits any State from "denying, diluting or restricting the equality of voting rights or privileges among classes of otherwise eligible voters similarly situated," and asserted that there was no political remedy practicably available under Maryland law to obtain the relief sought.

Plaintiffs below sought a declaratory judgment that Art III, §§ 2 and 5, of the Maryland Constitution deny them and those similarly situated rights protected under the Equal Protection Clause, and that

the failure of the Maryland Legislature to reapportion its membership in accordance with a formula which would reasonably reflect present population figures deprived them of their constitutional rights Plaintiffs also requested a declaration that the failure of the Maryland General Assembly to convene a constitutional convention as approved by a majority of the State's voters in the general election of 1950 violated various provisions of the State Constitution

Plaintiffs requested that, unless the November 1962 election and elections thereafter were conducted on an at-large basis, the Court enjoin defendants from performing various election duties until such time as the General Assembly should submit for a referendum vote by eligible state voters an amendment to Art. III, §§ 2 and 5, which would reapportion the membership of the Maryland Legislature on a population basis in conformity with the requirements of the Fourteenth Amendment Plaintiffs also asked the court to retain jurisdiction of the case until the General Assembly submitted such a constitutional amendment to the State's voters

On February 21, 1961, the Circuit Court sustained defendants' demurrers to plaintiffs' complaint and dismissed the complaint without leave to amend On appeal, the Maryland Court of Appeals, on April 25, 1962, splitting 5-to-2, reversed the order of the Circuit Court and remanded the case for a hearing on the merits 228 Md 412, 180 A 2d 656 Finding that the federal questions raised were not nonjusticiable in a Maryland state court, the Maryland Court of Appeals, after discussing this Court's decision in *Baker* v *Carr*, 369 U S. 186, stated that

> "if any action needs to be taken in order to bring the State's system of legislative apportionment into conformity with the requirements of the Fourteenth Amendment . . , it is preferable from the point of view of responsible self-government that the State's own duly constituted officials and the people themselves undertake the task, rather than leave to the Federal judiciary the delicate and perhaps unwelcome task of doing so "[1]

While recognizing that "there was no need in *Baker* v. *Carr* . . for the Supreme Court to pass upon the power of a State court to deal with questions of State legislative apportionment," the Maryland Court of Appeals found "implicit in the vacation of the judgment and remand by the Supreme Court of the United States to the Supreme Court of Michigan of the case of *Scholle* v *Hare*" this Court's view that cases challenging the constitutionality of state legislative apportionments are "appropriate for consideration by a State court . . "[2] Finding "a strong implication in the *Baker* decision that there must be some reasonable relationship of population, or eligible voters, to representation in the General Assembly, if an apportionment is to escape the label of constitutionally-prohibited invidious discrimination," the Maryland court nevertheless stated that it was not "possible (or advisable if it were possible) to state a precise, inflexible and intractable formula for constitutional representation in the General Assembly."[3] In remanding to the lower state court to "receive evi-

[1] 228 Md., at 419, 180 A 2d, at 659
[2] *Id.*, at 428, 180 A 2d, at 664
[3] *Id.*, at 433–434, 180 A 2d, at 667–668.

dence to determine whether or not an invidious discrimination does exist with respect to representation in either or both houses" of the Maryland Legislature, the Court of Appeals stated that, if the Maryland constitutional provisions relating to legislative apportionment were held invalid as to the November 1962 election, the Circuit Court should "also declare that the Legislature has the power, if called into Special Session by the Governor and such action be deemed appropriate by it, to enact a bill reapportioning its membership for purposes" of that election

On May 24, 1962, the Circuit Court, after receiving various exhibits and hearing argument, held that the apportionment of the Maryland House of Delegates invidiously discriminated against the people of Baltimore, Montgomery and Prince George's Counties, but not against the people of Baltimore City or Anne Arundel County, and that therefore Art III, § 5, of the Maryland Constitution, which apportions seats in the House of Delegates, violates the Equal Protection Clause of the Fourteenth Amendment Although stating that the apportionment of the Maryland Senate might be "constitutionally based upon area and geographical location regardless of population or eligible voters," the Circuit Court refrained from formally passing on the validity of the senatorial apportionment The lower court also stated that the Maryland Legislature had the power to enact a statute providing for the reapportionment of the House of Delegates as well as to propose a constitutional amendment providing for such a reapportionment It withheld the granting of injunctive relief but retained jurisdiction to do so before the November 1962 election if such became appropriate.

On May 31, 1962, the Maryland Legislature, called into special session by the Governor, enacted temporary "stop-gap" legislation reapportioning seats in the House of Delegates, by allocating 19 added seats to the more populous areas of the State [4] However, the legislature failed to pass a proposed constitutional amendment reapportioning the Maryland House The newly enacted apportionment statute expires automatically on January 1, 1966, except that, if a constitutional amendment superseding the statutory provisions is submitted to the voters at the 1964 general election and is rejected, the statute will continue in force until January 1, 1970 The statute further provides that upon its expiration the House of Delegates shall again be apportioned according to Art III, § 5, which the Circuit Court had previously held unconstitutional No appeal was taken from the Circuit Court's decision holding invalid the existing apportionment of the Maryland House of Delegates

Following the Circuit Court's failure to rule upon the validity of the senatorial apportionment, plaintiffs appealed this question to the Maryland Court of Appeals On June 8, 1962, the Court of Appeals ordered the case remanded to the Circuit Court for a prompt decision on whether Art III, § 2, of the Maryland Constitution, apportioning seats in the Senate, was valid or invalid under the Equal Protection Clause On June 28, 1962, the Circuit Court held that the apportionment of the Maryland Senate did not violate the Federal Constitution because it felt that an apportionment based upon area and geographi-

[4] Md Ann Code (1962 Supp), Art 43, § 40

cal location, without regard to population, served to protect minorities, preserve legislative checks and balances, and prevent hasty, though temporarily popular, legislation, and accorded with history, tradition and reason, placing considerable reliance on a comparison of that body of the Maryland Legislature with the Federal Senate

On July 23, 1962, the Maryland Court of Appeals, splitting 5-to-3, in a *per curiam* order affirmed the Circuit Court's decision holding valid the apportionment of the Maryland Senate, noting that its reasons would be stated in an opinion to be filed at a later date Plaintiffs' motion for reargument, calling attention to recent decisions and developments relating to legislative apportionment, was denied by the Maryland Court of Appeals on September 11, 1962 On September 25, 1962, the Court of Appeals filed its opinion 229 Md 406, 184 A 2d 715 It stated initially that the appeal did not question the apportionment of the Maryland House Continuing, the Maryland court indicated that it was affirming the decision below and upholding the constitutionality of the senatorial apportionment, on the grounds that (1) Each Maryland county has since 1837 had the same number of Senate seats, except that Baltimore City had periodically been given additional representation, and Maryland counties "have always been an integral part of state government" and have consistently possessed and maintained "distinct individualities", (2) Since the idea of a bicameral legislature assumes two different methods of apportionment in the two Houses to check "hasty and ill-conceived legislation," one house can be constitutionally apportioned on a nonpopulation, geographical basis, and (3) Geographical representation in the Maryland Senate, based on political subdivisions, is closely analagous to the representation of the States in the Federal Senate The dissenting judges pointed out that the House of Delegates, even as reapportioned, was still not apportioned on a population basis, and that gross disparities from population-based representation existed in the senatorial apportionment The dissenters found that neither history nor reliance on the so-called federal analogy provided a rational basis for such gross disparities from population-based representation as were found in the apportionment of the Maryland Legislature, before and after the 1962 reapportionment Since the Maryland Court of Appeals upheld the senatorial apportionment plan, the November 1962 election of senators was conducted pursuant thereto, and delegates were elected under the scheme provided by the 1962 legislation Notice of appeal to this Court from the Maryland Court of Appeals' decision was timely filed, and we noted probable jurisdiction on June 10, 1963 374 U S 804

II.

The Maryland Constitution of 1867 vests legislative power in a bicameral General Assembly consisting of a Senate and a House of Delegates According to official census figures, Maryland had a 1960 population of 3,100,689, and the combined population of the five most populous political subdivisions of Maryland—the counties of Anne Arundel, Baltimore, Montgomery and Prince George's, and the City of Baltimore—was 2,336,409 Thus, about 75 3% of the State's total population lived in these five most populous subdivisions, as of 1960, while about 24 7% lived in the remaining 19 counties of the State

Under Art III, § 2, of the Maryland Constitution, each of the State's 23 counties is allocated one seat in the Maryland Senate, and each of the six legislative districts of the City of Baltimore is also entitled to one Senate seat—resulting in a total of 29 seats in the Maryland Senate Thus, the five most populous political subdivisions, with over three-fourths of the State's total 1960 population, are represented by only 10 senators, or slightly over one-third of the membership of that body. On the other hand, the remaining 19 counties, with an aggregate population of less than one-fourth of the State's population, are nevertheless represented by 19 senators, almost two-thirds of the members of that body [5] And the 15 least populous counties, with only 14 1% of the total state population, can elect a controlling majority of the members of the Maryland Senate A maximum population-variance ratio of almost 32-to-1 exists between the most populous and least populous counties. Kent County, with a 1960 population of 15,481, and Calvert County, where only 15,826 resided, are each entitled to one Senate seat, while Baltimore County, with a 1960 population of 492,428, is likewise entitled to only one senator

As to the apportionment of the Maryland House of Delegates, Art. III, § 5, of the Maryland Constitution, in force when this litigation was commenced but subsequently held unconstitutional by the Maryland courts and superseded by the temporary legislation enacted in 1962, prescribed the representation accorded to each of the State's political subdivisions in the Maryland House The membership of the House was numerically fixed at 123 by this constitutional provision, with each county being given at least two House seats. Seven counties were given two seats each, five counties were allocated three seats, and four counties were given four House members The remaining seven counties, including all of those four populous counties where appellants reside, were each alloted six House seats, and the six legislative districts of the City of Baltimore were given six delegates each.[6] Under the existing House apportionment, the five most populous political subdivisions, with 75 3% of the State's 1960 population, elected only 60 delegates, or less than one-half of the members of the House of Delegates, while the other 19 counties, with only 24 7% of the population, were represented by 63 delegates, or 51 3% of the total membership A maximum population-variance ratio of over 12-to-1 existed between the most populous and least populous counties Baltimore County, with a 1960 population of 492,428, had only the same number of House seats, six, as did Garrett and Somerset Counties, whose combined 1960 population was 40,043

[5] Included as Appendix B to the dissenting opinion of the Maryland Court of Appeals is a chart comparing the senatorial representation of the City of Baltimore and the four most populous counties with that of the other counties in the State 229 Md, at 430, 184 A 2d at 730

[6] Article III, § 4, of the 1867 Maryland Constitution provided for a minimum of two delegates per county, with increases proportional to population up to a total of six when a county's population reached 55,000, but made no provision for additional delegates after a county's population reached and exceeded 55,000 In 1950, Art III § 5, was adopted as a constitutional amendment freezing the representation in the House of Delegates on the basis of the allocation of House seats under the 1940 federal census The purpose of this amendment was to prevent the smaller counties from continuing to receive increased House representation at the expense of the larger political subdivisions which, under the 1867 formula, were not entitled to any more than six delegates after their population had reached 55,000, regardless of how much it might increase thereafter Additionally, Art III, § 4, of the Maryland Constitution, as amended, provides for altering the boundaries of the legislative districts of the City of Baltimore to provide for approximately equal population among the six districts

Under the 1962 temporary legislation reapportioning the Maryland House of Delegates, the only practical effect is to add 19 House seats, increasing the membership of that body from 123 to 142, for the four-year terms of delegates elected in November 1962 Seven seats were added for Baltimore County, four delegates each were added for Montgomery and Prince George's Counties, two of Baltimore City's legislative districts were given two and one additional seats, respectively, and one seat was added for Anne Arundel County. The basic scheme embodied in the temporary legislation is to allocate two House seats to each county and to each of the six Baltimore City legislative districts, and then to distribute the remaining seats, out of a fixed number of 123, among the counties on a population basis The new law provided, however, that during the initial four-year period of its operation, "and for any additional period during which . [it] may be extended," each county and legislative district would be entitled, as a minimum, to the number of House seats that it had on January 1, 1962 Thus, this means that in actuality there will be more than 123 delegates and that the counties and legislative districts which were allegedly overrepresented under the old constitutional provisions will retain much of their former relative power Under the new legislation, the five most populous subdivisions, with 75 3% of the State's 1960 population, elect 79 delegates, or 55 6% of the members in the Maryland House The remaining 19 counties, with less than one-fourth of the State's population, elect 44 4% of the members of the House of Delegates Counties with only 35 6% of the State's total population elect a majority of the members of the House under the 1962 legislation A maximum population-variance ratio of almost 6-to-1 still exists between the most populous and least populous House districts A delegate from Somerset County represents an average of 6,541 persons, whereas a delegate from Baltimore County represents an average of 37,879 Under both the previous and present apportionment provisions, members of both the Senate and the House of Delegates in Maryland are all elected to serve four-year terms [7] None of the Maryland counties, under either the old or revised House apportionment schemes, were divided into districts for the purpose of electing delegates Rather, all House members are elected at large within each county (and legislative district), regardless of the number of seats allocated thereto [8]

Maryland law makes no provision for the initiation of legislation or constitutional amendments by the people [9] Certain constitutional pro-

[7] According to the provisions of Art III, §§ 2, 6 and 7, of the Maryland Constitution

[8] Appendix A to the dissenting opinion of the Maryland Court of Appeals contains a chart showing the populations, according to 1960 census figures, and representation of Maryland's 23 counties and the City of Baltimore in the two houses of the Maryland General Assembly, including figures relating to the apportionment of seats in the House of Delegates both before and after the 1962 reapportionment legislation Also included in this chart are figures showing the number of persons represented by each delegate, and computations of the relative values of votes for delegates and senators in each of the State's political subdivisions. 229 Md , at 429, 184 A 2d, at 728–729

[9] Article XVI, §§ 2–5, of the Maryland Constitution provides a procedure for the conducting of a referendum vote by the people on certain types of legislative enactments, however, upon the filing of a petition signed by at least 3% of the State's qualified voters

For a discussion of the lack of federal constitutional significance of the presence or absence of an available political remedy, see *Lucas* v *The Forty-Fourth General Assembly of the State of Colorado*, —— US ——, ——, decided also this date

visions provide, however, for the taking, at a general election each 20 years, of "the sense of the People in regard to calling a Convention for altering this Constitution" [10] Pursuant to these provisions, a statewide referendum on whether a constitutional convention, which would have the power to propose amendments to the Maryland Constitution, including amendments relating to the reapportionment of representation in the General Assembly, should be called was submitted to the State's voters at the general election in 1950 An overwhelming majority of the voters (by a vote of 200,439 to 56,998) indicated their approval of the calling of a constitutional convention Nevertheless, even though numerous bills providing for the convening of a constitutional convention were introduced into the General Assembly between 1951 and 1962, the General Assembly repeatedly refused to enact the necessary enabling legislation [11] Thus, despite the favorable vote of the State's electorate, no constitutional convention has ever been convened. The next such vote will not be taken until 1970, and, even if the people again approve the calling of a constitutional convention, it cannot be actually convened without the enactment of enabling legislation by the Maryland General Assembly.

Although over 10 reapportionment bills were introduced into the General Assembly between 1951 and 1960, all failed to pass because of opposition by legislators from the less populous counties Both houses of the General Assembly, during its 1960 regular session, declined to pass bills incorporating the limited reapportionment recommendations of a special commission created by the Governor in 1959 to investigate and report on the matter of legislative reapportionment. Numerous proposed reapportionment amendments and reapportionment bills were introduced at the regular session of the Maryland Legislature in 1961 and 1962, but all failed of passage Relief from the allegedly discriminatory apportionment through constitutional amendment was also apparently unavailable, as a practical matter, to appellants Article XIV, § 1, of the Maryland Constitution requires a three-fifths affirmative vote of the membership of both houses of the General Assembly in order to have proposed constitutional amendments submitted to the State's voters at a referendum Admittedly, legislators from the less populous counties controlled each house of the Maryland Legislature And even if a constitutional convention were convened, representation at the convention would be based on the allocation of seats in the allegedly malapportioned General Assembly [12] Significantly, the Maryland Court of Appeals, in its initial opinion in this litigation, stated that "the chances of the appellants' obtaining relief from the infringement upon their alleged constitutional rights, other than from the courts, is so remote as to be practically nil" [13]

[10] Md Const, Art XIV, § 2

[11] Despite the clear mandate of Art XIV, § 2, of the State Constitution, which states that 'if a majority of voters at each election or elections shall vote for a Convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto" Compare the situation existing in Colorado, with respect to the availability of a political remedy, as discussed in our opinion in *Lucas*, —— U S, at ——

[12] Pursuant to Art XIV, § 2, of the Maryland Constitution, which provides "Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called"

[13] 228 Md, at 432–433, 180 A 2d, at 667.

Neither in the Maryland Constitution nor in the state statutes is there any provision relating to the reapportionment of representation in the General Assembly Apart from the limited and temporary reapportionment of the House enacted at the 1962 special session of the Maryland Legislature, following the holding of the Circuit Court that the House apportionment provisions of the Maryland Constitution were invalid, all efforts since 1867 to achieve a substantial reapportionment of seats in the General Assembly, with two rather minor exceptions, have been futile [14] In 1900, the City of Baltimore, because of its expanding population, was given an additional Senate seat and an additional legislative district, bringing its total to four senators and legislative districts. Two additional senators and two more legislative districts were added to Baltimore City's representation in 1922 Apart from these increases in the legislative representation of the City of Baltimore, membership in the Maryland Senate remains as provided for in the 1867 Constitution And, until 19 additional House seats were created and distributed among the five most populous political subdivisions in 1962, representation in the House of Delegates had been based, for a period of 95 years, on the limited-population formula embodied in the 1867 Maryland Constitution [15]

III.

In its unreported opinion holding the Maryland senatorial apportionment valid, the Circuit Court, after referring to the reapportionment of seats in the House of Delegates by the Maryland Legislature, stated: "It appears, therefore, and the Petitioners have conceded, that the Lower House has been legally reapportioned according to population." And the Maryland Court of Appeals, in its opinion upholding the Circuit Court's decision that the senatorial apportionment was constitutionally valid, pointed out that the instant appeal was from the lower court's decision on remand of the previously undecided question as to the validity of the senatorial apportionment, and stated: "No question is presented as to the validity of the 'stop-gap' legislation or the reapportionment of the House of Delegates" [16] Questioning the validity of the majority's assumption in this regard, the dissenters stated:

> "The majority of this Court in the present case seems to accept tacitly, if not expressly, the view that if one house of the Maryland General Assembly (the Senate) may be apportioned on a basis which ignores disparities of population, the other house (the House of Delegates) must be apportioned with due regard to population, and assumes that the House of Delegates now is so apportioned It is true that the apportionment of the House is not under attack on this appeal and no question with regard thereto is

[14] In fact, there has been no substantial change in the scheme of legislative representation in Maryland since 1837, when the system of indirect election of senators was abolished In 1864 the City of Baltimore was given additional representation in the form of three legislative districts, with one senator for each of the three districts A constitutional convention in 1867, which adopted the existing Maryland Constitution, confirmed the increased representation accorded the City of Baltimore, but otherwise based the legislative apportionment provisions which it adopted on the 1837 scheme

[15] For a discussion of various aspects of the Maryland legislative apportionment situation, including the instant litigation, see Note, Senate Reapportionment —The Maryland Experience, 31 Geo Wash. L Rev. 812 (1963).

[16] 229 Md., at 410, 184 A 2d, at 716

now before us. It is also true, however, that even as reapportioned by the May 1962 Special Session of the General Assembly, considerable disparities still exist in a number of instances, though previous disparities have been materially reduced. . . . There is no such close relationship between population and representation as in the case of the Michigan House . Surely, the present Maryland apportionment is not so closely related to population as is that of the House of Representatives of the Congress of the United States In that respect the Federal analogy is far from perfect "[17]

Appellants have continually asserted that not only is the constitutional validity of the apportionment of the Maryland Senate at issue in this appeal, but that also presented for decision is the sufficiency, under the Fourteenth Amendment to the Federal Constitution, of "the combined total representation provided for in both Houses of the Maryland General Assembly " Appellees, on the other hand, have repeatedly contended that the sole question presented in this appeal is whether one house of a bicameral state legislature, *i. e.*, the Maryland Senate, can be apportioned on a basis other than population, where the other house is presumably apportioned on a strict population basis Appellees have argued that, since the courts below assumed and appellants allegedly conceded that the Maryland House of Delegates, as reapportioned in 1962, is apportioned on a population basis, and since the decisions of the state courts below here appealed from considered only the validity of the apportionment of the Maryland Senate, this Court is precluded from considering the validity of the apportionment of the Maryland House and is required to assume that that body is now apportioned on a population basis

Regardless of possible concessions made by the parties and the scope of the consideration of the courts below, in reviewing a state legislative apportionment case this Court must of necessity consider the challenged scheme as a whole in determining whether the particular State's apportionment plan, in its entirety, meets federal constitutional requisites. It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house Rather, the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the State's voters, in both houses of a bicameral state legislature We therefor reject appellees' contention that the Court is precluded from considering the validity of the apportionment of the Maryland House of Delegates We cannot be compelled to assume that the Maryland House is presently apportioned on a population basis, when that is in fact plainly not so Furthermore, whether or not the House is apportioned on a population basis, the scheme of legislative representation in Maryland cannot be sustained under the Equal Protection Clause of the Federal Constitution, because of the gross disparities from population-based representation in the apportionment of seats in the Maryland Senate

[17] *Id.*, at 421–422, 184 A. 2d, at 723–724

IV.

In *Reynolds* v. *Sims*, 377 U. S. 695, decided also this date, we held that seats in both houses of a bicameral state legislature are required, under the Equal Protection Clause, to be apportioned substantially on a population basis. Neither house of the Maryland Legislature, even after the 1962 legislation reapportioning the House of Delegates, is apportioned sufficiently on a population basis to be constitutionally sustainable. Thus, we conclude that the Maryland Court of Appeals erred in holding the Maryland legislative apportionment valid, and that the decision below must be reversed.

We applaud the willingness of state courts to assume jurisdiction and render decision in cases involving challenges to state legislative apportionment schemes.[18] However, in determining the validity of a State's apportionment plan, the same federal constitutional standards are applicable whether the matter is litigated in a federal or a state court. Maryland's plan is plainly insufficient under the requirements of the Equal Protection Clause as spelled out in our opinion in *Reynolds*.[19]

For the reasons stated in *Reynolds*,[20] appellees' reliance on the so-called federal analogy as a sustaining principle for the Maryland apportionment scheme, despite significant deviations from population-based representation in both houses of the General Assembly, is clearly misplaced.[21] And considerations of history and tradition, relied upon by appellees, do not, and could not, provide a sufficient justification for the substantial deviations from population-based representation in both houses of the Maryland Legislature.

In view of the circumstances of this case, we feel it inappropriate to discuss remedial questions at the present time.[22] Since all members of both houses of the Maryland General Assembly were elected in 1962, and since all Maryland legislators are elected to serve four-year terms, the next election of legislators in Maryland will not be conducted until 1966. Thus, sufficient time exists for the Maryland Legislature to enact legislation reapportioning seats in the General Assembly prior to the 1966 primary and general elections. With the Maryland constitutional provisions relating to legislative apportionment hereby held unconstitutional, the Maryland Legislature presumably has the inherent power to enact at least temporary reapportionment

[18] A commendable example of an exercise of judicial responsibility by a state court in a case involving state legislative apportionment is provided by the action of the Kansas Supreme Court in *Harris* v. *Shanahan*, 387 P. 2d 771 (Kan. Sup. Ct. 1963). In that case the Kansas Supreme Court held that the statutory provisions apportioning seats in both houses of the Kansas Legislature were constitutionally invalid, but afforded the legislature a further opportunity to enact a constitutionally valid plan prior to the 1964 primary and general elections. Of course, this decision by the Kansas Supreme Court is not presently before us, and we indicate no view as to the merits in that case.

[19] The pattern of prolonged legislative inaction with respect to legislative apportionment matters and the existence of a rural stranglehold on the legislature in Maryland closely parallels the situation existing in Alabama, although Maryland, unlike Alabama, has no state constitutional provision requiring decennial legislative reapportionment.

[20] See *Reynolds* v. *Sims*, ____ U. S., at ____.

[21] Additionally, the Maryland legislative apportionment scheme here attacked fails to resemble the plan of representation in the Federal Congress in at least two important respects: the Maryland House, even as reapportioned in 1962, is clearly not apportioned on a population basis, and political subdivisions are not accorded the same number of senatorial seats, since, although each of Maryland's 23 counties is given only one Senate seat, six senators are allotted to the City of Baltimore.

[22] See *Reynolds* v. *Sims*, ____ U. S., at ____.

legislation pending adoption of state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements.[23]

Since primary responsibility for legislative apportionment rests with the legislature itself, and since adequate time exists in which the Maryland General Assembly can act, the Maryland courts need feel obliged to take further affirmative action only if the legislature fails to enact a constitutionally valid state legislative apportionment scheme in a timely fashion after being afforded a further opportunity by the courts to do so. However, under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan. We therefore reverse the judgment of the Maryland Court of Appeals, and remand the case to that Court for further proceedings not inconsistent with the views stated here and in our opinion in *Reynolds* v. *Sims*.

It is so ordered.

MR. JUSTICE CLARK concurs in the reversal for the reasons stated in his separate opinion in *Reynolds* v *Sims*, 377 U.S. 695, decided this date.

MR JUSTICE STEWART

In this case there is no finding by this Court or by the Maryland Court of Appeals that Maryland's apportionment plan reflects "no policy, but simply arbitrary and capricious action or inaction." Nor do I think such a finding on the record before us would be warranted. Consequently, on the basis of the constitutional views expressed in my dissenting opinion in *Lucas* v. *The Forty-Fourth General Assembly of the State of Colorado*, *ante*, p ___ I would affirm the judgment of the Maryland Court of Appeals unless the Maryland apportionment "could be shown systematically to prevent ultimate effective majority rule." The Maryland court did not address itself to this question. Accordingly, I would vacate the judgment and remand this case to the state court for full consideration of this issue.

Levin Nock Davis, Secretary, State Board of Elections, et al., Appellants,

v.

Harrison Mann et al.

[June 15, 1964.]

MR CHIEF JUSTICE WARREN delivered the opinion of the Court

Presented for decision in this case is the validity, under the Equal Protection Clause of the Fourteenth Amendment to the Federal Con-

[23] See 228 Md., at 438–440, 180 A. 2d, at 670–671, where the Maryland Court of Appeals stated that, if the Maryland constitutional provisions relating to legislative apportionment were found invalid by the lower court, the Maryland Legislature would have the power to enact reapportionment legislation, "because the powers of the General Assembly of Maryland are plenary, except as limited by constitutional provisions." See also the reference to this matter earlier in this opinion, *ante*, at ____

stitution, of the apportionment of seats in the legislature of the Commonwealth of Virginia.

I.

Plaintiffs below, residents, taxpayers and qualified voters of Arlington and Fairfax Counties, filed a complaint on April 9, 1962, in the United States District Court for the Eastern District of Virginia, in their own behalf and on behalf of all voters in Virginia similarly situated, challenging the apportionment of the Virginia General Assembly. Defendants, sued in their representative capacities, were various officials charged with duties in connection with state elections Plaintiffs claimed rights under provisions of the Civil Rights Act, 42 U. S C §§ 1983, 1988, and asserted jurisdiction under 28 U S C § 1343 (3)

The complaint alleged that the present statutory provisions apportioning seats in the Virginia Legislature, as amended in 1962, results in invidious discrimination against plaintiffs and "all other voters of the State Senatorial and House districts" in which they reside, since voters in Arlington and Fairfax Counties are given substantially less representation than voters living in other parts of the State Plaintiffs asserted that the discrimination was violative of the Fourteenth Amendment as well as the Virginia Constitution, and contended that the requirements of the Equal Protection Clause of the Federal Constitution, and of the Virginia Constitution, could be met only by a redistribution of legislative representation among the counties and independent cities of the State "substantially in proportion to their respective populations" Plaintiffs asserted that they "possess an inherent right to vote for members of the General Assembly and to cast votes that are equally effective with the votes of every other citizen" of Virginia, and that this right was being diluted and effectively denied by the discriminatory apportionment of seats in both houses of the Virginia Legislature under the statutory provisions attacked as being unconstitutional. Plaintiffs contended that the alleged inequalities and distortions in the allocation of legislative seats prevented the Virginia Legislature from "being a body representative of the people of the Commonwealth," and resulted in a minority of the people of Virginia controlling the General Assembly

The complaint requested the convening of a three-judge District Court With respect to relief, plaintiffs sought a declaratory judgment that the statutory scheme of legislative apportionment in Virginia, prior as well as subsequent to the 1962 amendments, contravenes the Equal Protection Clause of the Fourteenth Amendment and is thus unconstitutional and void Plaintiffs also requested the issuance of a prohibitory injunction restraining defendants from performing their official duties relating to the election of members of the General Assembly pursuant to the present statutory provisions Plaintiffs further sought a mandatory injunction requiring defendants to conduct the next primary and general elections for legislators on an at-large basis throughout the State

A three-judge District Court was promptly convened Residents and voters of the City of Norfolk were permitted to intervene as plaintiffs against the original defendants and against certain additional defendants, election officials in Norfolk. On June 20, 1962, all of the plaintiffs obtained leave to amend the complaint by adding an additional

prayer for relief which requested that, unless the General Assembly "promptly and fairly" reapportioned the legislative districts, the Court should reapportion the districts by its own order so as to accord the parties and others similarly situated "fair and proportionate" representation in the Virginia Legislature.

Evidence presented to the District Court by plaintiffs included basic figures showing the populations of the various districts from which senators and delegates are elected and the number of seats assigned to each From that data various statistical comparisons were derived Since the 1962 reapportionment measures were enacted only two days before the complaint was filed and made only small changes in the statutory provisions relating to legislative apportionment, which had been last amended in 1958, the evidence submitted covered both the present and the last previous apportionments Defendants introduced various exhibits showing the numbers of military and military-related personnel in the City of Norfolk and in Arlington and Fairfax Counties, disparities from population-based representation among the various States in the Federal Electoral College, and results of a comparative study of state legislative apportionment which show Virginia as ranking eighth among the States in population-based legislative representativeness, as reapportioned in 1962

On November 28, 1962, the District Court, with one judge dissenting, sustained plaintiffs' claim and entered an interlocutory order holding the apportionment of the Virginia Legislature violative of the Federal Constitution 213 F Supp 577 The Court refused to dismiss the case or stay its action on the ground, asserted by defendants, that plaintiffs should be required first to procure the views of the state courts on the validity of the apportionment scheme Instead, it held that, since neither the 1962 legislation nor the relevant state constitutional provisions were ambiguous, no question of state law necessitating abstention by the Federal District Court was presented In applying the Equal Protection Clause to the Virginia apportionment scheme, the Court stated that, although population is the predominant consideration, other factors may be of some relevance "in assaying the justness of the apportionment " Stating that the Federal Constitution requires a state legislative apportionment to "accord the citizens of the State substantially equal representation," the Court held that the inequalities found in the statistical information relating to the population of the State's various legislative districts, if unexplained, sufficiently showed an "invidious discrimination" against plaintiffs and those similarly situated The Court rejected any possibility of different bases of representation being applicable in the two houses of the Virginia Legislature, stating that, in Virginia, each house has "a direct, indeed the same, relation to the people," and that the principal present-day justification for bicameralism in state legislatures is to insure against precipitate action by imposing greater deliberation upon proposed legislation Because of the gross inequalities in representation among various districts, in both houses of the Virginia Legislature, the Court put the burden of explanation on defendants, and found that they had failed to meet it Consequently, the Court concluded that the discrimination against Arlington and Fairfax Counties and the City of Norfolk was a grave and "constitutionally impermissible" depriva-

tion, violative of the Equal Protection Clause of the Fourteenth Amendment.

With respect to relief, the Court stated that, while it would have preferred that the General Assembly itself correct the unconstitutionality of the 1962 apportionment legislation, it would not defer deciding the case until after the next regular session of the Virginia Legislature in January 1964, because senators elected in November 1963 would hold office until 1968 and delegates elected in 1963 would serve until 1966. Deferring action would thus result in unreasonable delay in correcting the injustices in the apportionment of the Senate and the House of Delegates, concluded the Court

The District Court's interlocutory order declared that the 1962 apportionment violated the Equal Protection Clause and accordingly was void and of no effect It also restrained and enjoined defendants from proceeding with the conducting of elections under the 1962 legislation, but stayed the operation of the injunction until January 31, 1963, so that either the General Assembly could act or an appeal could be taken to this Court, provided that, if neither of these steps were taken, plaintiffs might apply to the District Court for further relief. Finally, the court below retained jurisdiction of the case for the entry of such orders as might be required.

An appeal to this Court was timely noted by defendants On application by appellants, THE CHIEF JUSTICE, on December 15, 1962, granted a stay of the District Court's injunction pending final disposition of the case by this Court Because of this stay, the November 1963 election of members of the Virginia Legislature was conducted under the existing statutory provisions. We noted probable jurisdiction on June 10, 1963. 374 U.S. 803.

II.

The Virginia Constitution provides for a Senate of not more than 40 nor less than 33 members, in Art IV, § 41, and for a House of Delegates of not more than 100 nor less than 90 seats, in Art IV, § 42 Senators are elected quadrennially and delegates biennially At all relevant times, state statutes have fixed the number of senators at 40 and the number of delegates at 100 Pursuant to the state constitutional requirement of legislative reapportionment at least decennially, contained in Art IV, § 43, the General Assembly has reapportioned senatorial and House seats in 1932, 1942, and 1952, as well as in 1962, and in 1958 the apportionment statutes were amended [1]

[1] Reapportionment in 1952 was accomplished only after the Governor convened a special session of the Virginia Legislature for that purpose, since the legislature had adjourned without enacting any statutes reallocating representation In anticipation of the constitutional mandate to reapportion in 1962, the Virginia Governor, in January 1961, appointed a commission on redistricting In doing its work, this commission employed the assistance of the Bureau of Public Administration of the University of Virginia Suggesting that Senate and House districts should be, as nearly as practicable, equal in population, the Bureau submitted two alternative plans for the apportionment of the House and three alternative plans for the apportionment of Senate seats These plans all followed the various criteria traditionally considered in previous apportionments and complied with the constitutionally prescribed size limitations on both of the houses In late 1961, the commission filed its report recommending a redistricting plan different from any of the plans submitted by the Bureau Its plan based more on political compromise than any of the Bureau's suggested plans deviated further from population-based representation than any of the Bureau's proposals At its 1962 regular session, the Virginia General Assembly completely disregarded both the commission report and the plans prepared by the Bureau, and

The Virginia Constitution contains no express standards, however, for the apportionment of legislative representation, and leaves the task of establishing districts solely up to the discretion of the legislature.

With respect to political subdivisions, Virginia has 98 counties and 32 independent cities Despite the absence of any specific provisions in the State Constitution, population has generally been traditionally regarded as the most important factor for legislative consideration in reapportioning and redistricting. Because cities and counties have consistently not been split or divided for purposes of legislative representation, multimember districts have been utilized for cities and counties whose populations entitle them to more than a single representative, resulting in there always being less than 100 delegate districts and less than 40 senatorial districts And, because of a tradition of respecting the integrity of the boundaries of cities and counties in drawing district lines, districts have been constructed only of combinations of counties and cities and not by pieces of them. This has resulted in the periodic utilization of floterial districts [2] where contiguous cities or counties cannot be combined to yield population totals reasonably close to a population ratio figure determined by dividing the State's total population by the number of seats in the particular legislative body Various other factors, in addition to population, which have historically been considered by Virginia Legislatures in enacting apportionment statutes include compactness and contiguity of territory in forming districts, geographic and topographic features, and community of interests among people in various districts.

Section 24–14 of the Virginia Code, as amended in 1962, provides for the apportionment of the Virginia Senate, and divides the State into 36 senatorial districts for the allocation of the 40 seats in that body With a total state population of 3,966,949, according to the 1960 census, and 40 Senate seats, the ideal ratio would be one senator for each 99,174 persons Under the 1962 statute, however, Arlington County is given but one senator for its 163,401 persons, only .61 of the representation to which it would be entitled on a strict population basis. The City of Norfolk has only 65 of its ideal share of senatorial representation, with two senators for a population of 305,872. And Fairfax County (including the cities of Fairfax and Falls Church),

adopted apportionment schemes of its own for each house, in practical effect making only minimal changes in the existing statutory provisions These enactments, of course, are the ones principally complained of by appellees in this litigation

[2] The term "floterial district" is used to refer to a legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned See *Baker* v *Carr*, 369 U S 186, 256 (CLARK, J., concurring) As an example, the City of Lynchburg, with a 1960 population of only 54,790, is itself allocated one seat in the Virginia House of Delegates under the 1962 apportionment plan Amherst County, with a population of only 22,953, is not given any independent representation in the Virginia House But the City of Lynchburg and Amherst County are combined in a floteral district with a total population of 77,743 Presumably, it was felt that Lynchburg was entitled to some additional representation in the Virginia House, since its population significantly exceeded the ideal House district size of 36,669 However, since Lynchburg's population did not approach twice that figure, it was apparently decided that Lynchburg was not entitled, by itself, to an added seat Adjacent Amherst County, with a population substantially smaller than the ideal district size, was presumably felt not to be entitled to a separate House seat The solution was the creation of a floterial district comprised of the two political subdivisions, thereby according Lynchburg additional representation and giving Amherst County a voice in the Virginia House, without having to create separate additional districts for each of the two political subdivisions

with two senators for 285,194 people, has but .70 of its ideal representation in the Virginia Senate In comparison, the smallest senatorial district, with respect to population, has only 61,730, and the next smallest 63,703 [3] Thus, the maximum population-variance ratio between the most populous and least populous senatorial districts is 2 65-to-1. Under the 1962 senatorial apportionment, applying 1960 population figures, approximately 41 1% of the State's total population reside in districts electing a majority of the members of that body.[4]

Apportionment of seats in the Virginia House of Delegates is provided for in § 24–12 of the Virginia Code, as amended in 1962, which creates 70 House districts and distributes the 100 House seats among them Dividing the State's total 1960 population by 100 results in an ideal ratio of one delegate for each 39,669 persons Fairfax County, with a population of 285,194, is allocated only three House seats under the 1962 apportionment provisions, however, thus being given only 42 of its ideal representation While the average population per delegate in Fairfax County is 95,064. Whythe County, with only 21,975 persons, and Shenandoah County, with a population of only 21,825, are each given one seat in the Virginia House [5] The maximum population-variance ratio, between the most populous and least populous House districts, is thus 4 36-to-1. The City of Norfolk, with 305,872 people, is given only six House seats, and Arlington County, with a population of 163,401, is allocated only three Under the 1962 reapportionment of the House of Delegates, 40 5% of the State's population live in districts electing a majority of the House members Twenty-seven House districts have more than three times the representation of the people of Fairfax County, 12 districts have twice the representation of Arlington County, and six, twice that of Norfolk.

No adequate political remedy to obtain legislative reapportionment appears to exist in Virginia [6] No initiative procedure is provided for under Virginia law. Amendment of the State Constitution or the calling of a constitutional convention initially requires the vote of a majority of both houses of the Virginia General Assembly.[7] Only after such legislative approval is obtained is such a measure submitted to the people for a referendum vote Legislative apportionment questions do not appear to have been traditionally regarded as nonjusticiable

[3] In illustrating the disparities from population-based representation in the apportionment of Senate seats, the District Court included in its opinion a chart showing the composition (by counties and cities) and populations of, and the number of senators allotted to, the various senatorial districts and comparing these figures with the senatorial representation given Arlington, Fairfax and Norfolk 213 F Supp , at 581–582

[4] Appellees have pointed out, however, that, since seats in the Virginia Legislature are reapportioned decennially, and since the allegedly underrepresented districts are those whose populations are increasing more rapidly than the allegedly overrepresented ones, the disparities from population-based representation, in both houses of the Virginia Legislature, will continually increase throughout the 10-year period until the next reapportionment

[5] In discussing deviations from population-based representation in the allocation of seats in the House of Delegates, the District Court included, as part of its opinion, a chart showing the populations of and the number of seats given to certain House districts, and comparing these figures with the House representation accorded Arlington, Fairfax and Norfolk 213 F Supp , at 582–584

[6] For a discussion of the lack of federal constitutional significance of the presence or absence of an available political remedy, see *Lucas* v *The Forty-Fourth General Assembly of the State of Colorado*, ___U S ___–___, decided also this date

[7] Va Const , Art XV, §§ 196, 197

by Virginia state courts, however,[8] and appellees could possibly have sought and obtained relief in a state court as well as in a Federal District Court.[9]

III.

In *Reynolds* v. *Sims*, 377 U. S. 695, decided also this date, we held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis. Neither of the houses of the Virginia General Assembly, under the 1962 statutory provisions here attacked, is apportioned sufficiently on a population basis to be constitutionally sustainable. Accordingly, we hold that the District Court properly found the Virginia legislative apportionment invalid.

Appellants' contention that the court below should have abstained so as to permit a state court to decide the questions of state law involved in this litigation is without merit. Where a federal court's jurisdiction is properly invoked, and the relevant state constitutional and statutory provisions are plain and unambiguous, there is no necessity for the federal court to abstain pending determination of the state law questions in a state court. *McNeese* v. *Board of Education*, 373 U. S. 668. This is especially so where, as here, no state proceeding had been instituted or was pending when the District Court's jurisdiction was invoked. We conclude that the court below did not err in refusing to dismiss the proceeding or stay its action pending recourse to the state courts.

Undoubtedly, the situation existing in Virginia, with respect to legislative apportionment, differs not insignificantly from that in Alabama. In contrast to Alabama, in Virginia the legislature has consistently reapportioned itself decennially as required by the State Constitution. Nevertheless, state legislative malapportionment, whether resulting from prolonged legislative inaction or from failure to comply sufficiently with federal constitutional requisites, although reapportionment is accomplished periodically, falls equally within the proscription of the Equal Protection Clause.

We reject appellants' argument that the underrepresentation of Arlington, Fairfax and Norfolk is constitutionally justifiable since it allegedly resulted in part from the fact that those areas contain large numbers of military and military-related personnel. Discrimination against a class of individuals, merely because of the nature of their

[8] In *Brown* v. *Saunders*, 159 Va. 28, 166 S. E. 105 (1932), the Supreme Court of Appeals of Virginia held that a congressional districting statute enacted by the Virginia Legislature was invalid since it conflicted with Art. IV, § 55, of the State Constitution, which requires congressional districts to have "as nearly as practicable, an equal number of inhabitants." Of course, involved in that case was a specific state constitutional requirement relating to congressional districting, whereas no such detailed state requirements exist with respect to apportionment of seats in the Virginia Legislature. Appellants have argued, however, that this decision indicates that Virginia courts will also adjudicate questions relating to the validity of the State's legislative apportionment scheme under the provisions of the Federal Constitution.

[9] However, in *Tyler* v. *Davis*, a case involving a suit instituted on March 26, 1963, almost four months after the District Court's decision in the instant case, the Circuit Court of the City of Richmond dismissed, on the merits, an action challenging the apportionment of seats in the Virginia Legislature. Although the state court found that it had jurisdiction and that the questions raised were justiciable in nature, it dismissed the complaint on the ground that plaintiffs had failed to show that the scheme for apportioning seats in the Virginia Legislature was an invidiously discriminatory one violative of the Equal Protection Clause.

employment, without more being shown, is constitutionally impermissible Additionally, no showing was made that the Virginia Legislature in fact took such a factor into account in allocating legislative representation [10] And state policy, as evidenced by Virginia's election laws, actually favors and fosters voting by military and military-related personnel [11] Furthermore, even if such persons were to be excluded in determining the populations of the various legislative districts, the discrimination against the disfavored areas would hardly be satisfactorily explained, because, after deducting military and military-related personnel, the maximum population-variance ratios would still be 2 22-to-1 in the Senate and 3 53-to-1 in the House

We also reject appellants' claim that the Virginia apportionment is sustainable as involving at attempt to balance urban and rural power in the legislature Not only does this explanation lack legal merit, but it also fails to conform to the facts. Some Virginia urban areas, such at Richmond, by comparison with Arlington, Fairfax and Norfolk, appear to be quite adequately represented in the General Assembly And, for the reasons stated in *Reynolds*,[12] in rejecting the so-called federal analogy, and in *Gray* v *Sanders*, 372 U. S. 368, 378, appellants' reliance on an asserted analogy to the deviations from population in the Federal Electoral College is misplaced The fact that the maximum variances in the populations of various state legislative districts are less than the extreme deviations from a population basis in the composition of the Federal Electoral College fails to provide a constitutionally cognizable basis for sustaining a state apportionment scheme under the Equal Protection Clause

We find it unnecessary and inappropriate to discuss questions relating to remedies at the present time [13] Since the next election of Virginia legislators will not occur until 1965, ample time remains for the Virginia Legislature to enact a constitutionally valid reapportionment scheme for purposes of that election After the District Court has provided the Virginia Legislature with an adequate opportunity to enact a valid plan, it can then proceed, should it become necessary, to grant relief under equitable principles to insure that no further elections are held under an unconstitutional scheme Since the District Court stated that it was retaining jurisdiction and that plaintiffs could seek further appropriate relief, the court below presumably intends to take further action should the Virginia Legislature fail to act promptly in remedying the constitutional defects in the State's legislative apportionment plan We therefore affirm the judgment of the District Court on the merits of this litigation, and remand the case for further pro-

[10] See 213 F Supp, at 584

[11] Virginia's election laws enable persons in the armed forces to vote without registration or payment of poll tax Va Code Ann, 1950 (Repl Vol 1964) § 24-23 1 While the literal language of this provision grants the privilege to those "on active service in time of war," the Virginia State Board of Electors is applying it currently Although the mere stationing of military personnel in the State does not give them residence, Virginia election officials interpret the applicable statutory provisions to mean that residence for military personnel is determined in the same manner as for all other citizens. Military personnel and members of their families who have been residents of Virginia for a year, residents of a county, city or town for six months, and residents of a precinct for 30 days are entitled to vote Military personnel are not included in the categories of persons disabled from voting Va Code Ann, 1950 (Repl Vol 1964) § 24-18

[12] See *Reynolds* v *Sims*, ___ U S, at ___-___

[13] See *id*, at ___

ceedings consistent with the views stated here and in our opinion in *Reynolds* v. *Sims*.

It is so ordered.

MR. JUSTICE CLARK concurs in the reversal for the reasons stated in his separate opinion in *Reynolds* v. *Sims*, 377 U. S. 695, decided this date.

MR. JUSTICE STEWART:

In this case, the District Court recognized that "population is not . . . the sole or definitive measure of districts when taken by the Equal Protection Clause" 213 F. Supp., at 584 In reaching its decision the court made clear that it did not "intend to say that there cannot be wide differences of population in districts if a sound reason can be advanced for the discrepancies." *Id.*, at 585 The District Court, however, could find "no rational basis for the disfavoring of Arlington, Fairfax and Norfolk." *Ibid.* In my opinion the appellants have failed to show that the trial court erred in reaching this conclusion. Accordingly, in keeping with the view expressed in my dissenting opinion in *Lucas* v. *The Forty-Fourth General Assembly of The State of Colorado*, I would affirm the District Court's judgment holding that to the extent a state legislative apportionment plan is conclusively shown to have no rational basis, such a plan violates the Equal Protection Clause

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Mabel V. Roman, Clerk, etc., et al.,
Appellants,
v.
Richard Sincock et al.
[June 15, 1964.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court:

Presented for decision in this case is the constitutional validity, under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution, of the apportionment of seats in the Delaware General Assembly.

I.

Shortly after this Court's decision in *Baker* v *Carr*, 369 U. S. 186, plaintiffs below residents, taxpayers and qualified voters of New Castle County, Delaware, filed a complaint in the United States District Court for the District of Delaware, in their own behalf and on behalf of all persons similarly situated, challenging the apportionment of the Delaware Legislature. Defendants, sued in their representative capacities, were various officials charged with the performance of certain duties in connection with state elections The complaint alleged deprivation of rights under the Equal Protection Clause of the Fourteenth Amendment, and asserted that the District Court had jurisdiction under the Fourteenth Amendment, 42 U. S C. §§ 1983 and 1988, and 28 U S. C. §§ 1343 and 2201.

Plaintiffs below alleged that the apportionment of seats in the Delaware Legislature resulted in an "invidious discrimination as to the in-

habitants of New Castle County and the City of Wilmington," operated to deny them the right to cast votes for Delaware legislators "that are of equal effect with that of every other citizen of the State of Delaware," and was arbitrary and capricious in failing to provide a reasonable classification of those voting for members of the Delaware General Assembly.[1] Plaintiffs also asserted that they were without any other adequate remedy since the existing legislative apportionment was frozen into the 1897 Delaware Constitution; that the present legislature was dominated by legislators representing the two less populous counties, that it was, as a practical matter, impossible to amend the State Constitution or convene a constitutional convention for the purpose of reapportioning the General Assembly, and that the Delaware Legislature had consistently fail to tak appropriate action with respect to reapportionment

Plaintiffs below sought a declaration that Art II, § 2, of the Delaware Constitution, which established the apportionment of seats in both houses of the Delaware Legislature, is unconstitutional, and an injunction against defendants to prevent the holding of any further elections under the existing apportionment scheme Plaintiffs also requested that the District Court either reapportion the Delaware Legislature on a population basis or, alternatively, direct that the November 1962 general election be conducted on an at-large basis A three-judge District Court was asked for by plaintiffs, and was promptly convened

On July 25, 1962, the District Court entered an order staying the proceedings until August 7, 1962, in order to permit the Delaware Legislature to take "some appropriate action" 207 F Supp 205 The Court noted that, since publication of any proposed constitutional amendment at least three months prior to the next general election was required under Delaware law,[2] it would serve no useful purpose to grant a stay beyond August 7, 1962

On July 30, 1962, the General Assembly approved a proposed amendment to the legislative apportionment provisions of the Delaware Constitution,[3] based upon recommendations of a bipartisan reapportionment committee appointed by the Delaware Governor Under Delaware law this amendment could not, however, become effective unless again approved during the next succeeding session of the General Assembly.[4]

On August 7, 1962, the District Court entered an order refusing to dismiss the suit, and stated that, while it had no desire to substitute its judgment for the collective wisdom of the Delaware General Assembly in matters of legislative apportionment, it had no alternative but to proceed promptly in deciding the case 210 F Supp 395 Some of the defendants applied for a further stay of proceedings so that the General Assembly coming into office in January 1963 would have an opportunity to approve the proposed constitutional amendment On August 8, 1962, plaintiffs applied for a preliminary injunction against the

[1] Interestingly, Art I, § 3, of the Delaware Constitution provides "All elections shall be free and equal"

[2] Sec 207 F Supp, at 207 All of the decisions of the court below are reported *sub nom Sincock v Duffy*

[3] By the requisite two-thirds vote in both houses of the General Assembly, pursuant to Art XVI, § 1, of the Delaware Constitution

[4] Under Art XVI, § 1, of the Delaware Constitution, a constitutional amendment must be passed by a two-thirds vote of both houses of successive General Assemblies before becoming part of the State Constitution

conducting of the November 1962 general election under the existing apportionment provisions Plaintiffs were thereafter permitted to amend their complaint to request that the proposed constitutional amendment also be declared unconstitutional and that the Court order a provisional reapportionment of the Delaware Legislature.

On October 16, 1962, the District Court denied both the applications for a preliminary injunction and for a further stay 210 F. Supp 396. Denial of a preliminary injunction effectively permitted the holding of the November 1962 general election pursuant to the legislative apportionment provisions of the 1897 Delaware Constitution After extended pretrial proceedings, the Court, on November 27, 1962, entered a pretrial order in which the parties agreed to the accuracy of a series of exhibits, statistics and various statistical computations In early January 1963, the Delaware General Assembly, elected in November 1962, approved the proposed constitutional amendment by the requisite two-thirds vote As a result, the amendment to the legislative apportionment provisions of Art II, § 2, became effective on January 17, 1963, since having been passed by two successive General Assemblies [5] Trial before the District Court ensued, with the expert testimony of various political scientists being presented

On April 17, 1963, the District Court, in an opinion by Circuit Judge Biggs, held that Art II, § 2, of the Delaware Constitution, both before and after the 1963 amendment, resulted in gross and invidious discrimination against the plaintiffs and others similarly situated, in violation of the Equal Protection Clause of the Fourteenth Amendment 215 F. Supp 169 Stating that "the fundamental issue presented for . . . adjudication is whether or not the apportioning of members of the General Assembly of the State of Delaware offends the electors of the State because of an alleged debasement of their voting rights," the Court indicated that it would pass upon the constitutional validity of both the provisions of the 1897 Constitution and the provisions of the 1963 constitutional amendment After considering in detail the apportionment of legislature seats under the provisions of the 1897 Delaware Constitution, the court below concluded that "the uneven growth of the different areas of the State created a condition because of which the numbers of inhabitants in representative and senatorial districts differed not only on an intercounty but also on an intracounty basis" After discussing the effect of the 1963 reapportionment amendment, the District Court turned to a consideration of plaintiffs' claim under the Federal Constitution Stating that the rights asserted by plaintiffs are "personal civil rights" of great importance, the court below continued:

> " . Section 2 of Article II of the Constitution of Delaware as it existed prior to the 1963 Amendment and as it exists today creates such an inequality in voting power, resulting in invidious discrimination, as to bring it within the proscription of the Fourteenth Amendment of the Constitution of the United States . . This is true as to the apportionment of the Senate as well as to the apportionment of the House of Representatives of the General Assembly of Delaware While mathematical exactitude in

[5] 53 Del Laws, c 425 (1962), 54 Del Laws, c 1 (1963)

apportionment cannot be expected, and indeed is not possible in an absolute sense, disparities created by Section 2 of Article II, as it was prior to the 1963 Amendment and as it is now, are of such a startling nature as to demonstrate a debasement of franchise of individual electors of this State which the Equal Protection Clause of the Federal Constitution cannot tolerate." [6]

After holding that the apportionment of at least one house of a bicameral state legislature must be based substantially on population, the District Court rejected the relevancy of the so-called federal analogy as a justification for departures from a population-based apportionment scheme in the other house of a state legislature. Although finding no rational or reasonable basis for the Delaware apportionment, either as it previously existed or as amended, the Court nevertheless concluded that reapportionment was basically a legislative function, and that a further opportunity should be given to the General Assembly to reapportion itself properly in accordance with the requirements of the Fourteenth Amendment. After attempting to delineate some guidelines for the Delaware Legislature to follow in reapportioning, the court below, with an eye toward the impending 1964 elections, gave the General Assembly until October 1, 1963, to adopt a constitutionally valid plan.[7] The District Court entered a decree declaring Art. II, § 2, of the Delaware Constitution to be unconstitutional, and retained jurisdiction to order injunctive or other relief if it became necessary to do so.

On May 6, 1963, the Supreme Court of Delaware advised the Delaware Governor that, notwithstanding the holding of the District Court, he should proceed according to the provisions of the invalidated 1963 constitutional amendment to proclaim a redistricting plan for House of Representatives seats. The Delaware Supreme Court's opinion was predicated on the view that the District Court's decision was not a final one, since it was appealable and since no injunctive relief had been granted. Acting on this device, while making reference to the District Court's decision, the Governor, on May 17, 1963, proclaimed a plan providing for the redistricting of certain House districts in accordance with the provisions of the 1963 reapportionment amendment. Under these circumstances, on May 20, 1963, the District Court entered an injunction against the holding of any elections for General Assembly seats under Art. II, § 2, of the Delaware Constitution, either as it had previously existed or as amended, and again reserved jurisdiction to make such further orders as it might deem necessary. The District Court denied a motion to stay its injunction pending appeal, but, on application by

[6] 215 F. Supp., at 184.

[7] The other two judges both wrote short opinions. Chief District Judge Wright indicated that he concurred in the view that Art. II, § 2, of the Delaware Constitution, before and after amendment, was unconstitutional, since at least one house of a state legislature must be apportioned strictly on a population basis. He indicated that he also agreed with the "precatory" observation" of Judge Biggs that the other house must also be apportioned substantially on a population basis.

District Judge Layton concurred in the result reached, finding that Art. II § 2, of the Delaware Constitution, prior to as well as after the 1963 amendment, was unconstitutional with respect to the House of Representatives. He stated that, since the 1963 amendment contained no severability clause, the whole amendment was unconstitutional because of the provisions relating to the House, and that therefore there was no need to consider whether the senatorial provisions were valid. He indicated, however, that he thought that it was permissible to apportion one house on a nonpopulation, area basis where the other house was apportioned strictly on population, since such a system would be patterned on the scheme of representation in the Federal Congress.

defendants below, MR JUSTICE BRENNAN, on June 27, 1963, stayed the operation of the District Court's injunction pending final disposition of the case by this Court Notices of appeal from the District Court's final decree, and from its injunction and denial of the motion for a stay, were timely filed by defendants Pursuant to this Court's Rule 15(3), both appeals have been treated as a single case When appellees filed a motion to affirm, appellants countered with a motion to advance On October 21, 1963, we noted probable jurisdiction and granted appellants' motion to advance. 375 U S. 877

II.

Under the provisions of the 1897 Delaware Constitution relating to legislative apportionment, in force when this litigation was commenced, the State was geographically divided into 17 Senate and 35 House districts for the purpose of electing members of the Delaware Legislature Delaware senators serve four-year terms, with approximately half of the senators elected every two years, and all representatives are elected for two-year terms Qualified voters in each Senate and House district elect one senator and one representative, under the 1897 Constitution's apportionment plan Delaware is comprised of only three counties, and only one sizable metropolitan area—Wilmington Under the 1897 apportionment, five senatorial districts and 10 representative districts were allocated to Kent County, to Sussex County, and to "rural" New Castle County (that part of the county outside of the City of Wilmington), and Wilmington was given two senatorial and five representative districts The number and boundaries of both the senatorial and representative districts were specifically fixed and described in the constitutional provisions, and no provision was made for their alteration When the constitutional provisions were adopted, the population of the State of Delaware was approximately 180,000, with about 32,000 living in Kent County, 38,000 residing in Sussex County, and 105,000 living in New Castle County (of whom about 70,000 lived in the City of Wilmington) By 1960, the total population of Delaware had increased to 446,292, of which 307,446 resided in New Castle County, 95,827 in Wilmington and 211,619 in "rural" New Castle County. And, under the 1960 census figures, 65,651 lived in Kent County and 73,195 resided in Sussex County.

Under the 1897 apportionment scheme, as perpetuated over 65 years later, Senate districts ranged in population from 4,177 to 64,820, resulting in a maximum population-variance ratio, between the most populous and least populous Senate districts, of about 15-to-1 Senatorial districts in Kent and Sussex Counties were consistently much smaller in population than those in New Castle County, with the exception of one New Castle County district which, with a population of only 4,177, was the smallest senatorial district in the State [8] Only 22% of the State's total population resided in districts electing a majority of the members of the 17-member Senate applying 1960 census figures to the senatorial apportionment scheme existing when this litigation was commenced.

[8] *Included in the District Court's opinion is a chart showing the population of the 17 senatorial districts established by Art II, § 2, of the 1897 Delaware Constitution, and tracing the population changes in each during the period 1930–1960* 215 F Supp, at 176

Representative districts ranged in population, as of 1960, from 1,643 to 58,228, under Art II, § 2, of the 1897 Delaware Constitution, resulting in a maximum population-variance ratio, in the Delaware House, of about 35-to-1 Again, the average population of House districts in Kent and Sussex Counties was significantly smaller than that of those in New Castle County, although several of the "rural" New Castle County districts were among the smallest in the State Applying 1960 census figures to the 1897 apportionment scheme, with respect to the Delaware House, the 18 most sparsely populated representative districts, containing only about 18 5% of the State's total 1960 population, elected a majority of the members of the House of Representatives [9] Persons living in the six most populous representative districts, 233,718, more than one-half of the total state population, had only the same voting power, under the 1897 Constitution's scheme, as those 16,552 persons living in the six least populous districts, with respect to electing members of the Delaware House [10] Serious disparities in the population of districts, both House and Senate, *within* each county were also presented in the district population figures considered by the District Court [11]

Evidence before the District Court showed that, despite repeated attempts to reapportion the legislature or to call a constitutional convention for that purpose, the Delaware Legislature had consistently failed to take any action to change the existing apportionment of legislative seats. No initiative and referendum procedure exists in Delaware [12] Legislative apportionment has been traditionally provided for wholly by constitutional provisions in Delaware, and a concurrence of two-thirds of both houses of two consecutive state legislatures is required in order to amend the State Constitution [13] The Delaware General Assembly may also, by a two-thirds vote, submit to the State's voters the question of whether to hold a constitutional convention,[14]

Under the 1963 amendment to Art II, § 2, of the Delaware Constitution, the size of the Senate is increased from 17 to 21 members, and the four added seats are allotted equally to Kent and Sussex Counties, giving each of the State's three counties seven senators [15] The added senators are to be elected at large from districts comprising about one-half of the House districts in each of the two counties As a result of

[9] A chart showing the population of the 35 representative districts established by Art II, § 2, of the 1897 Delaware Constitution, and tracing the population changes in each during the period 1890–1960, is included in the District Court's opinion 215 F Supp, at 174–175

[10] And, as pointed out by the court below, under the apportionment of House seats contained in Art II, § 2, of the Delaware Constitution, "The inhabitants of the 18 least populated representative districts are less in number than those of the two districts having the heaviest concentration of population, nonetheless, the former elect 18 representatives in the House of Representatives, while the latter elect 2 representatives in the House of Representatives of the Delaware General Assembly" 215 F Supp, at 176

[11] The 35 representative districts tended to follow generally the boundaries of a "hundred," a geographical subdivision of counties in Delaware since its founding, and the 17 senatorial districts, which were also described in a detailed fashion in Art II, § 2, of the 1897 Delaware Constitution, were composed either of two representative districts each or two or more hundreds or portions of hundreds

[12] For a discussion of the lack of federal constitutional significance of the presence or absence of an available political remedy, see *Lucas v The Forty-Fourth General Assembly of the State of Colorado*, ____ U S ____ — ____, decided also this date

[13] Under Art XVI, § 1, of the Delaware Constitution

[14] Under Art XVI, § 2, of the Delaware Constitution

[15] A chart showing the composition of the Senate and the population of each of the 21 senatorial districts under the 1963 amendment is included in the District Court's opinion 215 F Supp, at 181

this change, each voter in Kent and Sussex Counties is entitled to vote for two senators and one representative With respect to the House of Representatives, the amendment provides that each existing representative district with a population in excess of 15,000 persons is to be allotted an additional representative for each additional 15,000 persons or major fraction thereof. The boundaries of the original 35 representative districts are not affected, and districts receiving additional representatives are to be divided, by a redistricting commission headed by the Governor, so that each of the new districts elects one representative [16] The net effect of the 1963 amendment, as regards immediate changes in House representation, is to allot 10 additional representatives to various districts in New Castle County, increasing the size of the House to 45 members Representation of Kent and Sussex Counties is to be unaffected. Under the revised apportionment, the maximum population-variance ratio is reduced to about 12-to-1 with respect to the House, but remains about 15-to-1 in the Senate. A majority of the members of the House would be elected, under the 1963 amendment, from districts with only about 28% of the State's total population. And, since the 1963 amendment added two Senate seats each for the two smaller counties, the change in senatorial apportionment would result in two-thirds of the Senate being elected from districts where only about 31% of the State's population reside. About 21% of the State's population would be represented by a majority of the members of the Delaware Senate, under the 1963 reapportionment.

The 1963 amendment also provided that, if a constitutional convention were to be called, the number of delegates and the method of their election were not to be affected by the amended apportionment provisions, and, for the purpose of any future constitutional convention, the representative districts were to elect delegates on the basis of the apportionment provided by Art II, § 2, as it existed prior to the amendment Thus, the number of constitutional convention delegates would continue to be 41, one from each of the 35 representative districts provided for under the 1897 scheme, with two elected at large from each of the three counties.[17]

III.

In *Reynolds* v. *Sims,* 377 U S 695, decided also this date, we held that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis Neither of the houses of the Delaware General Assembly, either before or after the 1963 constitutional amendment, was so apportioned. Thus, we hold that the District Court correctly found the Delaware legislative apportionment constitutionally invalid, and affirm the decisions below.

For the reasons stated in our opinion in *Reynolds,*[18] appellants' reliance upon the so-called federal analogy to justify the deviations from a population basis in the apportionment of seats in the Delaware Legis-

[16] Included in the District Court's opinion are charts indicating the effect of the 1963 amendment on the representation of New Castle County in the House of Representatives and showing the composition of the Delaware House, as reapportioned, including the population of each of its 45 districts under 1960 census figures 215 F Supp., at 179–180

[17] Under Art XVI, § 2, of the Delaware Constitution

[18] See *Reynolds* v *Sims,* —— U S., at ——.

lature is misplaced [19] And appellants' argument that the Delaware apportionment scheme should be upheld since Congress has admitted various States into the Union although the apportionment of seats in their legislatures was based on factors other than population is also unconvincing [20] In giving the Delaware Legislature an opportunity to adopt a constitutionally valid plan of legislative apportionment, and in deferring decision until after the November 1962 general election, because of the imminence of that election and the disruptive effect which its decision might have had, the District Court acted in a wise and temperate manner And the court below did not err in granting injunctive relief after it had become apparent that, despite its decree holding that the 1963 constitutional amendment reapportioning seats in the Delaware Legislature failed to comply with federal constitutional requirements, no further reapportionment by the Delaware General Assembly was probable.

Our affirmance of the decision below is not meant to indicate approval of the District Court's attempt to state in mathematical language the constitutionally pemissible bounds of discretion in deviating from apportionment according to population [21] In our view the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause. Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination

Apart from what we said in *Reynolds,* we express no view on questions relating to remedies at the present time [22] Regardless of the re-

[19] That the three Delaware counties may have possessed some attributes of limited sovereignity prior to the inception of Delaware at a State provides no basis for applying the federal analogy to legislative apportionment in Delaware while holding it inapplicable in other States Whatever the rule of counties in Delaware during the colonial period, they never have had those aspects of sovereignty which the States possessed when our federal system of government was adopted And it could hardly be contended that Delaware's counties retained any elements of sovereign power, when the State was formed, that at all compare with those retained by the States under our Federal Constitution See 215 F Supp, at 126, where the District Court stated that "there never was much and there is now no sovereignty in the Counties of Delaware "

Additionally, the Delaware legislative apportionment scheme here challenged, even after the 1963 constitutional amendment, fails to resemble the plan of representation in the Federal Congress in several significant respects the Delawaie House of Representatives is plainly not apportioned in accordance with population, and senators in Delaware are not chosen as representatives of counties Although, under the 1963 amendment, each county is given an equal number of senators, the 21 senators are chosen one each from the 21 senatorial districts, seven per county, established solely for the purpose of their election Each Delaware senator represents his district and not the county in which the district is located Members of the Federal Senate are of course elected from a State at large, and represent the entire State

[20] See the discussion of and the reasons for rejecting this argument in *Reynolds* v *Sims,* —— U S, at ——

[21] The court below suggested that population-variance ratios smaller than 1½-to-1 would presumably comport with minimal constitutional requisites, while ratios in excess thereof would necessarily involve deviations from population-based apportionment too extreme to be constitutionally sustainable See 215 F Supp, at 190

[22] See *Reynolds* v *Sims,* —— U S, at ——

quirements of the Delaware Constitution [23] and the fact that legislative apportionment has traditionally been considered a constitutional matter in Delaware, the delay inherent in following the state constitutional prescription for approval of constitutional amendments by two successive General Assemblies cannot be allowed to result in an impermissible deprivation of appellees' right to an adequate voice in the election of legislators to represent them. Acting under general equitable principles, the court below must now determine whether it would be advisable, so as to avoid a possible disruption of state election processes and permit additional time for the Delaware Legislature to adopt a constitutionally valid apportionment scheme, to allow the 1964 election of Delaware legislators to be conducted pursuant to the provisions of the 1963 constitutional amendment, or whether those factors are insufficient to justify any further delay in the effectuation of appellants' constitutional rights. We therefore affirm the decisions of the District Court here appealed from, and remand the case for further proceedings consistent with the views stated here and in our opinion in *Reynolds* v *Sims*.

It is so ordered.

MR. JUSTICE CLARK concurs in the reversal for the reasons stated in his separate opinion in *Reynolds* v. *Sims*, 377 U. S. 695, decided this date.

MR. JUSTICE STEWART:

In the case the appellees showed that the apportionment of seats among the districts represented in the Delaware House of Representatives and within the counties represented in the Delaware Senate, apparently reflects "no policy, but simply arbitrary and capricious action." The appellants have failed to dispel this showing by suggesting any possible rational explanation for these aspects of Delaware's system of legislative apportionment. Accordingly, for the reasons stated in my dissenting opinion in *Lucas* v. *The Forty-Fourth General Assembly of the State of Colorado, ante*, p. ____, I would affirm the judgment of the District Court insofar as it holds that Delaware's system of apportionment violates the Equal Protection Clause.

[23] Particularly Art. XVI, § 1, which requires the approval by successive state legislatures before a proposed constitutional amendment can be adopted.
In its initial opinion, incident to its order granting a limited stay, the District Court suggested that the Delaware Legislature might desire to amend the State Constitution so as to make legislative apportionment a statutory instead of a constitutional matter, in order to obviate the delay inherently involved in complying with the requirement of the Delaware Constitution that constitutional amendments must be approved by two successive General Assemblies before becoming effective. 207 F. Supp., at 206–207. In this manner, the District Court suggested, if the Delaware Legislature's attempt at reapportionment should be found deficient under the Federal Constitution, the General Assembly elected in November 1962 would be free, under state law, to proceed expeditiously with the enactment of a revised statutory reapportionment plan consonant with the requirements of the Equal Protection Clause. Unfortunately, the Delaware Legislature failed to act on the Court's suggestion, and instead proposed the constitutional amendment hereinbefore discussed, which was approved by two consecutive state legislatures in late 1962 and in early 1963. However, in its opinion on the merits, the District Court intimated that, with the Delaware constitutional provisions relating to legislative apportionment declared invalid, the Delaware Legislature could "then proceed to pass an apportionment statute meeting the requirements of the Fourteenth Amendment . . ." 215 F. Supp., at 191.

B. A. Reynolds, etc., et al.,
Appellants,
v.
M. O. Sims et al

David J. Vann and Robert S. Vance,
Appellants,
v.
Agnes Baggett, Secretary of State of Alabama et al.

John W. McConnell, Jr., et al.,
Appellants,
v.
Agnes Baggett, Secretary of State of Alabama et al.

WMCA, Inc., et al., Appellants,
v.
John P. Lomenzo, Secretary of States of the State of New York, et al.

The Maryland Committee for Fair Representation et al.,
Appellants,
v.
J. Millard Tawes, Governor, et al.

Levin Nock Davis, Secretary, State Board of Elections, et al.,
Appellants,
v.
Harrison Mann et al.

Mabel V. Roman, Clerk, etc., et al.,
Appellants,
v.
Richard Sincock et al.

Andres Lucas et al , etc.,
Appellants,
v.
The Forty-Fourth General Assembly of the State of Colorado et al.

[June 15, 1964.]

MR JUSTICE HARLAN, dissenting.

In these cases the Court holds that seats in the legislatures of six States [1] are apportioned in ways that violate the Federal Constitution Under the Court's ruling it is bound to follow that the legislatures in

[1] Alabama, Colorado, Delaware, Maryland, New York, Virginia

all but a few of the other 44 States will meet the same fate.[2] These decisions, with *Wesberry* v *Sanders*, 376 U S 1, involving congressional districting by the States, and *Gray* v *Sanders*, 372 U. S. 368, relating to elections for statewide office, have the effect of placing basic aspects of state political systems under the pervasive overlordship of the federal judiciary. Once again,[3] I must register my protest.

PRELIMINARY STATEMENT.

Today's holding is that the Equal Protection Clause of the Fourteenth Amendment requires every State to structure its legislature so that all the members of each house represent substantially the same number of people; other factors may be given play only to the extent that they do not significantly encroach on this basic "population" principle. Whatever may be thought of this holding as a piece of political ideology—and even on that score the political history and practices of this country from its earliest beginnings leave wide room for debate (see the dissenting opinion of Frankfurter, J., in *Baker* v *Carr*, 369 U. S. 186, 266, 301–323)—I think it demonstrable that the Fourteenth Amendment does not impose this political tenet on the States or authorize this Court to do so.

The Court's constitutional discussion, found in its opinion in the Alabama cases (Nos. 23, 27, 41, *ante*, p. ——) and more particularly at pages 26–33 thereof, is remarkable (as, indeed, is that found in the separate opinions of my Brothers STEWART and CLARK, *ante*, pp. ——, ——) for its failure to address itself at all to the Fourteenth Amendment as a whole or to the legislative history of the Amendment pertinent to the matter at hand. Stripped of aphorisms, the Court's argument boils down to the assertion that petitioners' right to vote has been invidiously "debased" or "diluted" by systems of apportionment which entitle them to vote for fewer legislators than other voters, an assertion which is tied to the Equal Protection Clause only by the constitutionally frail tautology that "equal" means "equal."

Had the Court paused to probe more deeply into the matter, it would have found that the Equal Protection Clause was never intended to inhibit the States in choosing any democratic method they pleased for the apportionment of their legislatures. This is shown by the language of the Fourteenth Amendment taken as a whole, by the understanding of those who proposed and ratified it, and by the political practices of the States at the time the Amendment was adopted. It is confirmed by numerous state and congressional actions since the adoption of the Fourteenth Amendment, and by the common understanding of the Amendment as evidenced by subsequent constitutional amendments and decisions of this Court before *Baker* v. *Carr*, *supra*, made an abrupt break with the past in 1962.

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[2] In the Virginia case, *Davis* v *Mann*, *post*, p. ——, the defendants introduced an exhibit prepared by the staff of the Bureau of Public Administration of the University of Virginia in which the Virginia Legislature, now held to be unconstitutionally apportioned, was ranked eighth among the 50 States in "representativeness," with population taken as the basis of representation. The Court notes that before the end of 1962, litigation attacking the apportionment of state legislatures had been instituted in at least 34 States. *Ante*, p. 21, note 30. See *infra*, p. 24.

[3] See *Baker* v *Carr*, 369 U. S. 186, 330, and the dissenting opinion of Frankfurter, J., in which I joined, *id.*, at 266; *Gray* v. *Sanders*, 372 U. S. 368, 382; *Wesberry* v. *Sanders*, 376 U. S. 1, 20.

The failure of the Court to consider any of these matters cannot be excused or explained by any concept of "developing" constitutionalism It is meaningless to speak of constitutional "development" when both the language and history of the controlling provisions of the Constitution are wholly ignored Since it can, I think, be shown beyond doubt that state legislative apportionments, as such, are wholly free of constitutional limitations, save such as may be imposed by the Republican Form of Government Clause (Const, Art IV, § 4),[4] the Court's action now bringing them within the purview of the Fourteenth Amendment amounts to nothing less than an exercise of the amending power by this Court.

So far as the Federal Constitution is concerned, the complaints in these cases should all have been dismissed below for failure to state a cause of action, because what has been alleged or proved shows no violation of any constitutional right

Before proceeding to my argument it should be observed that nothing done in *Baker* v. *Carr*, *supra*, or in the two cases that followed in its wake, *Gray* v. *Sanders* and *Wesberry* v. *Sanders*, *supra*, from which the Court quotes at some length, forecloses the conclusion which I reach

Baker decided only that claims such as those made here are within the competence of the federal courts to adjudicate Although the Court stated as its conclusion that the allegations of a denial of equal protection presented "a justiciable constitutional cause of action," 369 U. S., at 237, it is evident from the Court's opinion that it was concerned all but exclusively with *justiciability* and gave no serious attention to the question whether the Equal Protection Clause touches state legislative apportionments.[5] Neither the opinion of the Court nor any of the concurring opinions considered the relevant text of the Fourteenth Amendment or any of the historical materials bearing on that question. None of the materials was briefed or otherwise brought to the Court's attention.[6]

In the *Gray* case the Court expressly laid aside the applicability to state legislative apportionments of the "one person, one vote" theory there found to require the striking down of the Georgia county unit system. See 372 U. S, at 376, and the concurring opinion of STEWART, J., joined by CLARK, J., *id*, at 381–382.

In *Wesberry*, involving congressional districting, the decision rested on Art. I, § 2, of the Constitution The Court expressly did not reach the arguments put forward concerning the Equal Protection Clause See 376 U. S, at 8, note 10

[4] That clause, which manifestly has no bearing on the claims made in these cases, see V Elliot's Debates on the Adoption of the Federal Constitution (1845), 322–323, could not in any event be the foundation for judicial relief *Luther* v *Borden*, 7 How 1, 42–44, *Ohio ex rel Bryant* v *Akron Metropolitan Park District*, 281 U S 74, 79–80, *Highland Farms Dairy, Inc.* v *Agnew*, 300 U S 608, 612 In *Baker* v *Carr*, *supra*, at 227, the Court stated that reliance on the Republican Form of Government Clause "would be futile."

[5] It is fair to say that, beyond discussion of a large number of cases having no relevance to this question, the Court's views on this subject were fully stated in the compass of a single sentence Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action" 369 U S, at 226

Except perhaps for the "crazy quilt' doctrine of my Brother CLARK, 369 U S, at 251, nothing is added to this by any of the concurring opinions, *id*, at 241, 265

[6] The cryptic remands in *Scholle* v *Hare*, 369 U S 429, and *WMCA, Inc*, v *Simon*, 370 U S 190, on the authority of *Baker*, had nothing to say on the question now before the Court

Thus it seems abundantly clear that the Court is entirely free to deal with the cases presently before it in light of materials now called to its attention for the first time. To these I now turn

I.

A. *The Language of the Fourteenth Amendment.*

The Court relies exclusively on that portion of § 1 of the Fourteenth Amendment which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws," and disregards entirely the significance of § 2, which reads:

> "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. *But when the right to vote at any election for* the choice of electors for President and Vice President of the United States, Representatives in Congress, *the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied* to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, *or in any way abridged*, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State " (Emphasis added.)

The Amendment is a single text It was introduced and discussed as such in the Reconstruction Committee,[7] which reported it to the Congress It was discussed as a unit in Congress and proposed as a unit to the States,[8] which ratified it as a unit A proposal to split up the Amendment and submit each section to the States as a separate amendment was rejected by the Senate.[9] Whatever one might take to be the application to these cases of the Equal Protection Clause if it stood alone, I am unable to understand the Court's utter disregard of the second section which expressly recognizes the States' power to deny "or in any way" abridge the right of their inhabitants to vote for "the members of the [State] Legislature," and its express provision of a remedy for such denial or abridgement The comprehensive scope of the second section and its particular reference to the state legislatures precludes the suggestion that the first section was intended to have the result reached by the Court today If indeed the words of the Fourteenth Amendment speak for themselves, as the majority's disregard of history seems to imply, they speak as clearly as may be against the construction which the majority puts on them But we are not limited to the language of the Amendment itself.

B. *Proposal and Ratification of the Amendment.*

The history of the adoption of the Fourteenth Amendment provides conclusive evidence that neither those who proposed nor those who ratified the Amendment believed that the Equal Protection Clause

[7] See the Journal of the Committee, reprinted in Kendrick, The Journal of the Joint Committee of Fifteen on Reconstruction (1914), 83–117

[8] See the debates in Congress, Cong Globe, 39th Cong, 1st Sess, 2459–3149, *passim* (1866) (hereafter Globe)

[9] Globe 3040

limited the power of the States to apportion their legislatures as they saw fit Moreover, the history demonstrates that the intention to leave this power undisturbed was deliberate and was widely believed to be essential to the adoption of the Amendment

(i) *Proposal of the amendment in Congress.*—A resolution proposing what became the Fourteenth Amendment was reported to both houses of Congress by the Reconstruction Committee of Fifteen on April 30, 1866.[10] The first two sections of the proposed amendment read

> "SEC 1 No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process or law; nor deny to any person within its jurisdiction the equal protection of the laws
>
> "SEC. 2 Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed But whenever, in any State, the elective franchise shall be deemed to any portion of its male citizens not less than twenty-one years of age, or in any way abridged except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age "[11]

In the House, Thaddeus Stevens introduced debate on the resolution on May 8 In his opening remarks, Stevens explained why he supported the resolution although it fell "far short" of his wishes

> "I believe it is all that can be obtained in the present state of public opinion Not only Congress but the several States are to be consulted Upon a careful survey of the whole ground, we did not believe that nineteen of the loyal States could be induced to ratify any proposition more stringent than this "[12]

In explanation of this belief, he asked the House to remember "that three months since, and more, the committee reported and the House adopted a proposed amendment fixing the basis of representation in such way as would surely have secured the enfranchisement of every citizen at no distant period," but that proposal had been rejected by the Senate.[13]

He then explained the impact of the first section of the proposed Amendment, particularly the Equal Protection Clause.

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[10] Globe 2265, 2286

[11] As reported in the House Globe 2286 For prior versions of the Amendment in the Reconstruction Committee, see Kendrick, *op cit*, *supra*, note 7, 83–117 The work of the Reconstruction Committee is discussed in Kendrick, *supra*, and Flack, The Adoption of the Fourteenth Amendment (1908), 55–139, *passim*

[12] Globe 2459

[13] *Ibid* Stevens was referring to a proposed amendment to the Constitution which provided that "whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation" Globe 535 It passed the House. *id*, at 533, but did not muster the necessary two-thirds vote in the Senate, *id*, at 1289.

> "This amendment . . . allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate *equally* upon all Whatever law punishes a white man for a crime shall punish the black man precisely in the same way and to the same degree Whatever law protects the white man shall afford 'equal' protection to the black man Whatever means of redress is afforded to one shall be afforded to all Whatever law allows the white man to testify in court shall allow the man of color to do the same. These are great advantages over their present codes Now different degrees of punishment are inflicted, not on account of the magnitude of the crime, but according to the color of the skin Now color disqualifies a man from testifying in courts, or being tried in the same way as white men I need not enumerate these partial and oppressive laws Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination, and crush to death the hated freedmen "[14]

He turned next to the second section, which he said he considered "the most important in the article "[15] Its effect, he said, was to fix "the basis of representation in Congress "[16] In unmistakable terms, he recognized the power of a State to withhold the right to vote·

> If any State shall exclude any of her adult male citizens from the elective franchise, or abridge that right, she shall forfeit her right to representation in the same proportion The effect of this provision will be either to compel the States to grant universal suffrage or so to shear them of their power as to keep them forever in a hopeless minority in the national Government, both legislative and executive "[17]

Closing his discussion of the second section, he noted his dislike for the fact that it allowed "the States to discriminate [with respect to the right to vote] among the same class, and receive proportionate credit in representation "[18]

Toward the end of the debate three days later, Mr. Bingham, the author of the first section in the Reconstruction Committee and its leading proponent,[19] concluded his discussion of it with the following.

> "Allow me, Mr Speaker, in passing, to say that this amendment takes from no State any right that ever pertained to it No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy *The amendment does not give, as the second section shows, the power to Congress of regulating suffrage in the several States* "[20] (Emphasis added) He immediately continued
>
> *"The second section excludes the conclusion that by the first section suffrage is subjected to congressional law;* save, indeed, with

[14] Globe 2459
[15] *Ibid*
[16] *Ibid*
[17] *Ibid*
[18] Globe 2460
[19] Kendrick, *op cit , supra,* note 7, 87, 106, Flack, *op cit , supra,* note 11, 60–68, 71
[20] Globe 2542.

this exception, that as the right in the people of each State to a republican government and to choose their Representatives in Congress is one of the guarantees of the Constitution, by this amendment a remedy might be given directly for a case supposed by Madison, where treason might change a State government from a republican to a despotic government, and thereby deny suffrage to the people "[21] (Emphasis added)

He stated at another point in his remarks:

"To be sure we all agree, and the great body of the people of this country agree, and the committee thus far in reporting measures of reconstruction agree, that *the exercise of the elective franchise, though it be one of the privileges of a citizen of the Republic, is exclusively under the control of the States* "[22] (Emphasis added)

In the three days of debate which separate the opening and closing remarks, both made by members of the Reconstruction Committee, every speaker on the resolution, with a single doubtful exception,[23] assumed without question that, as Mr. Bingham said, *supra*, "the second section excludes the conclusion that by the first section suffrage is subjected to congressional law" The assumption was neither inadvertent nor silent. Much of the debate concerned the change in the basis of representation effected by the second section, and the speakers stated repeatedly, in express terms or by unmistakable implication, that the States retained the power to regulate suffrage within their borders Attached as Appendix A hereto are some of those statements. The resolution was adopted by the House without change on May 10.[24]

Debate in the Senate began on May 23, and followed the same pattern Speaking for the Senate Chairman of the Reconstruction Committee, who was ill, Senator Howard, also a member of the Committee, explained the meaning of the Equal Protection Clause as follows:

"The last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State This abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another. It prohibits the hanging of a black man for a crime for which the white man is not to be hanged It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man Is it not time, Mr. President, that we extend to the black man, I had almost called it the poor privilege of the equal protection of the law? . . .

[21] *Ibid.* It is evident from the context of the reference to a republican government that Bingham did not regard limitations on the right to vote or the denial of the vote to specified categories of individuals as violating the guarantee of a republican form of government

[22] *Ibid.*

[23] Representative Rogers, who voted against the resolution, Globe 2545, suggested that the right to vote might be covered by the Privileges and Immunities Clause Globe 2538 But immediately thereafter he discussed the possibility that the southern States might "refuse to allow the negroes to vote" *Ibid.*

[24] Globe 2545

> *"But, sir, the first section of the proposed amendment does not give to either of these classes the right of voting* The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution It is merely the creature of law. It has always been regarded in this country as the result of positive local law, not regarded as one of those fundamental rights lying at the basis of all society and without which a people cannot exist except as slaves, subject to a depotism [*sic*] "[25] (Emphasis added.)

Discussing the second section, he expressed his regret that it did "not recognize the authority of the United States over the question of suffrage in the several States at all . . ."[26] He justified the limited purpose of the Amendment in this regard as follows.

> "But, sir, it is not the question here what will we do, it is not the question what you, or I, or half a dozen other members of the Senate may prefer in respect to colored suffrage; it is not entirely the question what measure we can pass through the two Houses, but the question really is, what will the Legislatures of the various States to whom these amendments are to be submitted do in the premises, what is it likely will meet the general approbation of the people who are to elect the Legislatures, three fourths of whom must ratify our propositions before they have the force of constitutional provisions?
>
> . . . . . .
>
> "The committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race. We may as well state it plainly and fairly, so that there shall be no misunderstanding on the subject It was our opinion that three fourths of the States of this Union could not be induced to vote to grant the right of suffrage, even in any degree or under any restriction, to the colored race . . .
>
> *"The second section leaves the right to regulate the elective franchise still with the States, and does not meddle with that right."*[27] (Emphasis added.)

There was not in the Senate, as there had been in the House, a closing speech in explanation of the Amendment But because the Senate considered, and finally adopted, several changes in the first and second sections, even more attention was given to the problem of voting rights there than had been given in the House In the Senate, it was fully understood by everyone that neither the first nor the second section interfered with the right of the States to regulate the elective franchise Attached as Appendix B hereto are representative statements from the debates to that effect After having changed the proposed amendment to the form in which it was adopted, the Senate passed the resolution on June 8, 1866[28] As changed, it passed in the House on June 13[29]

[25] Globe 2766
[26] *Ibid*
[27] *Ibid*
[28] Globe 3042
[29] Globe 3149

(11) *Ratification by the "loyal" States*—Reports of the debates in the state legislatures on the ratification of the Fourteenth Amendment are not generally available [30] There is, however, compelling indirect evidence Of the 23 loyal States which ratified the Amendment before 1870, five had constitutional provisions for apportionment of at least one house of their respective legislatures which wholly disregarded the spread of population [31] Ten more had constitutional provisions which gave primary emphasis to population, but which applied also other principles, such as partial ratios and recognition of political subdivisions, which were intended to favor sparsely settled areas [32] Can it be seriously contended that the legislatures of these States, almost two-thirds of those concerned, would have ratified an amendment which might render their own States' constitutions unconstitutional

Nor were these state constitutional provisions merely theoretical In New Jersey, for example, Cape May County, with a population of 8,349, and Ocean County, with a population of 13,628, each elected one State Senator, as did Essex and Hudson Counties, with populations of 143,839 and 129,067, respectively [33] In the House, each county was entitled to one representative, which left 39 seats to be apportioned according to population [34] Since there were 12 counties besides the two already mentioned which had populations over 30,000,[35] it is evident that there were serious disproportions in the House also In New York, each of the 60 counties except Hamilton County was entitled to one of the 128 seats in the Assembly [36] This left 69 seats to be distributed among counties the populations of which ranged from 15,420 to 942,-292 [37] With seven more counties having populations over 100,000 and 13 others having populations over 50,000,[38] the disproportion in the Assembly was necessarily large In Vermont, after each county had been allocated one Senator, there were 16 seats remaining to be dis-

[30] Such evidence as there is, mostly committee reports and messages to the legislatures from Governors of the States, is to the same effect as the evidence from the debates in the Congress See Ark House J 288 (1866–1867), Fla Sen J 8–10 (1868), Ind House J 47–48, 50–51 (1867), Mass. Legis Doc, House Doc No 149, 4–14, 16–17, 23, 24, 25–26 (1867), Mo Sen J 14 (1867), N J Sen J 7 (Extra Sess 1866) N C Sen J 96–97, 98–99 (1866–1867), Tenn House J 12–15 (1865–1866), Tenn Sen J 3 (Extra Sess 1866), Va House J & Doc, Doc No 1, 35 (1866–1867), Wis Sen J 33, 101–103 (1867) Contra, S C House J. 34 (1866), Tex Sen J 422 (1866 App)

For an account of the proceedings in the state legislatures and citations to the proceedings, see Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?" 2 Stan L Rev 5, 81–120 (1949)

[31] Conn Const, 1818, Art Third, § 3 (towns), N H Const, 1792, Part Second § XXVI (direct taxes paid) N J Const, 1844, Art IV, § II, cl 1 (counties), R I Const, 1842, Art VI, § 1 (towns and cities), Vt Const, 1793, c II, § 7 (towns)

In none of these States was the other House apportioned strictly according to population Conn Const, 1818, Amend II, N H Const 1792, Pt Second, §§ IX–XI, N J Const, 1844, Art IV, § III, cl 1, R I Const, 1842, Art V, § 1, Vt Const, 1793, Amend 23

[32] Iowa Const, 1857, Art III, § 35, Kan Const, 1859, Art 2, § 2, Art 10, § 1, Me Const, 1819, Art IV-Pt First, § 3, Mich Const, 1850, Art IV, § 3, Mo Const 1865, Art IV, § 2, N Y Const, 1846, Art III, § 5, Ohio Const, 1851, Art XI, §§ 2–5, Pa Const, 1838, Art I, §§ 4, 6, 7, as amended, Tenn Const, 1834, Art II, § 5, W Va Const, 1861–1863, Art IV, § 9

[33] Ninth Census of the United States, Statistics of Population (1872) (hereafter Census), 49 The population figures, here and hereafter, are for the year 1870, which presumably best reflect the figures for the years 1866–1870 Only the figures for 1860 were available at that time, of course, and they would have been used by anyone interested in population statistics See, *e g*, Globe 3028 (remarks of Senator Johnson)

The method of apportionment is contained in N. J. Const, 1844, Art. IV, § II, cl 1

[34] N J Const, 1844, Art IV, § III, cl 1 Census 49.

[35] *Ibid.*

[36] N Y Const, 1846, Art III, §§ 2, 5 Census 50–51

[37] *Ibid.*

[38] *Ibid.*

tributed among the larger counties [39] The smallest county had a population of 4,082, the largest had a population of 40,651 and there were 10 other counties with populations over 20,000 [40]

(iii) *Ratification by the "reconstructed" States*—Each of the 10 "reconstructed" States was required to ratify the Fourteenth Amendment before it was readmitted to the Union.[41] The Constitution of each was scrutinized in Congress.[42] Debates over readmission were extensive [43] In at least one instance, the problem of state legislative apportionment was expressly called to the attention of Congress. Objecting to the inclusion of Florida in the Act of June 25, 1868, Mr Farnsworth stated on the floor of the House:

> "I might refer to the apportionment of representatives By this constitution representatives in the Legislature of Florida are apportioned in such a manner as to give to the sparsely-populated portions of the State the control of the Legislature The sparsely-populated parts of the State are those where there are very few negroes, the parts inhabited by the white rebels, the men who, coming in from Georgia, Alabama, and other States, control the fortunes of their several counties By this constitution every county in that State is entitled to a representative There are in that State counties that have not thirty registered voters; yet, under this constitution, every one of those counties is entitled to a representative in the Legislature, while the populous counties are entitled to only one representative each, with an additional representative for every thousand inhabitants " [44]

The response of Mr. Butler is particularly illuminating:

> "All these arguments, all these statements, all the provisions of this constitution have been submitted to the Judiciary Committee of the Senate, and they have found the constitution republican

[39] There were 14 counties, Census 67, each of which was entitled to at least one out of a total of 30 seats Vt Const, 1793, Amend 23

[40] Census 67

[41] Act of Mar 2, 1867, § 5, 14 Stat 429 See also Act of June 25, 1868, 15 Stat 77, declaring that the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, would be admitted to representation in Congress when their legislatures had ratified the the Fourteenth Amendment Other conditions were also imposed, including a requirement that Georgia nullify certain provisions of its Constitution *Ibid* Arkansas, which had already ratified the Fourteenth Amendment, was readmitted by Act of June 22, 1868, 15 Stat 72 Virginia was readmitted by Act of Jan 26, 1870, 16 Stat 62, Mississippi by Act of Feb 23, 1870, 16 Stat 67, and Texas by Act of Mar 30, 1870, 16 Stat 80 Georgia was not finally readmitted until later, by Act of July 15, 1870, 16 Stat 363

[42] Discussing the bill which eventuated in the Act of June 25, 1868, see note 41, *supra* Thaddeus Stevens said

> "Now, sir, what is the particular question we are considering? Five or six States have had submitted to them the question of forming constitutions for their own government They have voluntarily formed such constitutions, under the direction of the Government of the United States They have sent us their constitutions Those constitutions have been printed and laid before us We have looked at them, we have pronounced them republican in form and all we propose to require is that they shall remain so forever Subject to this requirement, we are willing to admit them into the Union " Cong Globe, 40th Cong, 2d Sess, 2465 (1868) See also the remarks of Mr Butler, *infra*, p 19–20
>
> The close attention given the various Constitutions is attested by the Act of June 25, 1868, which conditioned Georgia's readmission on the deletion of "the first and third subdivisions of section seventeen of the fifth article of the constitution of said State, except the proviso to the first subdivision " 15 Stat 73 The sections involved are printed in Sen Ex Doc No 57, 40th Cong, 2d Sess, 14–15
>
> Compare *United States* v *Florida*, 363 U S 121, 124–127

[43] See, *e g*, Cong Globe, 40th Cong, 2d Sess, 2412–2413, 2858–2860, 2861–2871, 2895–2900, 2901–2904, 2907–2935, 2963–2970, 2998–3022, 3023–3029 (1868).

[44] Cong Globe, 40th Cong, 2d Sess, 3090–3091 (1868)

and proper This constitution has been submitted to the Senate, and they have found it republican and proper It has been submitted to your own Committee on Reconstruction, and they have found it republican and proper, and have reported it to this House." [45]

The Constitutions of six of the 10 States contained provisions departing substantially from the method of apportionment now held to be required by the Amendment [46] And, as in the North, the departures were as real in fact as in theory In North Carolina, 90 of the 120 representatives were apportioned among the counties without regard to population, leaving 30 seats to be distributed by numbers [47] Since there were seven counties with populations under 5,000 and 26 counties with populations over 15,000, the disproportions must have been widespread and substantial [48] In South Carolina, Charleston, with a population of 88,863, elected two Senators; each of the other counties, with populations ranging from 10,269 to 42,486 elected one Senator.[49] In Florida, each of the 39 counties was entitled to elect one Representative, no county was entitled to more than four [50] These principles applied to Dade County with a population of 85 and to Alachua County and Leon County, with populations of 17,328 and 15,236, respectively [51]

It is incredible that Congress would have exacted ratication of the Fourteenth Amendment as the price of readmission, would have studied the State Constitutions for compliance with the Amendment, and would then have disregarded violations of it

The facts recited above show beyond any possible doubt.

(1) that Congress, with full awareness of and attention to the possibility that the States would not afford full equality in voting rights to all their citizens, nevertheless deliberately chose not to interfere with the States' plenary power in this regard when it proposed the Fourteenth Amendment,

(2) that Congress did not include in the Fourteenth Amendment restrictions on the States' power to control voting rights because it believed that if such restrictions were included, the Amendment would not be adopted.

(3) that at least a substantial majority, if not all, of the States which ratified the Fourteenth Amendment did not consider that in so doing, they were accepting limitations on their freedom, never before questioned, to regulate voting rights as they chose

Even if one were to accept the majority's belief that it is proper entirely to disregard the unmistakable implications of the second section of the Amendment in construing the first section, one is confounded by its disregard of all this history There is here none of the difficulty which may attend the application of basic principles to situations not

[45] *Id.*, at 3092
[46] Ala Const, 1867, Art VIII, § 1, Fla Const, 1868 Art XIV, Ga Const 1868, Art III, § 3, ¶ 1, La Const, 1868, Tit II, Art 20, N C Const, 1868, Art II, § 6 S C Const, 1868, Art II, §§ 6, 8
[47] N C Const, 1868, Art II, § 6 There were 90 counties Census 52–53
[48] *Ibid*
[49] S C Const, 1868 Art II, § 8, Census 60
[50] Fla Const, 1868, Art XIV
[51] Census 18–19

contemplated or understood when the principles were framed The problems which concern the Court now were problems when the Amendment was adopted. By the deliberate choice of those responsible for the Amendment, it left those problems untouched

C. *After 1868.*

The years following 1868, far from indicating a developing awareness of the applicability of the Fourteenth Amendment to problems of apportionment, demonstrate the reverse; that the States retained and exercised the power independently to apportion their legislatures In its Constitutions of 1875 and 1901, Alabama carried forward earlier provisions guaranteeing each county at least one representative and fixing an upper limit to the number of seats in the House [52] Florida's Constitution of 1885 continued the guarantee of one representative for each county and reduced the maximum number of representatives per county from four to three [53] Georgia, in 1877, continued to favor the smaller counties [54] Louisiana, in 1879, guaranteed each parish at least one representative in the House [55] In 1890, Mississippi guaranteed each county one representative, established a maximum number of representatives, and provided that specified groups of counties should each have approximately one-third of the seats in the House, whatever the spread of population [56] Missouri's Constitution of 1875 gave each county one representative and otherwise favored less populous areas [57] Montana's original Constitution of 1889 apportioned the State Senate by counties [58] In 1877, New Hampshire amended its Constitution's provisions for apportionment, but continued to favor sparsely settled areas in the House and to apportion seats in the Senate according to direct taxes paid; [59] the same was true of New Hampshire's Constitution of 1902 [60]

In 1894, New York adopted a Constitution the peculiar apportionment provisions of which were obviously intended to prevent representation according to population no county was allowed to have more than one-third of all the senators, no two counties which were adjoining or "separated only by public waters" could have more than one-half of all the senators, and whenever any county became entitled to more than three senators, the total number of senators was increased, thus preserving to the small counties their original number of seats [61] In addition, each county except Hamilton was guaranteed a seat in the Assembly [62] The North Carolina Constitution of 1876 gave each county at least one representative and fixed a maximum number of representatives for the whole House [63] Oklahoma's Constitution at the time of its admission to the Union (1907) favored small counties by the use of partial ratios and a maximum number of seats in the House; in addition, no county was permitted to "take part" in the election of more

[52] Ala Const, 1875, Art IX, §§ 2, 3, Ala Const, 1901, Art IX, §§ 198, 199
[53] Fla Const, 1885, Art VII, § 3
[54] Ga Const, 1877, Art III, § III
[55] La Const, 1879, Art 16
[56] Miss Const, 1890, Art 13, § 256
[57] Mo Const, 1875, Art 4, § 2
[58] Mont Const, 1889, Art V, § 4, Art VI, § 4
[59] N H Const, 1792, Part Second, §§ 9–11, 26, as amended
[60] N H Const, 1902, Part Second, Arts 9, 10, 25
[61] N Y Const, 1894, Art III, § 4
[62] N Y Const, 1894, Art III, § 5
[63] N C Const, 1876, Art II, § 5

than seven representatives [64] Pennsylvania, in 1873, continued to guarantee each county one representative in the House [65] The same was true of South Carolina's Constitution of 1895, which provided also that each county should elect one and only one Senator [66] Utah's original Constitution of 1895 assured each county of one representative in the House [67] Wyoming, when it entered the Union in 1889, guaranteed each county at least one senator and one representative [68]

D. *Today*

Since the Court now invalidates the legislative apportionments in six States, and has so far upheld the apportionment in none, it is scarcely necessary to comment on the situation in the States today, which is, of course, as fully contrary to the Court's decision as is the record of every prior period in this Nation's history As of 1961, the Constitutions of all but 11 States, roughly 20% of the total, recognized bases of apportionment other than geographic spread of population, and to some extent favored sparsely populated areas by a variety of devices, ranging from straight area representation or guaranteed minimum area representation to complicated schemes of the kind exemplified by the provisions of New York's Constitution of 1894, still in effect until struck down by the Court today in No 20, *post*, p —— [69] Since Tennessee, which was the subject of *Baker* v *Carr*, and Virginia, scrutinized and disapproved today in No 69, *post*, p ——, are among the 11 States whose own Constitutions are sound from the standpoint of the Federal Constitution as construed today, it is evident that the actual practice of the States is even more uniformly than their theory opposed to the Court's view of what is constitutionally permissible

E. *Other Factors.*

In this summary of what the majority ignores, note should be taken of the Fifteenth and Nineteenth Amendments The former prohibited the States from denying or abridging the right to vote "on account of race, color, or previous condition of servitude" The latter, certified as part of the Constitution in 1920, added sex to the prohibited classifications In *Minor* v *Happersett*, 21 Wall. 162, this Court considered the claim that the right of women to vote was protected by the Privileges and Immunities Clause of the Fourteenth Amendment The Court's discussion there of the significance of the Fifteenth Amendment is fully applicable here with respect to the Nineteenth Amendment as well

> "And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows 'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of

[64] Okla Const, 1907, Art V, § 10,
[65] Pa Const, 1873, Art II, § 17
[66] S C Const, 1895, Art III, §§ 4, 6
[67] Utah Const, 1895, Art IX, § 4
[68] Wyo Const 1889, Art III, § 3
[69] A tabular presentation of constitutional provisions for apportionment as of Nov 1, 1961, appears in XIV Book of the States (1962–1963) 58–62 Using this table, but disregarding some deviations from a pure population base, the Advisory Commission on Intergovernmental Relations states that there are 15 States in which the legislatures are apportioned solely according to population Apportionment of State Legislatures (1962), 12

race, color, or previous condition of servitude' The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c ? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?'' *Id*, at 175

In the present case, we can go still further If constitutional amendment was the only means by which all men and, later, women, could be guaranteed the right to vote at all, even for *federal* officers, how can it be that the far less obvious *right* to a particular kind of apportionment of *state* legislatures—a right to which is opposed a far more plausible conflicting interest of the State than the interest which opposes the general right to vote—can be conferred by judicial construction of the Fourteenth Amendment? [10] Yet, unless one takes the highly implausible view that the Fourteenth Amendment controls methods of apportionment but leaves the right to vote itself unprotected, the conclusion is inescapable that the Court has, for purposes of these cases, relegated the Fifteenth and Nineteenth Amendments to the same limbo of constitutional anachronisms to which the second section of the Fourteenth Amendment has been assigned.

Mention should be made finally of the decisions of this Court which are disregarded or, more accurately, silently overruled today *Minor* v *Happersett*, *supra*, in which the Court held that the Fourteenth Amendment did *not* confer the right to vote on anyone, has already been noted Other cases are more directly in point In *Colegrove* v *Barrett*, 330 U S 804, this Court dismissed "for want of a substantial federal question" an appeal from the dismissal of a complaint alleging that the Illinois legislative apportionment resulted in "gross inequality in voting power" and "gross and arbitrary and atrocious discrimination in voting" which denied the plaintiffs equal protection of the laws [11] In *Remmey* v *Smith*, 102 F Supp 708 (D C E D Pa), a three-judge District Court dismissed a complaint alleging that the apportionment of the Pennsylvania Legislature deprived the plaintiffs of "constitutional rights guaranteed to them by the Fourteenth Amendment" *Id*, at 709 The District Court stated that it was aware that the plaintiffs' allegations were "notoriously true" and that "the practical disenfranchisement of qualified electors in certain of the election districts in Philadelphia County is a matter of common knowledge" *Id*, at 710 This Court dismissed the appeal "for the want of a substantial federal question" 342 U. S 916.

[10] Compare the Court's statement in *Guinn* v *United States*, 238 U S 347, 362

> Beyond doubt the [Fifteenth] Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals'

[11] The quoted phrases are taken from the Jurisdictional Statement, pp 13, 19

In *Kidd* v *McCanless*, 292 S. W 2d 40, the Supreme Court of Tennessee dismissed an action for a declaratory judgment that the Tennessee Apportionment Act of 1901 was unconstitutional The complaint alleged that "a minority of approximately 37% of the voting population of the State now elects and controls 20 of the 33 members of the Senate, that a minority of 40% of the voting population of the State now controls 63 of the 99 members of the House of Representatives" *Id*, at 42. Without dissent, this Court granted the motion to dismiss the appeal 352 U. S 920 In *Radford* v *Gary*, 145 F. Supp 541 (D C W. D. Okla), a three-judge District Court was convened to consider "the complaint of the plaintiff to the effect that the existing apportionment statutes of the State of Oklahoma violate the plain mandate of the Oklahoma Constitution and operate to deprive him of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States" *Id*, at 542 The plaintiff alleged that he was a resident and voter in the most populous county of the State, which had about 15% of the total population of the State but only about 2% of the seats in the State Senate and less than 4% of the seats in the House The complaint recited the unwillingness or inability of the branches of the state government to provide relief and alleged that there was no state remedy available The District Court granted a motion to dismiss This Court affirmed without dissent 352 U. S 991.

Each of these recent cases is distinguished on some ground or other in *Baker* v *Carr* See 369 U S at 235–236 Their summary dispositions prevent consideration whether these after-the-fact distinctions are real or imaginary. The fact remains, however, that between 1947 and 1957, four cases raising issues precisely the same as those decided today were presented to the Court Three were dismissed because the issues presented were thought insubstantial and in the fourth the lower court's dismissal was affirmed.[72]

I have tried to make the catalogue complete, yet to keep it within the manageable limits of a judicial opinion In my judgment, today's decisions are refuted by the language of the Amendment which they construe and by the inference fairly to be drawn from subsequently enacted Amendments They are unequivocally refuted by history and by consistent theory and practice from the time of the adoption of the Fourteenth Amendment until today

[72] In two early cases dealing with party primaries in Texas, the Court indicated that the Equal Protection Clause did afford some protection of the right to vote *Nixon* v *Herndon*, 273 U S 536, *Nixon* v *Condon*, 286 U S 73 Before and after these cases, two cases dealing with the qualifications for electors in Oklahoma had gone off on the Fifteenth Amendment, *Guinn* v *United States*, 238 U S 347, *Lane* v *Wilson*, 307 U S 268 The rationale of the Texas cases is almost certainly to be explained by the Court's reluctance to decide that party primaries were a part of the electoral process for purposes of the Fifteenth Amendment See *Newberry* v *United States*, 256 U S 232 Once that question was laid to rest in *United States* v *Classic* 313 U S 299, the Court decided subsequent cases involving Texas party primaries on the basis of the Fifteenth Amendment *Smith* v *Allwright*, 321 U S 649, *Terry* v *Adams* 345 U S 461

The recent decision in *Gomillion* v *Lightfoot*, 364 U S 339, that a constitutional claim was stated by allegations that municipal lines had been redrawn with the intention of depriving Negroes of the right to vote in municipal elections was based on the Fifteenth Amendment Only one Justice, in a concurring opinion, relied on the Equal Protection Clause of the Fourteenth Amendment *Id*, at 349

II.

The Court's elaboration of its new "constitutional" doctrine indicates how far—and how unwisely—it has strayed from the appropriate bounds of its authority The consequence of today's decision is that in all but the handful of States which may already satisfy the new requirements the local District Court or, it may be, the state courts, are given blanket authority and the constitutional duty to supervise apportionment of the State Legislatures It is difficult to imagine a more intolerable and inappropriate interference by the judiciary with the independent legislatures of the States

In the *Alabama* cases (Nos 23, 27, 41), the District Court held invalid not only existing provisions of the State Constitution—which this Court lightly dismisses with a wave of the Supremacy Clause and the remark that "it makes no difference whether a State's apportionment scheme is embodied in its constitution or in statutory provisions," *ante*, p 49—but also a proposed amendment to the Alabama Constitution which had never been submitted to the voters of Alabama for ratification, and "standby" legislation which was not to become effective unless the amendment was rejected (or declared unconstitutional) and in no event before 1966 *Sims* v *Frank*, 208 F Supp 431 See *ante*, pp 8–16 Both of these measures had been adopted only nine days before,[73] at an Extraordinary Session of the Alabama Legislature, convened pursuant to what was very nearly a directive of the District Court see *Sims* v *Frank*, 205 F Supp 245, 248 The District Court formulated its own plan for the apportionment of the Alabama Legislature, by picking and choosing among the provisions of the legislative measures 208 F Supp , at 441–442 See *ante*, p 17 Beyond that, the court warned the legislature that there would be still further judicial reapportionment unless the legislature, like it or not, undertook the task for itself 208 F Supp , at 442 This Court now states that the District Court acted in "a most proper and commendable manner," *ante*, p 51, and approves the District Court's avowed intention of taking "some further action" unless the State Legislature acts by 1966. *ante*, p 52

In the *Maryland* case (No 29, *post*, p ___), the State Legislature was called into Special Session and enacted a temporary reapportionment of the House of Delegates, under pressure from the state courts[74] Thereafter, the Maryland Court of Appeals held that the Maryland Senate was constitutionally apportioned *Maryland Committee for Fair Representation* v *Tawes*, 229 Md 406 This Court now holds that neither branch of the State Legislature meets constitutional requirements *Post*, p 17 The Court *presumes* that since "the Maryland constitutional provisions relating to legislative apportionment [are]

[73] The measures were adopted on July 12, 1962 The District Court handed down its opinion on July 21, 1962

[74] In reversing an initial order of the Circuit Court for Anne Arundel County dismissing the plaintiffs complaint, the Maryland Court of Appeals directed the lower court to hear evidence on and determine the plaintiffs' constitutional claims, and, if it found provisions of the Maryland Constitution to be invalid, to declare that the Legislature has the power, if called into Special Session by the Governor and such action be deemed appropriate by it, to enact a bill reapportioning its membership for purposes of the November 1962 election *Maryland Committee for Fair Representation* v *Tawes* 228 Md 412, 438–439 On remand, the opinion of the Circuit Court included such a declaration The opinion was filed on May 24, 1962 The Maryland Legislature in Special Session adopted the "emergency" measures now declared unconstitutional seven days later, on May 31, 1962

hereby held unconstitutional, the Maryland Legislature has the inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions" which satisfy the Federal Constitution. *Id.*, at 18. On this premise, the Court concludes that the Maryland courts need not "feel obliged to take further affirmative action" now, but that "under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan." *Id.*, at 19.

In the *Virginia* case (No. 69, *post*, p. ...) the State Legislature in 1962 complied with the state constitutional requirement of regular reapportionment.[75] Two days later, a complaint was filed in the District Court.[76] Eight months later the legislative reapportionment was declared unconstitutional. *Mann* v. *Davis*, 213 F. Supp. 577. The District Court gave the State Legislature two months within which to reapportion itself in special session, under penalty of being reapportioned by the court.[77] Only a stay granted by a member of this Court, slowed the process,[78] it is plain that no stay will be forthcoming in the future. The Virginia Legislature is to be given "an adequate opportunity to enact a valid plan", but if it fails "to act promptly in remedying the constitutional defects in the State's legislative apportionment plan," the District Court is to "take further action." *Post*, p. 14.

In *Delaware* (No. 307, *post*, p. ...), the District Court entered an order on July 25, 1962, which stayed proceedings until August 7, 1962, "in the hope and expectation" that the General Assembly would take "some appropriate action" in the intervening 13 days. *Sincock* v. *Terry*, 207 F. Supp. 205, 207. By way of prodding, presumably, the court noted that if no legislative action were taken and the court sustained the plaintiffs' claim, "the present General Assembly and any subsequent General Assembly, the members of which were elected pursuant to Section 2 of Article 2 [the challenged provisions of the Delaware Constitution], might be held not to be a *de jure* legislature and its legislative acts might be held invalid and unconstitutional." *Id.*, at 205–206. Five days later, on July 30, 1962, the General Assembly approved a proposed amendment to the State Constitution. On August 7, 1962, the District Court entered an order denying the defendants' motion to dismiss. The court said that it did not wish to substitute its judgment "for the collective wisdom of the General Assembly of Delaware," but that "in the light of all the circumstances," it had to proceed promptly. 210 F. Supp. 395, 396. On October 16, 1962, the court declined to enjoin the conduct of elections in November. 210 F. Supp. 396. The court went on to express its regret that the General Assembly had not adopted the court's suggestion, see 207 F. Supp., at 206–207, that the Delaware Constitution

[75] The Virginia Constitution, Art. IV, § 43, requires that a reapportionment be made every 10 years.

[76] The 1962 reapportionment acts were approved on Apr. 7, 1962. The complaint was filed on Apr. 9, 1962.

[77] The District Court handed down its opinion on Nov. 28, 1962, and gave the Virginia General Assembly until Jan. 31, 1963, "to enact appropriate reapportionment laws." 213 F. Supp., at 585–586. The court stated that failing such action or an appeal to this Court, the plaintiffs might apply to it "for such further orders as may be required." *Id.*, at 586.

[78] On Dec. 15, 1962, THE CHIEF JUSTICE granted a stay pending final disposition of the case in this Court.

be amended to make apportionment a statutory rather than a constitutional matter, so as to facilitate further changes in apportionment which might be required 210 F Supp 401 In January 1963, the General Assembly again approved the proposed amendment of the apportionment provisions of the Delaware Constitution, which thereby became effective on January 17, 1963 [79] Three months later, on April 17, 1963, the District Court reached "the reluctant conclusion" that Art II, § 2, of the Delaware Constitution was unconstitutional, with or without the 1963 amendment *Sincock* v *Duffy*, 215 F Supp 169, 189 Observing that "the State of Delaware, the General Assembly, and this court all seem to be trapped in a kind of box of time," *id*, at 191, the court gave the General Assembly until October 1, 1963, to adopt acceptable provisions for apportionment On May 20, 1963, the District Court enjoined the defendants from conducting any elections, including the general election scheduled for November 1964, pursuant to the old or the new constitutional provisions [80] This Court now approves all these proceedings noting particularly that in allowing the 1962 elections to go forward, "the District Court acted in a wise and temperate manner" *Post*, p 14 [81]

Records such as these in the cases decided today are sure to be duplicated in most of the other States if they have not already They present a jarring picture of courts threatening to take action in an area which they have no business entering, inevitably on the basis of political judgments which they are incompetent to make They show legislatures of the States meeting in haste and deliberating and deciding in haste to avoid the threat of judicial interference So far as I can tell, the Court's only response to this unseemly state of affairs is ponderous insistence that "a denial of constitutionally protected rights demands judicial protection," *ante*, p 31 By thus refusing to recognize the bearing which a potential for conflict of this kind may have on the question whether the claimed rights are in fact constitutionally entitled to judicial protection, the Court assumes, rather than supports, its conclusion

It should by now be obvious that these cases do not mark the end of reapportionment problems in the courts Predictions once made that the courts would never have to face the problem of actually working out an apportionment have proved false This Court, however,

[79] The Delaware Constitution, Art XVI, § 1 requires that amendments be approved by the necessary two-thirds vote in two successive General Assemblies

[80] The District Court thus nailed the lid on the "box of time" in which everyone seemed to it 'to be trapped" The lid was temporarily opened a crack on June 27, 1963, when MR JUSTICE BRENNAN granted a stay of the injunction until disposition of the case by this Court Since the Court states that "the delay inherent in following the state constitutional prescription for approval of constitutional amendments by two successive General Assemblies cannot be allowed to result in an impermissible deprivation of appellees' right to an adequate voice in the election of legislators to represent them," *post* pp 15–16, the lid has presumably been slammed shut again

[81] In New York and Colorado, this pattern of conduct has thus far been avoided In the *New York* case (No 20, *post* p ——), the District Court twice dismissed the complaint, once without reaching the merits, *WMCA, Inc* v *Simon* 202 F Supp 741, and once, after this Court's remand following *Baker* v *Carr*, *supra* 370 U S 190, on the merits, 208 F Supp 368 In the *Colorado* case (No 508 *post* p ——), the District Court first declined to interfere with a forthcoming election at which reapportionment measures were to be submitted to the voters, *Lisco* v *McNichols* 208 F Supp 471, and, after the election, upheld the apportionment provisions which had been adopted, 219 F Supp 922

In view of the action which this Court now takes in both of these cases, there is little doubt that the legislatures of these two States will now be subjected to the same kind of pressures from the federal judiciary as have the other States

continues to avoid the consequences of its decisions, simply assuring us that the lower courts "can and will work out more concrete and specific standards," *ante*, p 43. Deeming it "expedient" not to spell out "precise constitutional tests," the Court contents itself with stating "only a few rather general considerations " *Ibid*

Generalities cannot obscure the cold truth that cases of this type are not amenable to the development of judicial standards No set of standards can guide a court which has to decide how many legislative districts a State shall have, or what the shape of the districts shall be, or where to draw a particular district line No judicially manageable standard can determine whether a State should have single-member districts or multimember districts or some combination of both No such standard can control the balance between keeping up with population shifts and having stable districts In all these respects, the courts will be called upon to make particular decisions with respect to which a principle of equally populated districts will be of no assistance whatsoever Quite obviously, there are limitless possibilities for districting consistent with such a principle. Nor can these problems be avoided by judicial reliance on legislative judgments so far as possible Reshaping or combining one or two districts, or modifying just a few district lines, is no less a matter of choosing among many possible solutions, with varying political consequences, than reapportionment broadside.[82]

The Court ignores all this, saying only that "what is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case." *ante*, p 43 It is well to remember that the product of today's decisions will not be readjustment of a few districts in a few States which most glaringly depart from the principle of equally populated districts It will be a redetermination, extensive in many cases, of legislative districts in all but a few States

Although the Court—necessarily, as I believe—provides only generalities in elaboration of its main thesis, its opinion nevertheless fully demonstrates how far removed these problems are from fields of judicial competence Recognizing that "indiscriminate districting" is an invitation to "partisan gerrymandering," *ante*, pp. 43–44, the Court nevertheless excludes virtually every basis for the formation of electoral districts other than "indiscriminate districting " In one or another of today's opinions, the Court declares it unconstitutional for a State to give effective consideration to any of the following in establishing legislative districts:

(1) history;[83]

(2) "economic or other sorts of group interests";[84]

(3) area;[85]

(4) geographical considerations;[86]

[82] It is not mere fancy to suppose that in order to avoid problems of this sort, the Court may one day be tempted to hold that all state legislators must be elected in statewide elections

[83] *Ante*, p 44

[84] *Ante*, pp 44–45.

[85] *Ante*, p 45

[86] *Ibid*

(5) a desire "to insure effective representation for sparsely settled areas", [87]

(6) "availability of access of citizens to their representatives"; [88]

(7) theories of bicameralism (except those approved by the Court); [89]

(8) occupation; [90]

(9) "an attempt to balance urban and rural power" [91]

(10) the preference of a majority of voters in the State.[92]

So far as presently appears, the *only* factor which a State may consider, apart from numbers, is political subdivisions. But even "a clearly rational state policy" recognizing this factor is unconstitutional if "population is submerged as the controlling consideration . . ." [93]

I know of no principle of logic or practical or theoretical politics, still less any constitutional principle, which establishes all or any of these exclusions Certain it is that the Court's opinion does not establish them So far as the Court says anything at all on this score, it says only that "legislators represent people, not trees or acres," *ante*, p 27, that "citizens, not history or economic interests, cast votes," *ante*, p 45; that "people, not land or trees or pastures, vote," *ibid* [94] All this may be conceded But it is surely equally obvious, and, in the context of elections, more meaningful to note that people are not ciphers and that legislators can represent their electors only by speaking for their interests—economic, social, political—many of which do reflect the place where the electors live The Court does not establish, or indeed even attempt to make a case for the proposition that conflicting interests within a State can only be adjusted by disregarding them when voters are grouped for purposes of representation.

CONCLUSION.

With these cases the Court approaches the end of the third round set in motion by the complaint filed in *Baker* v. *Carr* What is done today deepens my conviction that judicial entry into this realm is profoundly ill-advised and constitutionally impermissible As I have said before, *Wesberry* v *Sanders*, *supra*, at 48, I believe that the vitality of our political system, on which in the last analysis all else depends, is weakened by reliance on the judiciary for political reform; in time a complacent body politic may result

These decisions also cut deeply into the fabric of our federalism What must follow from them may eventually appear to be the product of State Legislatures Nevertheless, no thinking person can fail to recognize that the aftermath of these cases, however desirable it may be thought in itself, will have been achieved at the cost of a radical

[87] *Ibid*
[88] *Ibid*
[89] *Ante*, pp 41–42
[90] *Davis* v *Mann*, *post*, p 12
[91] *Id*, at 13
[92] *Lucas* v *Forty-Fourth General Assembly*, *post*, p 22
[93] *Ante*, p 46
[94] The Court does note that, in view of modern developments in transportation and communication, it finds "unconvincing" arguments based on a desire to insure representation of sparsely settled areas or to avoid districts so large that voters' access to their representatives is impaired. *Ante*, p. 45.

alteration in the relationship between the States and the Federal Government, more particularly the Federal Judiciary Only one who has an overbearing impatience with the federal system and its political processes will believe that that cost was not too high or was inevitable

Finally, these decisions give support to a current mistaken view of the Constitution and the constitutional function of this Court This view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional "principle," and that this Court should "take the lead" in promoting reform when other branches of government fail to act The Constitution is not a panacea for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements The Constitution is an instrument of government, fundamental to which is the premise that in a diffusion of governmental authority lies the greatest promise that this Nation will realize liberty for all its citizens This Court, limited in function in accordance with that premise, does not serve its high purpose when it exceeds its authority, even to satisfy justified impatience with the slow workings of the political process For when, in the name of constitutional interpretation, the Court *adds* something to the Constitution that was deliberately excluded from it, the Court in reality substitutes its view of what should be so for the amending process.

I dissent in each of these cases, believing that in none of them have the plaintiffs stated a cause of action To the extent that *Baker* v *Carr*, expressly or by implication, went beyond a discussion of jurisdictional doctrines independent of the substantive issues involved here, it should be limited to what it in fact was: an experiment in venturesome constitutionalism. I would reverse the judgments of the District Court in Nos 23, 27, and 41 (Alabama), No 69 (Virginia), and No 307 (Delaware), and remand with directions to dismiss the complaints I would affirm the judgments of the District Court in No 20 (New York), and No 508 (Colorado), and of the Court of Appeals of Maryland in No. 29.

APPENDIX A.

Statements made in the House of Representatives during the debate on the resolution proposing the Fourteenth Amendment *

> "As the nearest approach to justice which we are likely to be able to make, I approve of the second section that bases representation upon voters " 2463 (Mr Garfield).
>
> "Would it not be a most unprecedented thing that when this [former slave] population are not permitted where they reside to enter into the basis of representation in their own State, we should receive it as an element of representation here, that when they will not count them in apportioning their own legislative districts, we are to count them as five fifths (no longer as three fifths, for that is out of the question) as soon as you make a new apportionment?" 2464–2465 (Mr Thayer)

* All page references are to Cong Globe, 39th Cong, 1st Sess (1866)

"The second section of the amendment is ostensibly intended to remedy a supposed inequality in the basis of representation The real object is to reduce the number of southern representatives in Congress and in the Electoral College, and also to operate as a standing inducement to negro suffrage " 2467 (Mr. Boyer).

"Shall the pardoned rebels of the South include in the basis of representation four million people to whom they deny political rights, and to no one of whom is allowed a vote in the selection of a Representative?" 2468 (Mr Kelley)

"I shall, Mr Speaker, vote for this amendment; not because I approve it Could I have controlled the report of the committee of fifteen, it would have proposed to give the right of sufferage to every loyal man in the country " 2469 (Mr Kelley).

"But I will ask, why should not the representation of the States be limited as the States themselves limit suffrage? . . If the negroes of the South are not to be counted as a political element in the government of the South in the States, why should they be counted as a political element in the government of the country in the Union. 2498 (Mr. Broomall)

"It is now proposed to base representation upon suffrage, upon the number of voters, instead of upon the aggregate population in every State of the Union " 2502 (Mr. Raymond).

"We admit equality of representation based upon the exercise of the elective franchise by the people The proposition in the matter of suffrage falls short of what I desire, but so far as it goes it tends to the equalization of the inequality at present existing; and while I demand and shall continue to demand the franchise for all loyal male citizens of this country—and I cannot but admit the possibility that ultimately those eleven States may be restored to representative power without the right of franchise being conferred upon the colored people—I should feel myself doubly humiliated and disgraced, and criminal even, if I hesitated to do what I can for a proposition which equalizes representation " 2508 (Mr. Boutwell).

"Now, conceding to each State the right to regulate the right of suffrage, they ought not to have a representation for male citizens not less than twenty-one years of age, whether white or black, who are deprived of the exercise of suffrage This amendment will settle the complication in regard to suffrage and representation, leaving each State to regulate that for itself, so that it will be for it to decide whether or not it shall have a representation for all its male citizens not less than twenty-one years of age " 2510 (Mr. Miller).

"Manifestly no State should have its basis of national representation enlarged by reason of a portion of citizens within its borders to which the elective franchise is denied If political power shall be lost because of such denial, not imposed because of participation in rebellion or other crime, it is to be hoped that political interests

may work in the line of justice, and that the end will be the impartial enfranchisement of all citizens not disqualified by crime. Whether that end shall be attained or not, this will be secured that the measure of political power of any State shall be determined by that portion of its citizens which can speak and act at the polls, and shall not be enlarged because of the residence within the State of portions of its citizens denied the right of franchise So much for the second section of the amendment It is not all that I wish and would demand, but odious inequalities are removed by it and representation will be equalized, and the political rights of all citizens will under its operation be, as we believe, ultimately recognized and admitted " 2511 (Mr Eliot).

"I have no doubt that the Government of the United States has full power to extend the elective franchise to the colored population of the insurgent States I mean authority, I said power I have no doubt that the Government of the United States has authority to do this under the Constitution, but I do not think they have the power. The distinction I make between authority and power is this: we have, in the nature of our Government, the right to do it: but the public opinion of the country is such at this precise moment as to make it impossible we should do it It was therefore most wise on the part of the committee on reconstruction to waive this matter in deference to public opinion The situation of opinion in these States compels us to look to other means to protect the Government against the enemy " 2532 (Mr Banks)

"If you deny to any portion of the loyal citizens of your State the right to vote for Representatives you shall not assume to represent them, and, as you have done for so long a time, misrepresent and oppress them This is a step in the right direction, and although I should prefer to see incorporated into the Constitution a guarantee of universal suffrage, as we cannot get the required two thirds for that I cordially support this proposition as the next best " 2539–2540 (Mr Rogers).

APPENDIX B.

Statements made in the Senate during the debate on the resolution proposing the Fourteenth Amendment *

"The second section of the constitutional amendment proposed by the committee can be justified upon no other theory than that the negroes ought to vote; and negro suffrage must be vindicated before the people in sustaining that section, for it does not exclude the non-voting population of the North, because it is admitted that there is no wrong in excluding from suffrage aliens, females, and minors But we say, if the negro is excluded from suffrage he shall also be excluded from the basis of representation. Why this inequality? Why this injustice? For injustice it would be unless there be some good reason for this discrimination against the South in excluding her non-voting population from the basis of repre-

* All page references are to Cong Globe, 39th Cong, 1st Sess (1866)

sentation The only defense that we can make to this apparent injustice is that the South commits an outrage upon human rights when she denies the ballot to the blacks, and we will not allow her to take advantage of her own wrong, or profit by this outrage Does any one suppose it possible to avoid this plain issue before the people? For if they will sustain you in reducing the representation of the South because she does not allow the negro to vote, they will do so because they think it is wrong to disfranchise him." 2800 (Senator Stewart)

"It [the second section of the proposed amendment] relieves him [the negro] from misrepresentation in Congress by denying him any representation whatever " 2801 (Senator Stewart).

"But I will again venture the opinion that it [the second section] means as if it read thus: no State shall be allowed a representation on a colored population unless the right of voting is given to the negroes—presenting to the States the alternative of loss of representation or the enfranchisement of the negroes, and their political equality " 2939 (Senator Hendricks)

"I should be much better satisfied if the right of suffrage had been given at once to the more intelligent of them [the Negroes] and such as had served in our Army But it is believed by wiser ones than myself that this amendment will very soon produce some grant of suffrage to them, and that the craving for political power will ere long give them universal suffrage . . . Believing that this amendment probably goes as far in favor of suffrage to the negro as is practicable to accomplish now, and hoping it may in the end accomplish all I desire in this respect, I shall vote for its adoption, although I should be glad to go further." 2963–2964 (Senator Poland).

"What is to be the operation of this amendment? Just this: your whip is held over Pennsylvania, and you say to her that she must either allow her negroes to vote or have one member of Congress less " 2987 (Senator Cowan)

"Now, sir, in all the States—certainly in mine, and no doubt in all—there are local as contradistinguished from State elections There are city elections, county elections, and district or borough elections; and those city and county and district elections are held under some law of the State in which the city or county or district or borough may be, and in those elections, according to the laws of the States, certain qualifications are prescribed, residence within the limits of the locality and a property qualification in some Now, is it proposed to say that if every man in a State is not at liberty to vote at a city or a country or a borough election that is to affect the basis of representation?" 2991 (Senator Johnson)

"Again, Mr President, the measure upon the table, like the first proposition submitted to the Senate from the committee of fifteen, concedes to the States . . . not only the right, but the exclusive right, to regulate the franchise . . It says that each of the southern States, and, of course, each other State in the Union, has a

right to regulate for itself the franchise, and that consequently, as far as the Government of the United States is concerned, if the black man is not permitted the right to the franchise, it will be a wrong (if a wrong) which the Government of the United States will be impotent to redress " 3027 (Senator Johnson).

"The amendment fixes representation upon numbers, precisely as the Constitution now does, but when a State denies or abridges the elective franchise to any of its male inhabitants who are citizens of the United States and not less than twenty-one years of age, except for participation in rebellion or other crime, then such State will lose its representation in Congress in the proportion which the male citizen so excluded bears to the whole number of male citizens not less than twenty-one years of age in the State " 3033 (Senator Henderson)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PHILL SILVER, as a citizen of the United States and of the State of California, etc.,
Plaintiff,
—vs—
FRANK M JORDAN, in his official capacity as Secretary of State of California, et al.,
Defendants

No. 62-953 MC
PER CURIAM ORDER
December 3, 1964

Since the historic pronouncement by the Supreme Court of the United States in *Baker v Carr*, 369 U.S 186 (decided March 26, 1962), the federal courts of the United States have been literally flooded with suits by voters, alleging either "the debasement" of their vote by state legislative action, or by the failure or alleged inability of the state legislature to act pursuant to constitutional requirements, which in either event have resulted in "invidious discrimination" against the litigant, and others in his class, which amounts to or results in a violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution This is one of those cases.

Plaintiff, Phill Silver, filed this class action on July 16, 1962, as a citizen of the United States and of California, and as an elector and registered voter of Los Angeles County, on his own behalf and on behalf of all other citizens, electors, and registered voters of the State of California, similarly situated The defendants are sued in their representative capacities as State officials, performing duties in respect to State elections.

The complaint alleged a deprivation of rights under the California Constitution and under the Equal Protection Clause of the Fourteenth Amendment It is asserted, and we hold, that this court has jurisdiction under the Civil Rights Act, 42 U S C §§ 1983, 1988, and 28 U.S C. § 1343(3). Relief is prayed for under 28 U S C §§ 2201-2202

Since relief was sought under the Federal Declaratory Judgment Act (28 U S.C. §§ 2201-2202), a three-judge District Court was convened The plaintiff prayed for injunctive relief to enjoin the 1962 General Election as it applied to the election of State Senators Plaintiff alleged that the present apportionment of the California State Senate, (Cal. Const, Art. IV, Sec 6, as amended in 1926), deprived him and all others similarly situated of due process of law and the equal protection of the law. Furthermore, he alleged that his right to equal suffrage in a free and equal election had been deprived in violation of both the California Constitution and the Fourteenth Amendment of the U S Constitution.

On August 30, 1962, this court handed down its opinion and order (Civil Action No 62-953 MC) holding that it had jurisdiction, *Baker v. Carr, supra* at 204-208, and that the subject matter of this suit was justiciable, not a non-justiciable political question regarding the relationship between the judiciary and its co-ordinate branches of the Federal Government. *Baker v. Carr, supra* at 208-236, especially at 217. All of defendants' motions to dismiss were denied However, this court, while retaining jurisdiction, denied any injunctive relief at that time, as there was then available to the plaintiff a State remedy, namely, the Initiative Measure on the 1962 General Election Ballot, Proposition 23, which, if passed, would have reapportioned the State Senate

II

The California Constitution of 1849 and the revised Constitution of 1879 provided for representation on the basis of population in both houses of the Legislature *(Cal. Const.* 1849, Art. IV, §§ 28-29; *Cal Const.* 1879, Art IV, §6) and vested the entire lawmaking power of the State in that body. *(Cal. Const.* 1849, Art IV, §29; *Cal. Const.* 1879, Art IV, § 6).

In response to Governor Hiram Johnson's call to allow the people the right to check any abuse of power by the Legislature, the Legislature in 1911 submitted to the voters of the state a constitutional amendment, which was passed by the electorate, reserving to them the right to initiate and enact laws, which is the initiative, and to prevent laws enacted from becoming effective, which is the referendum *(Cal. Const.* Art IV, §1; Hichborn, *Story of the California Legislature of 1911,* p 93).

After the 1920 decennial census, the 1921, 1923 and 1925 sessions of the State Legislature failed to enact any reapportionment scheme, as demanded by the U S Constitution, Art I, § 2 The people of the State responded to the inaction of the legislators and on the 1926 election ballot they qualified two proposals by initiative for the consideration of the electorate. Proposition 20 would have retained the apportionment of the two houses as they then existed, namely, on a population basis; whereas, Proposition 28 presented the so-called "Federal Plan" to the electorate, which would retain the Assembly's apportionment on a population basis, but the State Senate was to be apportioned largely on a geographic basis Proposition 28 was based on existing representation in the Congress of the United States Proposition 28 was adopted, and Proposition 20 was rejected Thus, since 1926, California has retained this "Federal Plan" in its apportionment of seats in the California Legislature. It is this amendment to Art IV, § 6 of the California Constitution, which the plaintiff challenges here Since the adoption of Proposition 28 in 1926, the State Legislature has never failed to comply with the Federal requirement of apportioning its seats every ten years in accordance with the Federal Census

Presently, the State of California is divided into forty senatorial districts. Furthermore, no county is to have more than one representative in the Senate, and no Senator is to represent more than three counties (*Cal Const* Art IV, § 6, *Cal Elections Code* § 30100). There is no controversy here over the constitutionality of the apportionment

of seats in the State Assembly, containing 80 members, since the apportionment in the lower house is based solely on population. (*Cal. Const.* Art IV, § 6; *Cal. Elections Code* § 30201).

Since the Amendment to Article IV, Section 6 was adopted in 1926, there have been four attempts by the initiative process to revert back to the pre-1926 apportionment. But the electorate in 1928, 1948, 1960 and most recently in 1962, has rejected these initiatives. Since 1951 there have been numerous bills introduced in the State Legislature for the apportionment of the State Senate on a population basis, but all of these attempts have been killed by the Senate or died without any action by both houses.

III

It is pertinent to note the various population disparities which exist in the present apportionment of seats in the California State Senate under Art. IV, § 6, as amended in 1926 For example, according to the last Federal Census (1960), the population of the 38th Senatorial District, comprising Los Angeles County, is 6,380,771. The population of the 28th Senatorial District, comprising Mono, Inyo, and Alpine Counties, is 14,294 This is a ratio of almost 450·1. Other great disparities exist with respect to other Senatorial Districts, i e, 40th Senatorial District, San Diego County, 100·1 as compared to District 28; 16th Senatorial District, Alameda County, 90.1 as compared to District 28, 14th Senatorial District, San Francisco County, 60.1 as compared with District 28; 35th Senatorial District, Orange County, 50.1 as compared to District 28, to name a few Thus about one-third of the total population of the State of California today controls more than two-thirds of the representation in the State Senate. (See U S. Census of Population, 1960, California, U. S. Department of Commerce, Bureau of the Census, p. 23).

IV

INTERVENTION OF THE STATE SENATE

The California State Senate's motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court. Fed. R. Civ. P. 24(a)(2); *Calif. Const.* Art. IV, §§ 1, 4, 5 and 6; *People v. U S*, 180 F.2d 596 (9 Cir.); *Kozak v. Wells*, 278 F.2d 104; *Ex Parte D. O. McCarthy*, 29 Cal. 395.

V

LEGAL EFFECT UPON THIS SUIT OF THE VARIOUS LITIGATION INITIATED IN THE CALIFORNIA SUPREME COURT BY APPLICATIONS FOR WRITS OF MANDAMUS, WHICH WERE ALL DENIED

In *Yorty and Bonelli v. Anderson*, 60 C 2d 312, 33 Cal Rptr 97, 384 P 2d 417 (1963); *Yorty and Bonelli v Jordan*, Sac No. 7543 (appealed to the U. S. Supreme Court, October 1964 Term, Case No. 250, and dismissed for want of jurisdiction on October 12, 1964, ___ U.S. ___); and *Yorty* and *Bonelli v. Jordan*, Sac. No. 7582, the plaintiffs sought a writ of mandate from the Supreme Court of the State of

California to compel a reapportionment of the Senate of the Legislature of the State of California on a population basis

In denying a writ in the last named case, the Supreme Court of California said:

> "The petition to intervene and the petition for the writ of mandate are denied for the reason that any determination by this court on the question of legislative reapportionment would be premature until such time as the Legislature has had an opportunity to consider the matter and to take such action as it may deem to be required pursuant to the expression of the United States Supreme Court in *Reynolds v. Sims*, ___ U.S ___, and companion cases."

None of these cases have any effect on the present suit, for in *Yorty v. Anderson, supra,* the case was determined on a non-federal question, i e, the plaintiff had misjoined the wrong party as defendant. The proper party defendant should have been the Secretary of State, not the members of the Reapportionment Commission, which had no jurisdiction to reapportion the legislature, unless the Legislature failed to act, which it had not. The other two cases, resulting in denials of petitioners' request, were denied without any opinion It is apparent that none of these cases have directly reached the federal constitutional question of an alleged denial of petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment, and, as such, they have no relation to our decision here

VI

DELAY

Although the plaintiff herein originally sought injunctive relief, which this court temporarily denied, his position subsequently changed Despite the fact no initiative petitions proposing reapportionment of the California Senate had been filed with the State by June 25th, 1964 (the last day for filing such initiative proceedings) and that none of the twelve proposed amendments to the California Constitution, appearing on the November 3rd, 1964 election ballot, related to reapportionment of the California Senate, it was stipulated (Supplementary Stipulation of Facts No. 3, ¶ XXI). "The plaintiff does not seek any injunctive or mandatory relief in connection with the November 3, 1964 general election."

This court deemed it proper, in view of the lack of demand for injunctive relief, to obtain the benefit of the argument of plaintiff, and original defendants, and more particularly that of the intervening Senate, as to the meaning and effect of the group of cases on this novel and revolutionary legal theory, decided by the Supreme Court of the United States on June 15, 1964. *Reynolds v Sims,* 377 U S 533, *WMCA, Inc v. Lomenzo,* 377 U S 633; *Maryland Committee v Tawes,* 377 U S 656; *Davis v Mann,* 377 U S 695; *Lucas v Colorado General Assembly,* 377 U S 713.

These cases dispose of each position taken by the intervening plaintiffs. They establish the existence of "malapportionment" in California Senate election districts, on the facts present before us But they did

not require immediate action by this court, for all reiterate the principle that in awarding relief for malapportionment of election districts, a District Court should consider many factors, including the proximity of the forthcoming election, the complexities of the election laws, etc, and above all should rely on general equitable principles.

VII

DIFFUSION OF POLITICAL POWER BETWEEN THINLY AND HEAVILY POPULATED COUNTIES IS NOT PERMISSIBLE

Defendants contend that population is not the only basis for an apportioning of seats in a bicameral legislature, as such. California's so-called "Federal Plan" is constitutionally valid (*Cal Const*, Art IV, § 6, as amended in 1926) The defendants contend that such was the rule as laid down in *Baker v Carr, supra Baker* held only that the petitioners had stated a cause of action, and thus the Supreme Court remanded the cause to the District Court in Tennessee for a hearing on the merits In *Grey v Sanders*, 372 U S. 368 (1963), the court held that the Georgia County Unit System was unconstitutional as it "watered-down" the weight of the votes of certain Georgia voters simply because of their residence Such discrimination cannot be justified, for the Equal Protection Clause as well as the Fifteenth and Nineteenth Amendments demand "One-Man, One-Vote." Thus it was apparent that the "handwriting was on the wall" with the *Grey* decision, and the pinnacle was reached in the landmark Reapportionment Cases of June 1964

In considering whether or not the State's legislative apportionment method amounts to an invidious discrimination violative of rights asserted under the Equal Protection Clause, the crucial point is that these rights purportedly violated are individual and personal in nature *Reynolds v Sims*, 377 U S 533, 561, affirming and remanding 208 F. Supp 431 (M D Ala, 1962) Even though the court's holding may result in a reapportionment of the California State Senate, this court must predominantly concern itself in ascertaining if the plaintiff and others similarly situated have been so invidiously discriminated against as to constitute a prohibited dilution of their constitutionally protected right to vote The court stated in *Reynolds v. Sims, supra:*

> "Legislators are elected by voters, not trees or acres Legislators are elected by voters, not farms or cities or economic interests As long as ours is a representative form of government and our legislators are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system "

377 U.S. at 562; *WMCA, Inc v Lomenzo*, 377 U S. 633, reversing and remanding 208 F Supp 368 (S D N Y 1962); *Maryland Committee v Tawes*, 377 U S 656 reversing and remanding 209 Md 406, 184 A.2d 715; *Davis v. Mann*, 377 U S. 678, affirming and remanding 213 F Supp 577 (E D Va 1962); *Roman v Sincock*, 377 U S 695, affirming and remanding 215 F Supp 169 (Del.

1963); *Lucas v Colorado General Assembly*, 377 U S. 713, reversing and remanding 219 F.Supp. 922 (Colo 1963).

In California the Twenty-Eighth Senatorial District, Inyo, Mono and Alpine Counties, had a population of 14,294 according to the 1960 Federal Census, contrasted with the 38th Senatorial District, Los Angeles County, with a population of 6,380,771 The disparity here in favor of the residents of the 28th District is almost 450 to 1 It is invidious discrimination against the residents of Los Angeles County and is debasement of their right to vote and deprives them of the Equal Protection of the Laws as guaranteed by the Fourteenth Amendment *Reynolds v. Sims, supra* The votes of the voters of Los Angeles County simply do not count as much as the votes of the voters of Alpine, Mono and Inyo Counties It takes 450 Los Angeles County voters to equal one vote cast by a voter in the 28th District In *Maryland Committee v. Tawes, supra*, the ratio was 32 to 1 in the State Senate in the variance of allocation of seats between the most populous and least populous counties, and 12 to 1 in the House In *Davis v Mann, supra*, the population variance in the State Senate was 2 65 to 1, and in the House, 4 36 to 1 In *Roman v Sincock, supra*, the population variance was 15 to 1 for the Senate, and in the House, 35 to 1 Lastly, in *Lucas v Colorado General Assembly, supra*, the population variance, after the enactment of the Constitutional referendum by the voters in 1962, adopting an apportionment which divided the seats on population and other factors in the State Senate and population in the House, in the Senate was 3 6 to 1 and in the House, 1 7 to 1 In all these cases the court held, in line with the *Reynolds* doctrine of apportionment on a "Substantially-Equal" Population Basis, that they all failed to meet the requisites of this rule and were, therefore, unconstitutional under the Equal Protection Clause of the Fourteenth Amendment

The court held in *Wesberry v Sanders*, 376 U S 1: "We do not believe that the framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants To say that a vote is worth more in one district than in another would . run counter to our fundamental ideas of democratic government " 376 U S 1, at 8. Thus the court held in *Reynolds v Sims, supra*, that population is the central point for determination and the main basis for judgment in legislative apportionment controversies

> "A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm This is the clear and strong command of our Constitution's Equal Protection Clause This is an essential part of the concept of a government of laws and not men This is at the heart of Lincoln's vision of 'government of the people, by the people, [and] for the people ' The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all *places* as well as of all races " 377 U S. at 568 (Emphasis added).

Then Chief Justice Warren, writing for the majority, held:

> ". . . as a basic constitutional standard, the Equal Protection Clause requires that seats in a bicameral state legislature must be

apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired where its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." 377 U.S. at 568.

Defendants' contention that population is not the only basis for apportioning of seats in the State Senate and that a diffusion of political power between urban and rural areas is permissible cannot be sustained, as such a position is the antithesis of the doctrine which *Reynolds v Sims, supra,* and all its companion cases have established

The reliance on *MacDougall v Green,* 335 U.S. 281, by the defendants is futile in light of *Reynolds v. Sims, supra,* and its companion cases They have completely misinterpreted *Baker v. Carr, supra,* where the majority in citing *MacDougall* did not give their approval, but rather clearly disapproved it, for the court stated

> "In MacDougall v Green, 335 U.S. 281, the District Court dismissed for want of jurisdiction, which had been invoked under 28 U.S.C. § 1343(3), a suit to enjoin enforcement of the requirement that nominees for state-wide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties *This Court's* disagreement with that action is clear since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit " 369 U.S. at 203 (Emphasis added)

Clearly, by the Court's own language it has disapproved the earlier *MacDougall v Green, supra,* holding, for it held that "this Court" disagrees with the earlier holding. Therefore, although not expressly overruled, *MacDougall v Green. supra,* is now obsolete in light of *Baker v Carr, supra.* and *Reynolds v Sims, supra.*

California's Senatorial apportionment under Art IV, § 6, as amended in 1926, is invidiously discriminatory, being based on no constitutionally valid policy; therefore it is invalid under the Equal Protection Clause of the Fourteenth Amendment, since it substantially dilutes one's right to vote solely because of where one happens to reside. *Reynolds v. Sims, supra; Maryland Committee v. Tawes, supra; Davis v Mann, supra; Roman v Sincock, supra; WMCA v. Lomenzo, supra;* and *Lucas v Colorado General Assembly. supra; Paulson v Meier,* 232 F Supp 183 (No Dak, S W, July 1964); and *League of Nebraska Municipalities v. Marsh,* 232 F Supp 411 (Nebr, July 1964).

Any reliance by the defendants on *Scholle v. Hare,* 367 Mich. 176 (116 N W 2d 350), and its subsequent companion cases, under the 1963 Michigan Constitution, Art. IV, §§ 2–6, in 372 Mich 418 (126 N.W 2d 731), (see latter case's two supplemental opinions in 372 Mich 461 (126 N W 2d 731) and 128 N W 2d 350) is now futile This is necessarily so, for the Supreme Court in a per curiam decision, 32 U S L Week 3442; 82 S.Ct. 1912; based on *Reynolds v Sims,* 377 U.S 533, and *Lucas v. Colorado General Assembly.* 377 U S 713, reversed and remanded for further hearings consistent with the *Reynolds'* rule, *Marshall v Hare,* 227 F Supp 989 (E D Mich, 1964), the exact same case, which had been instituted in the District Court The discrepancy in representation in Michigan was about 4 to 1, like all the other reapportionment deci-

sions handed down last June, it, too, was invalid under the *Reynolds'* doctrine

VIII

AVAILABLE POLITICAL REMEDIES, AS THE INITIATIVE AND REFERENDUM, HAVE NO CONSTITUTIONAL SIGNIFICANCE

Any reliance on the political remedies of initiative and referendum (*Cal Const* Art IV, § 1) has no constitutional relevance Even though a majority of the electorate may have voted to retain the present apportionment scheme in California under Art IV, § 6, as amended in 1926, such a vote cannot be sustained, if it deprives others of the Equal Protection of the Laws under the Fourteenth Amendment *Reynolds v Sims, supra,* and *Lucas v Colorado General Assembly, supra* The Court in *Lucas v Colorado General Assembly, supra,* was explicit on this point·

> " . . While a court sitting as a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionmen case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived, or denied judicial effectuation, because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment, which the individual voters seek, might be achieved An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act . . A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in *Reynolds v Sims* And we conclude that the fact that a practicably available political remedy, such as initiative and referendum exists under state law provides justification only for a court of equity to stay its hand temporarily while recourse to such a remedial device is attempted or while proposed initiated measures relating to legislative apportionments are pending and will be submitted to the State's voters at the next election." 377 U S at 736–737.

Therefore, it is clear that the mere fact that California voters have consistently rejected any reapportionment of the State Senate on a population basis by the initiative process in the elections of 1928, 1948, 1960 and 1962 is immaterial The rejection cannot be immune from constitutional attack on the ground that it violates the plaintiff's and all others similarly situated right to vote without having such right being substantially diluted by the mere fact of their residence, which

is in direct violation of the rights guaranteed under the Fourteenth Amendment. *Reynolds v Sims, supra*, and *Lucas v. Colorado General Assembly, supra.*

IX

CAN CALIFORNIA'S GREAT DIVERSITY OF PEOPLES RESOURCES, INTEREST AND ACTIVITIES OVERRIDE THE EQUAL PROTECTION PRINCIPLE?

It is the position of the defendants that California's apportionment of its State Senate (Art. IV, § 6, as amended in 1926) is constitutionally rational in light of the State's size, diversity, interests and activities This argument had it been made prior to *Baker v Carr, supra*, and its progeny, would have been highly persuasive But these other factors cannot be sustained where the deviation is so clerly invidious, as is the case here in California (almost 450 to 1 in two districts). *Reynolds v Sims, supra; Lucas v Colorado General Assembly, supra; Davis v Mann, supra; Roman v Sincock, supra; Maryland Committee v Tawes, supra;* and *WNCA v Lomenzo, supra* The rule laid down in *Reynolds* and its companion cases will allow for a slight deviation from the "Substantially Equal Population" Doctrine, where such is incident to the effectuation of a rational state policy The Court in *Reynolds v. Sims, supra,* held:

> ". . . neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation Citizens, not history or economic interests, cast votes Considerations of area alone provide an insufficient justification for deviations from the equal-population principle Again, people, not land or trees or pastures, vote Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing." 377 U S. at 579–580.

Thus any reliance on California's large area, diverse interests, history, sectional differences, that districts would be too large in area, and the like, are immaterial, since California's State Senate is strictly apportioned on an area basis (Art IV, § 6, as amended in 1926) without any consideration to the substantially-equal population doctrine by *Reynolds v Sims, supra,* and its companion cases

X

FEDERAL SCHEME ANALOGY

Furthermore, defendants contend that the present apportionment of the California State Senate (Art IV, § 6, as amended 1926) can, nevertheless, be sustained because it is patterned after the Federal

Congress Factually, the similarity is clear, for in California the Assembly is apportioned strictly on a population basis (*Cal Const* Art. IV, § 6), analogous to the House of Representatives (U S C, *Const Art.* I, § 2, cl 3), whereas, the State Senate, being apportioned on an area basis with no more than one Senator for each county, is analogous to the United States Senate, where each State is entitled to two Senators regardless of population (Seventeenth Amendment of the U S Constitution). But, legally, this analogy is inapposite and irrelevant to State Legislative Districting schemes The Court in *Reynolds v Sims, supra,* adopted the opinion of the lower court on this matter, which had held that the Alabama counties were merely involuntary political units of the State created by statute to aid in the administration of the State Government *Sims v Reynolds,* 208 F Supp 431 (M D Ala 1961) The Court held that the federal analogy argument is generally the last hope when it is clear that a state's apportionment is, as is California's, individiously maladjusted The Supreme Court holds our Founding Fathers did not intend to establish any pattern for state legislative apportionment when the representation in the Federal Congress was adopted *Reynolds v Sims, supra; Maryland Committee v. Tawes, supra; Roman v Sincock, supra; Davis v Mann, supra;* and *Lucas v. Colorado General Assembly, supra* The Court in *Reynolds* proceeded:

> ". . . The fact that almost three-fourths of our present States were never in fact independently sovereign does not detract from our view that the so-called federal analogy is inapplicable as a sustaining precedent for state legislative apportionments The developing history and growth of our republic cannot cloud the fact that, at the time of the inception of the system of representation in the Federal Congress, a compromise between the larger and smaller states on this matter averted a deadlock in the Constitutional Convention which had threatened to abort the birth of our Nation. . . .
>
> Political subdivisions of States—Counties, cities, or whatever—never were and never have been considered as sovereign entities Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions . . The relationship of the States to the Federal Government could hardly be less analogous " 377 U S at 574–575

Defendant makes further mention that the different basis of apportionment in the California Legislature is necessary to maintain the proper checks and balances between the two houses of the legislature, as is the case in the Federal Congress This again might be a forceful argument were this a case of first impression, but this argument is of no avail in light of the Court's holding that the Federal Analogy is inapposite and irrelevent to state legislative schemes This is seen from the Court's holding in *Reynolds:*

> "We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be

the same—population A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies Different constituencies can be represented in the two houses One body could be composed of single-member districts while the other could have at least some multimember districts. The length of terms of the legislators in the separate bodies could differ The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ And apportionment in one house could be arranged so as to balance off minor inequalities in the representation of certain areas in the other house In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis " 377 U S. at 576–577

XI

CONCLUSION

The present plan of Senate apportionment by districts in California is unconstitutional, being an invidious discrimination of citizens' rights and violative of the Equal Protection Clause of the XIV Amendment to the United States Constitution, as interpreted and determined by the Supreme Court of the United States

XII

RELIEF

Equitable principles must guide this court in whatever relief it determines is just and appropriate under the circumstances of this case (*Baker* v *Carr, supra; Reynolds* v *Sims, supra*)

This court asserts and agrees that "legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v *Sims, supra* at 586

At the same time, this court feels required to state (as a three-judge court in this circuit has heretofore said with respect to reapportionment of both houses of the State Legislature of the State of Washington) .

> "In the legal climate of today, no citizen may acquire a right to a legal status created by an unremitting legislative disregard of sacred constitutional rights " *Thigpen* v *Meyers,* 211 F Supp. 826 (1962).

If the California State Legislature once ordered fails to act, and to act with promptness, we, ever conscious of our oath to uphold the

Constitution of the United States, will unhesitatingly take appropriate action to correct the inequity

This court, having determined that the primary objective of any order or decree at this time should be to effectively induce the 1965 session of the California State Legislature *to properly reapportion itself as its first order of business,* makes no order at this time other than the following.

(1) It is the order of this court that the California State Legislature reapportion the California State Senate consistent with this opinion, and the several existing United States Supreme Court decisions on the subject, so that the *Reynolds'* doctrine of "districts of substantial equality in population" exists

(2) Should the California State Legislature fail to discharge its duty to fairly, adequately and validly redistrict State Senatorial Districts within the State of California, by not later than July 1, 1965, this court will, before or after that date, hold further hearings, or motions; devise redistricting plans, and make such further orders or take such further steps as may be necessary or appropriate (either upon its own motion, or on the motion of any party or intervenor), and to that end we retain full jurisdiction of this case for such purpose, and all others.

STANLEY A BARNES
Judge, U. S Court of Appeals

M. D CROCKER
Judge, U S. District Court

I dissent, and reserve the right to subsequently file a dissenting opinion.

CHARLES H CARR
Judge, U S. District Court

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

Sacramento, June 18, 1964

HON. DON A ALLEN, SR
4222 Don Diablo Drive
Los Angeles 8, California

REAPPORTIONMENT—No. 6336

DEAR MR ALLEN:

At your request we have prepared and enclose an analysis of the recent decisions of the United States Supreme Court on the subject of legislative reapportionment Due to the extreme length of the decisions, our analysis is also quite long, and, to permit you to more readily ascertain what the court held in the cases, we will set forth here a brief summary of the conclusions reached by the court

The court held that the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis, and that an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state (*Reynolds* v *Sims* (Ala), 32 Law Week 4535)

It held that the fact that a legislative apportionment plan is approved by the electorate of the state, or that the remedy of initiative and referendum is available to the people, is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause (*Lucas* v. *The Forty-Fourth General Assembly of the State of Colorado* (Colo), 32 Law Week 4557).

It held that the fact that a legislature has little discretion in forming legislative districts due to state constitutional restrictions (*WMCA, Inc.* v. *Lomenzo* (N.Y), 32 Law Week 4551), or that the legislature has consistently carried out its duty to reapportion every 10 years (*Davis* v. *Mann* (Va), 32 Law Week 4579), does not excuse the failure to comply with federal constitutional requirements.

The court recognized that mathematical exactness in the apportionment of districts is not a constitutional requisite, and that so long as the divergencies from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible in either or both houses The overriding objective, however, must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen of the state (*Reynolds* v. *Sims* (Ala), 32 Law Week 4735).

In the same connection, the court indicated that a state may legitimately take into consideration the lines of political subdivisions in forming legislative counties, some independent representation in at least one house of the legislature, as long as the basic standard of equality of population among districts is maintained The court pointed out, however, that consideration of area alone does not provide a sufficient justification for deviations from the equal-population principle, nor is history alone or economic or other group interests permissible factors in attempting to justify disparities from population-based representation A state, for example, may not give representation to each political subdivision, regardless of population, or in most instances justify population disparities on the ground that they were necessary to prevent the formation of a legislative district so large in area as to afford little access of its citizens to their representatives (*Reynolds* v *Sims* (Ala), 32 Law Week 4735)

Again speaking on the issue of population disparities, the court indicated that the problem does not lend itself to any uniform mathematical formula denoting the constitutionally permissible bounds of discretion in deviating from apportionment according to population The court stated that the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination. (*Roman* v. *Sincock* (Del), 32 Law Week 4583).

The court left it to the lower courts to decide whether to permit the use of existing reapportionment provisions for pending elections, but indicated that in no event should elections in future years be permitted to be held under provisions held to be invalid by the courts (e g *Maryland Committee for Fair Representation* v *Tawes* (Md), 32 Law Week 4573) * The court did speak with favor, however, with respect to giving a state legislature an opportunity to apportion districts to meet constitutional requirements, before an exercise of judicial action in this area.

It should also be noted that the court considered the fact that state constitutions often impose restrictions on the legislature that make it difficult to achieve equality of population The court's answer to this is that state requirements should be complied with if at all possible, but that where there is an unavoidable conflict between the federal and state constitutions, the latter must yield (*Reynolds* v *Sims* (Ala), 32 Law Week 4735)

Very truly yours,

A. C MORRISON
Legislative Counsel

BY EDWARD K PURCELL
Deputy Legislative Counsel

* In the Maryland case cited, the court stated that under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan of apportionment

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
June 24, 1964

HON. DON A ALLEN, SR.
4222 Don Diablo Drive
Los Angeles 8, California

Dear Mr Allen·

ANALYSIS OF DECISIONS OF UNITED STATES SUPREME COURT ON LEGISLATIVE REAPPORTIONMENT—No. 6336

A. *Reynolds* v. *Sims* (32 Law Week 4535).

Facts

In August of 1961, certain voters of the *State of Alabama* brought an action in the federal district court challenging the apportionment of the Alabama Legislature on the grounds that it deprived them of their rights under the Alabama Constitution and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States They sought a declaration that the existing constitutional and statutory provisions, establishing the apportionment of seats in the Alabama Legislature, were unconstitutional, and an injunction against the holding of future elections for legislators until the Legislature reapportioned itself in accordance with the State Constitution.

The Alabama Constitution provides that the Legislature shall consist of not more than 35 Senators and not more than 105 members of the House of Representatives, but authorizes an additional representative for each new county created. It requires that the number of representatives be apportioned after each federal decennial census among the several counties of the state, according to the number of inhabitants in them, and that the state be divided after each federal decennial census into as many senatorial districts as there are senators, and that such districts be as nearly equal to each other in the number of inhabitants as may be It provides that in the formation of senatorial districts no county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other. It states that representation in the Legislature shall be based on population, and that such basis of representation shall not be changed by constitutional amendment

The Alabama Constitution, in 1901, established the boundaries of the original legislative districts, and these provisions were periodically enacted as statutes by the Alabama Legislature, modified only by the creation of an additional county in 1903 As a result, the districts,

in effect, were based on the 1900 federal decennial census, and variations between the population of districts ranged from a ratio of 41 to 1 for the Senate and 16 to 1 in the House.

The district court did not grant an injunction, and stated that it would take no action before the Alabama Legislature had a further reasonable but prompt opportunity to comply with its duty under the Alabama Constitution. The court, in April of 1962, reset the case for hearing in July of 1962, and stated that unless the Alabama Legislature took action to comply with constitutional requirements before that time, the court itself would take some action on the matter prior to the 1962 general election.

On July 12, 1962, the Alabama Legislature, in extraordinary session, adopted two reapportionment plans to take effect for the 1966 elections One was a proposed constitutional amendment, apportioning the House of Representatives by giving one seat to each of the 67 counties and distributing the remaining 39 according to population; and by fixing the number of Senators at 67, one from each county. The other reapportionment plan was a statutory measure, to take effect if the constitutional amendment was not adopted by the people or was declared invalid by the federal court It provided for a 35-member Senate, representing 35 senatorial districts established along county lines, and altering only a few of the former districts It also gave each county one seat in the House of Representatives and apportioned the remaining 39 seats on a population basis

On July 21, 1962, the district court held that the inequality of the existing representation in the Legislature violated the Equal Protection Clause of the Fourteenth Amendment Furthermore, it held that neither the constitutional amendment nor statutory plan proposed by the Legislature met the necessary constitutional requirements It pointed out that the proposed constitutional amendment would increase the population disparity between senatorial districts, so that members representing 19.4 percent of the people would control the Senate. The court noted, however, that the proposed apportionment of seats in the House of Representatives would probably be sufficient to meet constitutional standards, even though serious disparities still remained. The court found the statutory plan to be totally unacceptable, since it would give control of the House to members representing 37 percent of the state's population, and would not significantly reduce the population disparity between senatorial districts.

The district court, as a consequence of its findings, adopted a provisional and temporary reapportionment plan composed of elements of both the proposed constitutional amendment and the statutory proposal, and ordered that such plan be followed for the 1962 general election. It stressed that its plan was not acceptable as a piece of permanent legislation, but was merely designed to break the stranglehold by the smaller counties on the Alabama Legislature, and to enable the reapportioned Legislature to formulate an acceptable plan for reapportionment

After the district court's decision, new primary elections were held and the general election was conducted on the basis of the court's plan. However, the new Legislature did not enact legislation on re-

apportionment An appeal was filed in the Supreme Court from the district court's decision It was alleged, on appeal, that the district court erred in failing to compel reapportionment of the Alabama Senate on a population basis, and that the district court should have required and ordered into effect the apportionment of seats in both houses on a population basis.

Decision of the United States Supreme Court

The Supreme Court held that the district court was correct in holding that neither the existing apportionment of the Alabama Legislature nor the plans proposed by the Alabama Legislature meet constitutional requirements, and that since the district court has evinced its intention to take further action if the provisionally reapportioned Legislature fails to do so, the matter should be remanded to the court for further proceedings in accordance with the principles enunciated by the Supreme Court in its opinion

In the course of its opinion, the Supreme Court set forth the constitutional principles governing the apportionment of seats in a State Legislature It pointed out that the Equal Protection Clause of the Fourteenth Amendment guarantees the opportunity for equal participation by all voters in the election of state legislators, and that an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state. It concluded that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature be apportioned on a population basis

The court rejected the application of the so-called federal analogy to state legislative apportionment arrangements, whereunder it is sought to justify basing one house on population and the other on geographical considerations. The court stated that political subdivisions of states—counties, cities, or whatever, never were and never have been considered as sovereign entities, but rather have been traditionally considered as subordinate governmental instrumentalities created by the state to assist in the carrying out of state governmental functions. Thus, it is improper to compare the right of such a political subdivision to representation in the State Senate to the right of a state to representation in the United States Senate.

The court, however, did indicate that a state may legitimately take into consideration the lines of political subdivisions in forming legislative districts, and afford political subdivisions some independent representation in at least one house of the state legislature, so long as the basic standard of equality of population among districts is maintained The court was careful to point out, however, that considerations of area alone do not provide a sufficient justification for deviations from the equal-population principle A state, for example, may not give each governmental unit or political subdivision representation, regardless of population, especially where the number of counties is large and many of them are sparsely populated.

The court recognized that mathematical exactness in the apportionment of districts is not a constitutional requisite. It stated that so long

as the divergencies from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both houses of a bicameral state legislature The overriding objective, however, must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen of the state

Along this same line, the court stated that neither history alone, nor economic or other group interests, are permissible factors in attempting to justify disparities from population-based representation It also rejected as a justification for population disparities the contention that in sparsely populated areas a population standard would result in legislative districts so large that citizens would have little access to their representatives The court indicated that modern developments and improvements in transportation and communications make this contention rather hollow.

The court sanctioned the use of decennial reapportionments, even though population shifts might cause inequities in the interim It stated that if reapportionment were accomplished with less frequency, it would be constitutionally suspect

The court then considered the fact that state constitutions often impose restrictions on the legislature that make it difficult to achieve equality of population The court's answer to this is that state requirements should be complied with, if at all possible, but that where there is an unavoidable conflict between the federal and state constitutions, the latter must yield.

The court declined to consider the question of the proper remedial devices which federal courts should utilize in state legislative apportionment cases It did state, however, that once a state's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which the court would be justified in not taking appropriate action to insure no further elections are conducted under the invalid plan. Despite this statement, the court went on to state that where an impending election is imminent and a state's election machinery is already in progress, a court would be justified in withholding the granting of immediate relief, even though the existing apportionment scheme was invalid.

In this same connection, the Supreme Court praised the district court for declining to stay the pending primary election in Alabama and for giving the Alabama Legislature the opportunity to remedy the admitted discrepancies in the state's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action. It also stated its agreement with the district court's conclusion that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion in a timely fashion after having an adequate opportunity to do so Finally, the Supreme Court commended the district court for acting with proper judicial restraint, after the Alabama Legislature failed to act effec-

tively, in ordering its own temporary reapportionment plan into effect, at a time sufficiently early to permit the holding of elections pursuant to that plan without great difficulty, and in prescribing a plan admittedly provisional in purpose so as not to usurp the primary responsibility for reapportionment which rests with the Legislature.

B. *WMCA, Inc.* v. *Lomenzo* (32 Law Week 4551)

Facts

An action was brought in the federal district court by certain voters of the *State of New York* requesting a declaration that the provisions of the State Constitution and statutes respecting legislative reapportionment violate the Fourteenth Amendment of the Constitution, and requesting the court to enjoin the election officials from performing any acts or duties in compliance with the allegedly unconstitutional legislative apportionment provisions

The district court, upon remand of the case to it from the Supreme Court after it initially dismissed the case, again dismissed the case. The court held that the plaintiffs had not proved invidious discrimination, that the apportionment provisions were rational and not arbitrary, that they were of historical origin and contained no improper geographical discrimination, that they could be amended by an electoral majority of the citizens of New York, and that therefore the apportionment was not unconstitutional The decision of the court was appealed to the United States Supreme Court

Decision of the United States Supreme Court

The Supreme Court first outlined the formulas prescribed in the New York Constitution for the apportionment of seats in the New York Legislature The formulas in question are extremely complicated. In brief, they provide for allocation of seats to the counties on the basis of ratios, with a variation in the formulas which, in operation, served to give greater representation to the less populous counties According to the figures cited by the court, a citizen in a less populous county had, under the 1960 census, about 1 7 times the representation in the State Senate of a citizen in a populous county A similar situation prevailed in the State Assembly. The difference between the least populous and the most populous senatorial district would be about 2 6 to 1, and 12 7 to 1 in the Assembly, if reapportioned under existing constitutional formulas

The court reversed the decision of the district court, holding that neither house of the State Legislature was apportioned sufficiently on a population basis to be constitutionally sustainable

The court stated that however complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a state's citizens merely because of where they happen to reside

The court noted that since the rules prescribed in the New York Constitution for apportioning the Senate are so explicit and detailed, the New York Legislature has little discretion in decennially enacting

implementary statutory reapportionment provisions, and likewise has little discretion in reapportioning Assembly seats. This fact, however, does not operate to render its apportionment valid

The court left the matter of remedies up to the district court It stated that since all members of the Legislature will be elected in November of 1964, the district court, acting under equitable principles, must determine whether, because of the imminence of the election and in order to give the New York Legislature an opportunity to fashion a constitutionally valid apportionment plan, it would be desirable to permit the 1964 election of legislators to be conducted pursuant to the existing provisions, or whether, under the circumstances, the effectuation of the appellant's right to a properly weighted voice in the election of state legislators should not be delayed beyond the 1964 election.

C. *Lucas* v. *The Forty-fourth General Assembly of the State of Colorado* (32 Law Week 4557)

Facts

An action was brought in the federal district court by certain voters of the *State of Colorado* challenging the constitutionality of the apportionment of seats in both houses of the Colorado Legislature, and requesting declaratory and injunctive relief

The district court found that the existing apportionment did not meet constitutional requirements, but, due to the imminence of the primary and general elections, and the fact that two constitutional amendments on reapportionment were pending, continued the case until after the general election

The voters, at the 1962 general election, rejected a constitutional amendment that would have required that both houses of the Legislature be apportioned on a population basis, and adopted instead a constitutional amendment providing for the apportionment of the lower house on a population basis, but maintaining the existing apportionment in the Senate, which was based on a combination of population and various other factors The Colorado Legislature, at its 1963 session, reapportioned on the basis of the constitutional amendment adopted by the people

The district court concluded that the apportionment met the requirements of the Equal Protection Clause, and, in doing so, placed heavy stress on the fact that the electorate had approved the reapportionment plan and that the initiative was available to the people to change the plan when they see fit The decision of the district court was appealed to the United States Supreme Court

Decision of the United States Supreme Court

The Supreme Court first found that the population disparities between senatorial districts were too great to meet constitutional requirements. According to the figures cited by the court, the maximum population variance ratio was 3 6 to 1.

The court then proceeded to consider the fact that the apportionment plan was one adopted by the people, and that the initiative was available to the people to change that plan The court concluded that this was immaterial.

The court pointed out that while a court of equity might be justified in temporarily refraining from the issuance of injunctive relief in an apportionment case in order to allow for resort to an available political remedy, such as initiative and referendum, individual constitutional rights cannot be deprived or denied judicial effectuation because of the existence of a nonjudicial remedy through which relief against the alleged malapportionment might be achieved The court stated that an individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by the vote of the majority of a state's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause.

The court reversed the decision of the district court, and left it to that court to determine whether the imminence of the 1964 primary and general elections requires the utilization of the existing apportionment plan or whether the circumstances in Colorado would permit the effectuation of the appellants' rights in 1964.

D. *The Maryland Committee for Fair Representation* v. *Tawes* (32 Law Week 4573)

Facts

An action was brought in the state court by certain voters of the *State of Maryland* challenging the apportionment of the Maryland Legislature. The plaintiffs requested a declaration of their rights and, if necessary, injunctive relief against further elections under the existing apportionment plan

The state court held that the apportionment of seats in the lower house of the Legislature did not meet constitutional requirements, but upheld the Senate reapportionment plan on the theory that one house can be constitutionally apportioned on a nonpopulation, geographical basis An appeal was taken to the United States Supreme Court from the lower court's decision on Senate apportionment.

Decision of the United States Supreme Court

Relying on its decision in *Reynolds* v *Sims*, discussed above, the court held that both houses of a state legislature must be apportioned substantially on a population basis. It concluded that neither house of the Maryland Legislature is apportioned sufficiently on a population basis to be constitutionally sustainable The population ratio variance for the Senate was 32 to 1 and for the lower house was 6 to 1.

The only new point made by the court was as to its right to consider the apportionment of Maryland's lower house, when the appeal was based on the alleged invalidity of the State Senate. The court concluded that it must of necessity consider the challenged scheme as a whole in determining whether the particular state's apportionment plan, in its entirety, meets federal constitutional requisites The court stated that it is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house It further stated that the proper and indeed indispensable subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters in both houses of a bicameral state legislature.

With respect to remedies, the court noted that the next election for state legislators will not be conducted until 1966, and that the Legislature has sufficient time, without further judicial action, to enact an acceptable apportionment plan prior to the 1966 elections. The court cautioned that under no circumstances should the 1966 election be conducted pursuant to the existing or any other unconstitutional plan.

E. *Davis* v. *Mann* (32 Law Week 4579)

Facts

Certain voters of the *State of Virginia* brought an action in the federal district court challenging the apportionment of the Virginia Legislature The plaintiffs requested a declaration that the statutory scheme of legislative apportionment was unconstitutional, an injunction against further elections under existing apportionment statutes, and a mandatory injunction calling for the election of legislators on an at-large basis.

The district court held that the inequalities of population in the case of both senatorial and lower house districts violated the Equal Protection Clause of the Fourteenth Amendment. The decision was appealed to the United States Supreme Court

Decision of the United States Supreme Court

The Supreme Court noted that the Virginia Constitution did not impose any particular restrictions on the Legislature in forming legislative districts, and that the Legislature had reapportioned decennially, on a population basis The only issue, therefore, was whether the population disparities were too great to meet constitutional requirements. The court found that the disparities were too great; they being 2.65 to 1 in the Senate and 4 36 to 1 in the House.

The court pointed out that the fact that the Legislature consistently reapportioned every 10 years did not serve to validate the apportionment plan. It stated that state legislative malapportionment, whether resulting from prolonged legislative inaction or from failure to comply sufficiently with federal constitutional requisites, although reapportionment is accomplished periodically, falls equally within the proscription of the Equal Protection Clause

The court concluded that since the next election of Virginia legislators will not occur until 1965, the Legislature has ample time to enact a constitutionally valid reapportionment scheme Should it not do so, the district court would then be obligated to grant relief under equitable principles to insure that no further elections are held under an unconstitutional scheme.

F. *Roman* v. *Sincock* (32 Law Week 4583)

Facts

An action was brought in the federal district court by certain voters of the *State of Delaware* challenging the apportionment of the Delaware Legislature. The plaintiffs sought a declaration that the provisions of the Delaware Constitution establishing the apportionment of seats in the Legislature was unconstitutional, an injunction against holding further elections under the existing apportionment scheme, and an order by the district court either reapportioning the Legislature on a popula-

tion basis or requiring that the general election be conducted on an at-large basis.

Subsequently, a constitutional amendment was adopted by the Legislature changing the apportionment provisions of the Delaware Constitution

The district court found the legislative districts to be unconstitutional, both before and after the adoption of the constitutional amendment The decision of the court was appealed to the United States Supreme Court.

Decision of the United States Supreme Court

The Supreme Court affirmed the decision of the lower court, and held that the legislative districts did not meet constitutional requirements. The court pointed out that even under the revised apportionment plan, the population-variance ratio for the House was 12 to 1 and for the Senate 15 to 1.

The only new point made by the court was in reference to the attempt of the district court to set forth in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population The Supreme Court stated that the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause The court further stated that the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual state whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination

The Supreme Court left to the district court the decision of whether to allow the 1964 election of Delaware legislators to be conducted pursuant to the provisions of the 1963 constitutional amendment, or whether the factors involved are insufficient to justify any further delay in the effectuation of appellants' constitutional rights

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ASSEMBLY COMMITTEE REPORTS
VOLUME 7 NUMBER 9

REAPPORTIONMENT IN CALIFORNIA: CONSULTANTS' REPORT TO THE ASSEMBLY

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HON DON A. ALLEN, SR.
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LETTERS OF TRANSMITTAL

April 26, 1965

Hon. Jesse M Unruh, *Speaker of the Assembly,*
and Members of the Assembly:

We transmit herewith a report on the subject of reapportionment prepared for the Assembly by Professors William P. Gerberding, Edward M Goldberg, Douglas S Hobbs, and Charles G. Bell, under contract with our committee. We invite each member of the Legislature to examine the contents of this report with the greatest care

The transmittal and publication of this report should not be construed to imply that either the committee or any of its members necessarily concurs in or endorses any of the conclusions contained therein Such construction is not the intention of either the committee or the authors.

The committee wishes to take this occasion of express its gratitude to Professor J A C. Grant of U C L A and Dean Edward L Barrett, Jr, of the Law School of the University of California at Davis, in addition to Gerberding, Goldberg, Hobbs, and Bell, for invaluable advice and counsel on this most difficult and complex legal, historical, and political issue. These men have rendered a distinct service to the people of California and merit the highest esteem of the Legislature, the public, and their colleagues in the academic community.

Respectfully submitted on behalf of the committee,

DON A. ALLEN, SR. *Chairman*

HON DON A ALLEN, SR, *Chairman*
Assembly Committee on Elections
and Reapportionment
State Capitol, Sacramento

Dear Mr. Chairman

Enclosed herewith is our "Consultants' Report to the Assembly" on the state of the law regarding legislative reapportionment and an analysis of the alternatives available to the California Legislature The contribution of Contributing Consultant Charles Bell Fullerton, appears as Appendix E.

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PART ONE

INTRODUCTION AND SUMMARY

The subject matter of this report is very complex. Anyone who wishes to understand the details and the subtleties of the current reapportionment problem confronting California would be well advised to read this entire report, especially Parts Two and Three. What follows in Part One is a summation, without much elaboration, of the major facts, conclusions, and judgments which are discussed at greater length in Parts Two and Three.

I.

The new (1964) "one man, one vote" requirement—which holds that both houses of state legislatures and congressional representation must be apportioned on the basis of districts of substantially equal population—is not likely to be changed The Supreme Court almost certainly will not reverse or modify its position, and the chances that the United States Constitution can be amended are very slim

II.

Therefore, California must adjust to this new requirement The State Senate is already under a federal court order to do so by July 1, 1965 Sooner or later, depending upon the vagaries of court action, the Assembly and congressional apportionments will very likely have to be adjusted as well

III.

If the Legislature fails to reapportion the State Senate by July 1, 1965, the federal court *might* extend its deadline beyond July 1, 1965 A much more likely development, however—unless the Legislature appears to be nearing action on the matter—is that the court will reapportion the Senate, either by itself or through a special master

IV.

Either as an aspect of the court proceedings regarding the State Senate or, more likely, as a consequence of other judicial action, the Assembly is likely to be ordered to reapportion It is impossible to predict with any confidence when this will occur This presents the Legislature (or the Assembly alone) with some difficult choices

A. The Legislature could simply wait until such an order to reapportion the Assembly is handed down and then respond to it. This response could take several forms

1 The Legislature could reapportion the Assembly If the reapportionment were adjudged valid by the ordering court that would presumably be the end of the matter (barring a successful challenge of the reapportionment in another court or by a referendum petition). If the reapportionment were adjudged invalid, then the ordering court would either permit another effort by the Legislature or reapportion the Assembly by itself.

2. The Legislature could ignore the court order or fail to act on it. The court would then reapportion the Assembly by itself. If, under these conditions, the Assembly had itself passed a valid reapportionment plan—which had failed to become law— the court might very well adopt this plan as its own and order the Assembly reapportioned accordingly

B. Alternatively, the Legislature (or the Assembly alone) could anticipate such an order and pass a law (or, in the case of the Assembly acting alone, a bill) reapportioning the Assembly. (The purpose of having the Assembly act alone, if necessary, would be the same as that described above · it would provide a court with a plan to adopt as its own. Whether this action should be taken before or after a court order, or at all, is, of course, a political question)

C Finally, the Legislature could enact a contingency reapportionment plan for the Assembly, to be implemented if and when the court orders Assembly reapportionment

V.

Regarding congressional reapportionment, essentially the same options are available to the Legislature (or the Assembly alone).

VI.

However and whenever the Legislature (or the Assembly alone) decides to act, it will be confronted with the knotty problem of determining which, if any, of the state constitutional provisions affecting state legislative apportionment are still binding No certain answers are possible. Our best judgment is as follows

A Regarding the Senate, the requirement of a 40-member Senate is still binding and the requirement of single-member districts is almost certainly still binding Those which require that no more than three counties be combined in any district, that multicounty districts be composed of whole contiguous counties, and that no county may have more than one senator are no longer binding

B Regarding the Assembly, the requirement of an 80-member Assembly is still binding and the requirement of single-member districts is almost certainly still binding The requirement that multicounty districts be composed of whole contiguous counties is no longer binding

C. Regarding congressional apportionment, there are fewer state constitutional restrictions than there are regarding the Assembly and the Senate A congressional district, unlike either Assembly or Senate districts, may cross a county line and include only part of one or more counties The only troublesome proviso is that when congressional districts are formed within counties having populations which merit more than one congressional district, Assembly districts may *not* be divided. This prohibition is bound to create congressional districts which are substantially unequal in population and is therefore no longer binding.

VII.

In the course of any reapportioning process in California, the following considerations should be borne in mind

A It is not yet known what the maximum permissable deviation from districts of exactly equal populations will be. The Supreme Court has been unwilling to adopt any rigid mathematical formula. Only a few guidelines have been offered

1. Regarding state legislative districts, acceptable justifications for deviation are limited to two considerations: (a) the use of political or natural or historical boundary lines so long as the resulting apportionment is based substantially on population; and (b) the balancing of a slight overrepresentation of a particular area in one house with a minor underrepresentation of that area in the other In addition, temporary reapportionment plans designed to elect a legislature which will effect a permanent reapportionment may permissibly contain deviations which would be unconstitutional in a permanent plan
2. Regarding congressional apportionment, the Supreme Court has indicated that less flexibility is probably permissible regarding congressional districts than regarding state legislative districts. In fact, it could be argued at this point in time that there are *no* allowable grounds for deviation regarding congressional districts. Recent events in Congress suggest that federal legislation may be passed providing for a maximum deviation among a state's congressional districts of 15 percent from the norm The Supreme Court would almost certainly accept any such congressional determination.

B In California, the State Constitution makes reliance on the 1960 census data mandatory in any reapportionment prior to 1971.

C. The constitutional status of gerrymandering is far from clear. The Supreme Court has referred to gerrymandering in passing but its comments have not been helpful The Supreme Court may very well avoid dealing with political gerrymandering altogether. What it will do regarding racial gerrymandering is entirely unclear at this time

D The Supreme Court has specifically authorized multimember districts, but will probably declare certain kinds—i.e, those that grossly and deliberately discriminate against racial or political minorities—unconstitutional.

E Weighted (or fractional) voting, although not necessarily unconstitutional in terms of the U S Constitution, is clearly contrary to the California constitution

F Floterial districts will be upheld as constitutional only under the unusual circumstances wherein the component single-member districts are substantially equal in population

PART TWO

THE CURRENT STATE OF THE LAW IN REGARD TO LEGISLATIVE APPORTIONMENT

I. INTRODUCTION

A very great jurist, from whose wisdom and insight we invariably profit, defined law in his relative youth as "The prophecies of what the courts will do . . ."* In stressing the necessity of prediction Holmes was perhaps exaggerating the law's uncertainty His exaggeration is, however, peculiarly relevant to this section of the report, which is at best prophecy, or, if we may be permitted an immodest paraphrase, an 'educated guess' as to what judges will or might do Such educated guesses are very often little better than uneducated guesses This seems particularly true of the law surrounding reapportionment To make the point more dramatically, the informed predictions of both lawyers and political scientists in the aftermath of *Baker* v *Carr* † almost universally failed to anticipate what, in retrospect, was obviously the court's intended course of action ‡

If the efforts below fail to convey certainty, it is not because the authors have attempted to lay off their bets It is rather a case of the law itself being uncertain to the point of being mysterious What we hope to achieve is not prophecy in its literal sense, but rather an intelligible recounting of what the courts, particularly the Supreme Court of the United States, have said about reapportionment and a systematic elaboration of what appear to be the unresolved constitutional issues Our purpose will be fulfilled if our readers are helped in making the difficult judgments ahead

II. DEFINITION OF "POPULATION"

The Supreme Court has left no doubt that its "one person, one vote" [1] caveat means legislative districts (for both houses of the state legislatures and for the House of Representatives) of "substantial equality of population" [1a] or "as nearly of equal population as is practicable" [2] It has, however, been singularly and unfortunately vague about how it is using the word "population" This is apparently the key word in light of the Supreme Court's dictum in *Reynolds* v *Sims* that "population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment

* Holmes, "The Path of the Law," *Collected Paper* 9 (1920)
† 369 U S 186 (1962)
‡ For a list of the false or misguided prophets, see *Lucas* v *Forty Fourth General Assembly*, 377 U S, 748 n 9 (1964) (Stewart, J, dissenting)
[1] The phrase was coined by Douglas, J, writing for the Court in *Gray* v *Sanders*, 372 U S 368, 381 (1963) Stewart, J, concurring, preferred the "one voter, one vote" formulation *Id* at 382 This preference is most easily explained by Justice Stewart's belief that arithmetic equality applied only to votes cast within the same constituency It does not imply a belief that voters rather than persons were the appropriate basis of apportionment
[1a] *Reynolds* v *Sims*, 377 U S 533, 599 (1963)
[2] *Id* at 577

controversies"[3] The court uses the word in a variety of ways. In *Reynolds,* the governing case in the area of state legislative apportionment, the Chief Justice within the space of seven pages speaks of "numbers of people,"[4] "voters,"[5] "citizens,"[6] and "qualified voters"[7] as if each were a generally accepted synonym for "population." Some 10 pages later, on the other hand, he speaks within a single sentence of "residents, *or* citizens, *or* voters"[8] as if the terms were perhaps distinguishable.

One inference that could be drawn from the court's language is that for constitutional purposes the terms are in fact interchangeable, and that as far as the court is concerned the states are at liberty to select whichever measure, whether it be residents, citizens or voters, they think most appropriate. Such a conclusion, however, seems unjustifiable, or at least premature, in view of the logic the court employed in support of its "one person, one vote" criterion. The court's *logic* intimates that the way a state chooses to define "population" may well affect the constitutionality of its apportionment. It is our intent here to examine that possibility.

The court's rationale for districts of equal population is that any other arrangement results in an unconstitutional "dilution" or "debasement" of the value of the *vote* in the more populous districts For example, a *voter* in a district of 20,000 inhabitants is alleged to have one-half the vote of one voting in a district of 10,000 Or, to put it another way, the voter in the smaller district is said to have his vote "weighted" by a factor of two.[9] Leaving aside the question of whether talk of "dilution" or "weighting" is, as alleged by Justice Harlan,[10] circular or question begging, the court's reasoning is, at least in mathematical terms, beyond reproach if, *but only if,* the figures cited refer to populations composed *entirely of voters.* Under these circumstances the voter in the larger district clearly exercises a proportionately lower degree of influence on election day than his counterpart in the smaller district If, however, this condition does not prevail, the court's argument poses some serious questions for all of the standards for measuring population which are currently employed by one or more of the states.

The criteria currently in vogue are· (a) inhabitants (with or without exceptions for certain groups such as aliens, non-resident service personnel, etc);[11] (b) registered voters;[12] and (c) voters[13]

[3] *Id* at 567
[4] *Id* at 560
[5] *Id* at 561
[6] *Id* at 562
[7] *Id* at 565
[8] *Id* at 577 (Emphasis added)
[9] The Court alluded to "weighting" in both *Gray* v. *Sanders, supra* note 1, at 380, and *Wesberry* v *Sanders,* 376 U S 1, 8 (1964) The "weighting-dilution" argument is most fully elaborated in *Reynolds* v *Sims, supra* note 1a, at 561–568
[10] *Wesberry* v *Sanders, supra* note 9, at 25 (dissenting opinion), *Reynolds* v *Sims, supra* note 1a at 590 (dissenting opinion)
[11] On the eve of *Baker* v *Carr,* 369 U S 186 (1962), thirty-three states employed a standard of total inhabitants Alabama, Colorado, Connecticut, Florida, Iowa, Kansas, Kentucky, Louisiana, Missouri, N Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia and Wyoming apportioned *both houses* by this method, Arkansas, Georgia, Illinois, Maryland, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island, S Carolina, Texas and West Virginia apportioned the *lower house* in this fashion, Vermont employed total population for the upper house Ten states employed a somewhat narrower base New York and Nebraska excluded aliens, California excludes persons ineligible to U S citizenship (see note 19 *infra*) Maine excluded aliens and untaxed Indians from the upper house apportionment and

(a) For those states such as California which utilize "inhabitants" or some modified version thereof in their apportionment formula the court's "dilution" logic presents a potantially serious problem What, for example, would be the court's view of an apportionment based on inhabitants which resulted in districts of equal population, but where, because of the concentration of significant numbers of persons ineligible to vote such as nonresident servicemen and their families, the ratio of voters between two given districts reaches, say, two to one? (Such a situation is conceivable in a state where there is a high proportion of ineligible voters who tend to concentrate in certam geographic areas) According to the logic of "dilution" such a situation would seem constitutionally impermissible [13a] Yet, on the other hand, the use of "inhabitants" has a certam historic legitimacy, regardless of the inequities it may foster; it has been the predominant practice in the states and appears to be sanctioned by the Federal Constitution which provides that "Representatives shall be apportioned . . according to . . . numbers, counting the whole number of persons excluding Indians not taxed." [14]

(b) For those states employing "registered voters" in the apportionment formula, an analogous question of constitutional import arises when there is a substantial divergence amongst the districts in the ratio of registered to actual voters Under such circumstances, would residents of districts where the ratio of voters to registered voters was habitually and substantially higher have an allowable constitutional claim? Again there are arguments on both sides From one standpoint it could be maintained that the voters in the districts where there existed a higher participation rate had their votes "diluted " From another, it could be argued that the "stay-at-home" was a "potential" voter who simply elected to remain "neutral" and whose right to an "undiluted" vote at some future election should be anticipated and protected

(c) For those states that base their apportionment on "actual voters," the controversial issue is which election should be chosen to serve as the apportionment base. What if it can be shown that in the election selected as the apportionment base, large numbers of eligible voters in certain areas were unable to vote not because of apathy but

aliens from the lower house formula North Carolina excluded both aliens and untaxed Indians Minnesota excluded untaxed Indians Washington, Wisconsin, and Alaska excluded military personnel And Indiana based its apportionment upon male inhabitants over 21 years of age Baker, *State Constitutions Reapportionment*, Appendix, at 63-70 (1960)

[13] Massachusetts and Tennessee used registered voters for both houses, Texas and Rhode Island for the upper house, and Hawaii for the lower house *Id*

[13a] Arizona based its apportionment of the lower house on the number of votes cast for governor in the most recent election

[13a] But cf *Ellis* v *the Mayor and City Council of Baltimore*, 234 F Supp 945 (1964) There a Federal District Court held unequivocally that *Reynolds* v *Sims*, "and particularly its analysis from *the* foundation of the 'one person, one vote' concept, makes clear /*sic*/ that the basic constitutional protection is one of equal representation by population, and not equal representation by registered voters" *Id* at 953

[14] Art I, Sec 2, para 3, as amended by Amendment XIV, Sec 2 The Virginia Supreme Court of Appeals has recently ruled that since Representatives are allocated to the states on the basis of population, congressional seats within the state must be apportioned on the same basis Virginia's employment of inhabitants (i e, residents) for congressional apportionment was thus held impermissible *Wilkins* v *Davis*, 33 LW 2364 (1965) Congress is currently considering legislation which *inter alia* would require states to apportion their congressional districts on the basis of "whole numbers of persons excluding Indians not taxed " See H R 5505 contained in Appendix E It should be noted that since the Supreme Court ruled that all Indians were "subject" to taxation, *Superintendent* v *Commissioner*, 295 U S 418 (1935), the Census Bureau has included all Indians in its apportionment computations

because of a natural disaster or epidemic which was confined largely to their locale? Or, what if the *type* of election—e g , "off year" or when no statewide offices were at stake—upon which apportionment was based was one in which certain districts traditionally achieved a higher percent of voter turnout than other districts? It would appear that the voters in the low turnout areas would in both cases have a case of substantial merit for claiming that their votes were being "diluted" as long as the apportionment derived from the base election remained in effect Whether the court would acknowledge the claim is of course another matter [14a]

There are at present no available answers to the questions raised when the court's dilution logic is applied to the several measures of population, each of which, as we have seen, possesses its own peculiar potential for "inequity" Each of the cases before the court involved a state employing the "inhabitant" criterion, and in each the population disparities among the districts were so great under any accepted standard of population that the inequities, if any, attributable to their definition of the term "*population*" was not even considered by the court

On the one occasion where the court might have provided some guidance in this area, it managed to avoid making a constitutional pronouncement In *Davis* v *Mann*,[15] the Virginia reapportionment case, in which the state attempted to justify population disparities on the grounds that the larger districts contained a high percentage of nonresident servicemen and their families, the court brushed aside the state's contention on several grounds, none of which met the constitutional question First, it stated broadly that "[d]iscrimination against a class of individuals [i e , servicemen] merely because of the nature of their employment, without more being shown, is constitutionally impermissible" Then, more specifically, it noted (a) that there was no

[14a] In the recent New York case, a federal district court was called upon to pass upon the use of actual voters as the basis for apportionment The court struck down the plan on the *grounds* that (a) *since the effect of the plan was to reduce the* representation accorded New York City, it failed to reflect the U S Supreme Court's concern with the existing "bias against voters, living in [New York] State's more populous counties", and (b) New York State had, since 1894, used *citizen population as the apportionment base* The district court, however, scrupulously avoided passing upon the constitutionality of using voters as a base under other circumstances, and, with consummate delicacy, did not mention the fact that the base election employed in the plan—the 1962 gubernatorial election—was to the marked advantage of one of the political parties *WMCA, Inc* v *Lomenzo*, Civil Docket 1559, S District of New York, filed 1 Feb 1965 (mimeo)

The district court's approval of the employment of citizen population (as opposed to total population) is of scant precedential value since the record clearly showed that aliens were equally distributed throughout the state and that their exclusion from the apportionment formula would thus not be to the advantage of any given area

[15] 377 U S 678 (1964)

showing that the Legislature did *in fact* take the presence of servicemen into account in its allocation of legislative seats, (2) that since state election laws appeared to encourage servicemen to vote, their exclusion from the apportionment formula was of questionable rationality; and (3) that, even if servicemen were taken into account, the disparity between districts could not be satisfactorily rationalized.[16] At most, this reasoning carries with it the implication that nonresident servicemen may be excluded if certain conditions are met Whether or not under certain circumstances exclusion is required is not clear [16a]

Despite the existing uncertainty as to the exact constitutional status of the various population standards, some generalizations can be made concerning possible court reaction in this area In the first place, there is no standard—inhabitants, registered voters, or voters—which is unconstitutional on *its face*. Barring a clear showing by the complainant that the prescribed norm in fact produces a "dilution" of anyone's vote, it would seem most unlikely that the court would assume jurisdiction over the complaint [17] If the mere possibility of discrimination were the basis for intervention, the court would not only be inviting litigation, but doing so without an appropriate remedy since any standard it chose to impose as a replacement would also be discriminatory, or potentially so To anticipate, then, that all standards will be accorded a presumption of constitutionality appears reasonable

Secondly, once the inequities due to the employment of a given population standard have been shown, the court has a crucial choice· Are all substantial and correctable inequities to be regarded as impermissible, or only those which can be shown to be the result of a deliberate state policy? Presumably the court would opt for the latter alternative To do otherwise would put it in the unenviable position of striking down an apportionment which, for lack of evidence to the contrary, would normally be assumed to be the result of " . an honest and good faith effort" [18] on the part of the apportionment agency Further, to refrain from intervention in the case of unanticipated or fortuitous inequities would probably not result in the perpetuation of any great inequities In an age of elaborate census data, voting statistics, and computers—to say nothing of politically sensitive legislators, alert journalists, and obliging political scientists—it would seem improbable that gross inequities could be convincingly or reasonably attributed to "inadvertance" or "lack of warning "

Thirdly, even if the court has been satisfied that the inequity was unintended, its task is by no means complete What if the Legislature consciously elected to use registered voters as the measure of population, well knowing that it would create certain inequities, but was prepared to justify its choice on the grounds that this particular variety of "dilution" or "weighting" was preferable to some other inequity that would result if another standard were adopted? As we have seen,

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[16] *Id* at 691

[16a] One conceivable situation where the use of "residents" rather than "inhabitants" would be arguably required is when, because of large military installations, certain districts composed almost entirely of nonresident servicemen and their families assume the aspect of "pocket boroughs", i e, are controlled by a relative handful of actual residents

[17] In the Baltimore case, *supra* note 13a, there was evidence before the court to suggest that employment of registered voters in the apportionment formula did in fact discriminate against certain areas

[18] *Reynolds* v. *Sims*, *supra* note 1a, at 577.

each standard is capable of producing its own brand of numerical injustice As a result, the alternative before the apportionment agency may well be, indeed often will be, not between an inequitable and equitable standard, but between various inequitable standards The avoidance of one inequity may require the adoption of another. How the court will confront this and the other dilemmas involved in the utilization of a population measure is, in the last analysis, a matter of considerable conjecture at this point

This uncertain state of the law in regard to the definition of population suggests that all that can be done for the present is for each apportioning agency to make the required "honest and good faith effort," and then to hope that its effort is adjudged constitutional Until and unless the court clarifies the matter, selection of the population measure will remain within the discretion of the apportioning agency.

As far as California is concerned, the problems surrounding the definition of "population" are, for the present at least, academic Article IV, Section 6, of the California Constitution provides that "Each . . . reapportionment . . . shall be based upon the last preceding federal census." [19] Even if it could be shown that census figures are—either because of actual or projected population movement—less than an ideal basis for court ordered reapportionments in California between now and 1970, the unequivocal mandate of the existing State Constitution leaves no immediate alternative but the use of the census data of 1960. Further, the Supreme Court clearly stated in *Reynolds* that decennial reapportionment, "although undoubtedly . . . lead[ing] to some imbalance in the population of districts toward the end of the decennial period," clearly meets "the minimal requirements for maintaining a reasonably current scheme of legislative representation." [20] From this it may reasonably be inferred that any alleged inequities attributable to the employment of the most recent official (but nevertheless probably out-of-date) population data will not be the basis of a successful federal constitutional claim.

III. SUBSTANTIAL EQUALITY OF POPULATION

Assuming that an acceptable or workable definition of "population" can be generated, the next question is what constitutes "substantial" equality, or what does "as nearly [equal] as is practicable" mean. Since the court suggested in *Reynolds* that the requirements for apportioning state legislatures were distinguishable from those governing congressional apportionment,[1] we will here treat congressional and state legislative apportionment separately.

[19] Census data is based upon *total inhabitants* The stipulation in Article IV, to the effect that in reapportionment "no persons who are not eligible to become citizens of the United States under the naturalization laws shall be counted as forming the population of any district" is apparently obsolete by virtue of the fact that no such class of persons has existed since 1952 when congress provided that no person shall be denied the right to become a citizen of the United States because of race, sex, or marriage 8 U S C A 1422 The stipulation in the California Constitution was apparently incorporated with an eye to excluding those of Chinese ancestry from the apportionment count See *Debates of the California Constitutional Convention* 1257–1258

[20] *Supra* note 1a at 583–584

[1] 377 U S 533, 577 (1964).

A. *Congressional Apportionment*

In *Wesberry* v *Sanders*,[2] the only case involving congressional apportionment in which the Supreme Court considered the merits in opinion form, the Court went no further than to state that districts shall be "as nearly [equal] as is practicable."[3] Clearly the Georgia apportionment at issue, which contained a district "two to three times" as large as others,[4] did not meet this requirement As to what is meant by "practicable," however, the court went no further than to acknowledge that "it may not be possible to draw . . districts with mathematical precision . . "[5] As Justice Harlan noted in dissent, such a formulation swept "a host of questions under the rug "[6]

> How great a difference between the population of various districts within a state is tolerable? Is the standard an absolute or relative one, and if the latter to what is the difference in population to be related? Does the number of districts within the state have any relevance? . . . Is the relevant statistic the greatest disparity between any two districts or the average departure from the average population per district, or a little of both? May the state consider factors such as area or natural boundaries (rivers, mountain ranges) which are plainly relevant to the practicability of effective representation?

If these queries were left unanswered in *Wesberry,* the experience of the past two years has provided some partial answers In the first place, in *Reynolds* the court noted that "more flexibility may . . . be constitutionally permissible with respect to state legislative apportionment than in congressional districting "[7] This conclusion flowed from the following argument

> Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a state than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the state To do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-protection principle was not diluted in any significant way.[8]

Since adherence to the boundaries of political subdivisions was virtually the only permissible justification for departing from the population principle afforded in the case of state legislatures which the court noted, it could be argued that in congressional districting there are *no* allowable grounds for deviation Justice Harlan's final query could be considered answered in the negative

Although the court elected to distinguish congressional and state legislative apportionment solely on the grounds of their differing relationships to political subdivisions, it appears likely that the court was

[2] 376 U S 1 (1964).
[3] *Id* at 7–8
[4] *Id* at 7
[5] *Id* at 18
[6] *Id* at 21 n 4
[7] 377 U S 533, 578 (1964).
[8] *Ibid*

not unmindful that deviations from the population standard among congressional districts—which are fewer in number and more populous than state legislative districts—were not only easier to detect, but also more susceptible to simple remedy than analogous disparities among state legislative districts Even minor disparities among congressional districts, which generally average around 410,000 inhabitants,[9] result in easily recognizable absolute deviations A 5 percent deviation, for example, represents 20,500 readily visible people, more than the average lower house district in some state legislatures

In terms of remedy, election-at-large for congressional seats usually presents manifestly fewer inconveniences and dangers than a similar election for a 200- or 300-member state legislature would [10] Similarly, even the reapportionment of congressional seats by a court itself is usually much less awesome when compared to a similar effort in regard to the state legislature

Probably the most useful clarifications in the area of congressional apportionment have been provided by the lower courts which have contributed at least some suggestive examples of what apportionments are *impermissible*.[10a] Table 1 is a summary of the cases decided through February 28, 1965, in which apportionments have been overturned With the exception of the Georgia case, which was finally decided by the Supreme Court itself, and the Virginia case, which was decided by the Virginia Supreme Court of Appeals, all the cases were handled by federal district courts.

TABLE 1

Congressional Apportionments Held Unconstitutional

State	Ratio of largest to Smallest district [a]	Citation
1. Alabama	2 8 to 1	*Moore* v *Moore*, 229 F. Supp 435 (1964).
2 Georgia	3 0 to 1	*Wesberry* v *Sanders*, 376 U S. 1 (1964).
3 Texas	4 4 to 1	*Bush* v *Martin*. 224 F Supp 499 (1964), affirmed *Martin* v *Bush*, 376 U S 222 (1964) (per curiam)
4. Maryland	2 9 to 1 [b]	*Maryland Citizens Committee for Fair Congressional Redistricting*, 228 F. Supp. 956 (1964).
5. Michigan	1 6 to 1	*Calkins* v *Hare*, 228 F. Supp. 824 (1964).
6 Kansas	1 5 to 1 [b]	*Meeks* v *Anderson*, 229 F. Supp 271 (1964).
7. Florida	2 8 to 1	*Gong v. Bryant*, 230 F. Supp 917 (1964).
8 Missouri	1 4 to 1	*Preisler* v *Hearnes* [c]
9. Virginia	1 7 to 1	*Wilkins* v *Davis*, 33 LW 2364 (1965)

[a] With the exception of the Michigan case, the courts, when they have used figures at all, have confined themselves to comparing the largest districts to the smallest in terms either of a ratio or raw population In Calkins v Hare the court spoke of the "Index of Representation," defined as the average district population divided by the population of a given district, as well as the disparity between largest and smallest districts 228 F Supp 824, 826 n 4 (1964)

[b] No figures cited in the opinion Data used in the table is based upon Congressional Quarterly Special Report: Congressional Districting (1962)

[c] Opinion is unreported to date For an account, see the Los Angeles Times, January 5, 1965, p 26

[9] *Congressional District Data Book*, Table A (Bureau of the Census, 1963)

[10] The "danger" of elections at-large is, of course, their winner-take-all aspects which is understandably frightening to either political party See, e g, *Colegrove* v *Green*, 328 U S 549, 553 (1946) The recent experience in Illinois suggests that this problem can be substantially obviated by interparty agreement to guarantee the losing party a certain minimum percentage of the seats

[10a] Since *Wesberry* only in one case, *Levitt* v *Maynard*, 202 A 2d 478 (1964), has a congressional apportionment withstood judicial scrutiny Unfortunately, however, the case is of scant precedential value In the first place, the New Hampshire apportionment involved was one of the nation's best, only two states (Maine and North Dakota) showing a smaller disparity between largest and smallest dis-

The most that would appear to be justifiably inferrable from these cases is (1) that the principal judicial preoccupation is with extreme deviations rather than the overall pattern of apportionment within a state, and (2) that any apportionment which involves a 1 4 to 1 or greater ratio between the largest and smallest districts is probably constitutionally suspect At exactly what point the courts will elect to fix the maximum permissible deviation in individual cases remains conjectural. What is apparent, however, is that however and wherever the line is drawn it will be done so arbitrarily.

As things stand now, these arbitrary determinations could be made in either of two ways They could be accomplished either on an *ad hoc*, case by case basis, which is the method suggested by the Supreme Court for the handling of state legislative apportionment controversies.[11] or in terms of some universally applicable norm(s) prescribing maximum permissible variations Either approach would have its own peculiar results, which we shall now explore.

If the case by case approach is adopted—and it has been so far—the following consequences may be anticipated·

(1) Specific findings in individual cases will not necessarily be binding in subsequent cases, but will create certain rebuttal presumptions For example, the holding in *Wilkins* v *Davis* [12] that a maximum deviation ratio of 1 4 to 1 is constitutionally impermissible would not necessarily mean that, say, the California apportionment [13] which contains a 2 to 1 ratio is analogously void on its face What it would mean, however, is that there would be a presumption against the California scheme In other words, the burden of proof would be shifted from the plaintiff, where it would normally be placed, to the state To meet this burden the state would have to be able to distinguish its situation from that in Virginia There are any number of ways in which this might be attempted One would be to demonstrate that extreme variations in California, which has 38 districts, do not have as bad an overall effect on an apportionment plan as such variations have in Virginia, which has 16 seats This might be accomplished by showing either that in California the average deviation per district was less or that a higher percentage of the total electorate was required to elect a majority of the representatives

(2) As implied above, there will be a great deal of uncertainty, at least temporarily, as to exactly what is permissible Thus uncertainty will remain until some court approves an apportionment whose validity is doubtful Until that time, all that can be assumed realistically is

tricts Thus, even if New Hampshire's 1 2 to 1 ratio between its most and least populous districts is considered constitutional, the apportionments of 37 of the remaining 39 states which district (i e, those states with more than one representative that do not conduct their elections at large) are still in doubt Secondly, the New Hampshire Court predicated its finding on a very questionable reading of *Wesberry* Not only did it rely upon Justice Harlan's *dissent*, but it appears to have misread the dissent, at that Justice Harlan had said that apportionments which contained population differentials between districts of more than 100 000 persons were "presumably" not as nearly equal "as is practicable" 376 U S 1, 21–22 (1964) The New Hampshire court then made the very questionable inference that Justice Harlan had read the *Wesberry* majority as approving any apportionment having less than a 100,000-person disparity between districts *Levitt*, *supra* at 480

[11] *Reynolds* v *Sims*, *supra* note 1, at 578
[12] 33 LW 2364 (1965).
[13] See Appendix A.

that any plan which provides for deviations no greater than those already disapproved by some court has a chance of being upheld.

(3) The point at which apportionment schemes are confronted with a presumption of unconstitutionality will be lowered over time. The first cases to be litigated are, in general, the more extreme ones in which the courts are not required to establish very restrictive holdings However, once the potential litigants in the more marginal situations become encouraged and take up the cause, the courts will be faced with suits involving apportionments where deviations, while noticeable and correctable, are hardly spectacular And, sooner or later, some court will strike down a marginal apportionment and thus further reduce the area of presumed constitutionality It is not by accident that the successive ratios contained in Table 1 display a general downward trend.

This process of the lowering of the permissible level of deviation is not likely to be halted by any of the appellate courts, including the Supreme Court A court which initially strikes down an apportionment is presumably prepared to say that a more equitable apportionment is "practicable" This type of judgement is difficult to reverse A reversal by an appellate court in such circumstances would be tantamount to a verdict of no confidence in the inferior court, a judgment courts are understandably and wisely reluctant to make

In summary, the overall result of *ad hoc* determinations will be uncertainty and flexibility which over time will give way to greater certainty, increasing rigidity, and more restrictive interpretations of permissible deviation

If a policy of imposing, across the board, absolute standards, is, on the other hand, found attractive by the courts, the following results may be anticipated:

(1) Certainty will be achieved once the standard(s) is (are) established

(2) The process of selecting the standards will be troublesome to say the least In the first place, there is the question of what standard to adopt Should deviations be limited to 15 percent, as suggested by the American Political Science Association in 1951? [14] Or, would a 10 percent norm be better? To answer this type of question, the Supreme Court, which would inevitably be the ultimate arbiter, would be confronted with precisely the task it has so assiduously avoided up to now, namely, how to set an absolute standard without appearing palpably arbitrary In the second place, since no single standard, unless extremely restrictive, provides enough safeguards to guarantee the meeting of constitutional requirements, the courts would be obliged to enunciate more than one standard which would necessarily compound its difficulties

(3) If the courts elect to impose one extremely restrictive standard, states with large congressional delegations may find apportionment extremely difficult While states with two or three districts can easily meet any requirement, a standard which requires, say, that no district deviate from the average by more than 5 percent (roughly 20,000 persons) would certainly cause a hardship for a state with 20- or 30-odd districts.

[14] "The Reapportionment of Congress," 45 *American Political Science Review* 154–155 (1951).

(4) If, on the other hand, the court opted for the adoption of more flexible, multiple standards, the more populous states would be relatively better off than their less populous sisters. Assume for example, that the courts employ conjointly the following standards: (a) no district may deviate from the norm by more than 15 percent and (b) no less than 45 percent of the population may be able to elect half of the delegation Under these rules, New Hampshire, which has two districts, could have no district deviating by more than 5 percent from the norm without violating condition (b). California with 38 districts, on the other hand, could have 24 districts deviating by 15 percent (12 by +15% and 12 by −15%) or all 38 districts deviating by 10 percent (19 by +10% and 19 by −10%), and still meet the second stipulation

The foregoing analysis is both speculative and contingent. It certainly has raised more problems than it has solved. And some of these problems may turn out not to be problems at all once the situation becomes clarified, as it inevitably must. However, this is the way it must be, for the area of congressional apportionment has been at most only faintly illuminated by the endeavors of the judiciary to date.

Recent events in Congress suggests that much of the present uncertainty may be removed by legislation.[15] Bills defining the maximum permissible deviation for congressional districts have been introduced in the House of Representatives. One bill provides for a 15 percent limit, another for a 12½ percent maximum disparity. The former proposal, reflecting the American Political Science Association's 1951 recommendation, appears to have considerable backing. Both bills appear eminently reasonable, and the passage of either should not create any serious difficulties for those states required to redistrict. Quite clearly any federal legislation in the area of congressional apportionment would be subject to judicial scrutiny on constitutional grounds Fortunately, it appears extremely unlikely that the courts would be so judicially immodest as to nullify a patently reasonable and helpful effort on the part of the political branches to implement *Wesberry* v. *Sanders*. Congress's authority over federal elections is indisputable and its endeavors are invariably accorded appropriate deference by the courts

If the federal courts prove to be reluctant to overturn requirements established by Congress, it does not necessarily follow, however, that any and every congressional apportionment which meets the plus or minus 15 *per centum* requirement would be immune from judicial oversight Take, for example, an extreme situation where half of a state's districts deviated by plus 15 percent and half by minus 15 percent, and assume further that all the former districts were urban and all the latter were rural Despite the fact that such an arrangement conforms to the letter of the law, it would appear that it would not be beyond constitutional challenge. Such a situation could be handled by the courts in at least two ways The courts could find that the apportionment, despite its conformance to statutory provisions, was so "invidiously discriminatory" that it violated the Equal Protection Clause. Or, they could construe the congressional statute as setting boundaries, the exceeding of which would be a *prima facie* case of unconstitutionality,

[15] See "Congressional Districts," 23 *Congressional Quarterly* 286 (1965) for a summary of current happenings in Congress.

but still requiring the apportionment agency to construct districts of as nearly equal populations "as is practicable." This particular construction would seem not unreasonable in light of the fact that HR 5505,[16] which was recently favorably reported by the House Judiciary Committee, provides simply that no district deviate from the average by more than 15 percent. It does not say that any deviation of less than 15 percent is constitutionally permissible. Thus, the way is open for the courts to strike down a given apportionment without voiding the governing congressional enactment.

B. *State Legislative Districts*

(1) THE BASIC NORM In *Reynolds* v *Sims* the court held that, "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral legislature must be apportioned on a population basis."[1] The court refined this requirement with the following observations:

(a) ". . . the Equal Protection Clause requires that a state make an *honest and good faith effort* to construct districts . . . of . . . as *nearly of equal population as is practicable.*"[2]
(b) "Mathematical exactness or precision is hardly a workable constitutional requirement."[3]
(c) Both houses must be apportioned "*substantially* on a population basis"[4]
(d) Districts should be "*substantially equal* in population"[5]
(e) In evaluating a legislative apportionment the courts should "consider the challenged scheme as a whole" because "disparities from population-based representation, tough minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses . . ."[6]

Although the court eschewed advancing any mathematical standards for implementing the constitutional norm on the grounds that such standards were "neither practicable nor desirable,"[7] it did elaborate "a few rather general considerations which appear . . . relevant."[8] These considerations consisted of a lengthy exegesis of considerations which would *not* justify departures from the population standard and a not so lengthly enumeration of factors which would justify some deviations. Justice Harlan enumerated those factors which may *not* be considered as a justification for deviations from the population standard as follows:[9]

[16] See Appendix D.
[1] 377 U S 533, 568 (1964).
[2] *Id* at 577 (Emphasis added)
[3] *Ibid.*
[4] *Lucas* v *Colorado General Assembly*, 377 U S 713, 734 (1964) (Emphasis added)
[5] *Id* at 735 n 27 (Emphasis added)
[6] *Ibid*
[7] *Roman* v *Sincock*, 377 U S 695, 710 (1964)
[8] *Reynolds* v *Sims*, *supra* note 1, at 578
[9] *Id* at 622–623 (Dissenting opinion) (Footnotes omitted) Justice Harlan cited the following sections of the court's opinions in support of his view that the various factors he listed had been precluded from consideration
(1)—(6)[N]either history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation Citizens, not history or economic interests, cast votes Considerations of area alone provide an insufficient justification for deviations from the equal-population principle Again, people, not land or trees or pastures, vote Modern developments and improvements in transformation and communications make rather hollow, in the mid-1960's, most claims that deviations from popula-

(1) History;
(2) "Economic or other sorts of group interests;"
(3) Area;
(4) Geographical considerations;
(5) A desire "to insure effective representation for sparsely settled areas;"
(6) "The availability of access of citizens to their representatives;"
(7) Theories of bicameralism (except those approved by the court);
(8) Occupation;
(9) "An attempt to balance urban and rural power,"
(10) "The preference of a majority of the voters"

It should be acknowledged that Justice Harlan may have unduly exaggerated the court's holdings to the extent that he overlooked the fact that factors (1), (3), and (4) were qualified by the word "alone."[10] If one chooses to stress this qualification, it is possible to interpret the court's opinion as meaning that these factors were not excluded as justifications *per se* but were rather excluded as justifying departures in and of themselves Conceivably, what is meant by the court is that these factors, unpersuasive when standing alone, can under certain circumstances be combined to form an acceptable rationale for deviation A certain credence is lent to this view by the Chief Justice's somewhat ambiguous statement which immediately precedes his analysis of factors (1), (3), and (4).[11]

> So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of

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tion-based representation can validly be based solely on geographical considerations Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing, (*Reynolds* v *Sims*, 377 U S 533, 579–80 [1964])

(7) [W]e necessarily hold that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis The right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens in the election of members of one house of a bicameral state legislature would amount to little if States could effectively submerge the equal-population principle in the apportionment of seats in the other house We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation is required to be the same—population Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies Different constituencies can be represented in the two houses the length of terms of the legislators in the separate bodies could differ . [Etc] (*Id* at 576–577)

(8) We reject appellants' argument that the underrepresentation of [certain named areas] is constitutionally justifiable since it allegedly resulted in part from the fact that those areas contain large numbers of military and military-related personnel Discrimination against a class of individuals merely because of the nature of their employment without more being shown, is constitutionally impermissible (*Davis* v *Mann*, 377 U S 678, 691 [1964])

(9) We also reject appellants claim that the apportionment is sustainable as involving an attempt to balance urban and rural power in the legisature this explanation lack[s] legal merit (*Id* at 692)

(10) Except as an interim remedial procedure, justifying a court in staying its hand temporarily, we find no significance in the fact that a nonjudicial, political remedy may be available for the effectuation of asserted rights to equal representation in a state legislature We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirement of the Equal Protection Clause (*Lucas* v *Forty-Fourth General Assembly*, 377 U S 713, 736 [1964])

[10] See note 9 *supra*

[11] *Reynolds* v *Sims*, supra note 1, at 579

> a rational state policy, some deviations from the equal-population principle are permissible . .

In the last analysis, however, the manner in which one chooses to interpret the Chief Justice in this regard is of no great consequence In practical terms, the acceptable justifications discussed below are adequate to justify just about any departure which history, area, or geographical considerations could rationalize if employed in combination. The critical point, to anticipate, is that deviations, however justified, must be insubstantial under any circumstances

The expressly acceptable justifications for advertent deviation are limited to·

(1) the employment of political or natural or historical boundary lines "so long as the resulting apportionment . . . [*is*] one based *substantially* on population ."[12] [This, however, "does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population "] [13]

(2) the balancing of "a *slight* overrepresentation of a particular area in one house with a *minor* underrepresentation of that area in the other "[14]

Adherence to political subdivisions is apparently "a legitimate consideration incident to the effectuation of a rational state policy" whenever (a) it deters "partisan gerrymandering;"[15] (b) [l]ocal governmental entities are charged with various responsibilities incident to the operation of state government;"[16] or (c) "much of the state legislature's activity involves the enactment of so-called local legislation "[17] The employment of natural and historical boundaries can justify deviations where such use hinders gerrymandering In light of the court's warning against "cumulative" inequities,[18] number (2) may perhaps best be considered directive rather than permissive.

About all that the court has made unmistakably clear is that for a deviation to be permissible, it must be "slight" or at least not "substantial " It has, of course, been unwilling to put forth any "rigid mathematical standards" which distinguish the permissible from the impermissible[19] However, its case-by-case handling of the apportionment problem has (1) suggested what type of measures of representativeness it will employ and (2) provided a basis for the drawing of certain inferences as to both what is permissible and what is impermissible.

(2) INDICES OF REPRESENTATIVENESS The Supreme Court has utilized three yardsticks of representativeness· (1) the Dauer-Kelsay Index, i e , minimum percentage of the population capable of electing a

[12] *Id* at 578
[13] *Id* at 580
[14] *Lucas* v *Forty-Fourth General Assembly*, 377 U S 713, 735 n 27 (1964), *Reynolds* v *Sims*, note 1 *supra*, at 577 (Emphasis added)
[15] *Reynolds* v *Sims*, *supra* note 1, at 579
[16] *Id* at 578, 580
[17] *Id* at 580, 581
[18] *Lucas* v *Forty-Fourth General Assembly*, *supra* note 14, at 735 n 27
[19] *Roman* v. *Sincock*, *supra*, note 7, at 710

simple majority of the legislative body; (2) the ratio of the largest to the smallest district, the so-called population-variance ratio, and (3) the relative value of the vote In general, the court has relied upon more than one measure, an especially prudent practice since each measure possesses its own peculiar disadvantages. Although statistically more sophisticated indices are available,[20] these three appear to be adequate for purposes of measuring electoral inequalities [21]

The Dauer-Kelsay Index is arrived at by arranging the districts in ascending order of population, counting down the list from the low population end until a majority of legislative seats has been accumulated, and then computing exactly what percentage of the electorate is represented by the seats so accumulated [22] The index provides the best overall view of the pattern of apportionment Its weaknesses are that it may, especially in the case of large legislatures, obscure some rather dramatic disparities between districts and that it offers no way of evaluating representation accorded various geographic areas or identifiable groups The scale can, for example, hide the facts that there are significant disparities amongst a few districts and that there is a resulting inequality between, say, rural and urban representation [23]

The population-variance ratio, computed by simply dividing the population of the largest district by the population of the smallest provides a clear picture of the worst of the inequities It is an appropriate supplement to the Dauer-Kelsay Index in that it focuses upon the dramatic deviations It indicates nothing, however, about the overall pattern of representation.[24]

Although the court has generally been content to rely upon the tandem use of the Dauer-Kelsay Index and the population-variance ratio, it entertained evidence adduced from the employment of the relative value of the vote The relative value of the vote is calculated by dividing the average district (the total population of the state divided by the number of districts) by the population of individual districts. Districts of less than average size will thus have an index of more than one, while districts of more than average size will have an index of less than one The advantage of this technique is that it allows the observer to group districts, in terms of their characteristics, e g , urban or rural upstate or downstate, and thus facilitates comparison [25]

(3) IMPERMISSIBLE DEVIATIONS Generally relying upon the above measures of inequality, apportionments in some sixteen states have been established as unconstitutional by the Supreme Court through January 15th, 1965 These apportionments are summarized in Table 2 Italicized figures are those actually considered by the court itself or the court below.

[20] See, e g , Schubert and Press, "Measuring Malapportionment," LVIII *American Political Science Review* 302, (1964)

[21] Alker and Russett conclude that minimum majority is highly correlated with the more statistically sophisticated measures and that it makes very "little difference" which measure of *overall* inequality is employed "On Measuring Inequality," 9 *Behavioral Science* 207, 215 (1964)

[22] See Dauer and Kelsay, "Unrepresentative States," 44 *National Municipal Review* 571 (1955)

[23] See, I David and Eisenberg, *Devaluation of the Urban and Suburban Vote* 7 (1961) See also Appendix A

[24] See *id.* at 3

[25] See *id.* at 7.

TABLE 2

Apportionment Plans Which Have Been Treated as Unconstitutional by the United States Supreme Court

State	Maximum Population Variance Ratio		Minimum Percentage of Population Capable of Electing a Majority		Relative Value of the Vote	
	Upper House	Lower House	Upper House	Lower House	Upper House	Lower House
Alabama[a]						
Existing Plan	41 1	16 1	26 1	25 7		
Amendment	59 1	4 7 1	15 4	43 0		
Act	20 1	5 1	27 6	37 0		
New York[b]						
Existing Plan (1950 Census)	2 4 1	11 9 1	40 9	37 1		
Existing Plan (1960 Census)	3 6 1	21 1 1	43 8	34 7		
Under Cons (1960 Census)	2 6 1	12 7 1	33 1	37 6		
Maryland[c]						
Existing Plan	32 1	12 1	14 1	24 7		
Temporary Leg		6 1		35 6		
Virginia[d]	8 7 1	4 4 1	41 1	40 5	61, 86, .70	75, 78, 42
Delaware[e]						
Existing Plan	15 1	35 1	22 0	18 5		
1963 Amdt	15 1	12 1	21 0	28 0		
Colorado[f]						
1953 Plan (1960 Census)	8 1	8 1	20 3	32 1		
Amdt 7	3 6.1	1.7 1	33 3	45 1		
Michigan[g]						
Old Cons	12 1					
1963 Cons	4 1	3 1	44 6×	45 4×		
Washington[h]	7.8 1	4 7 1	35 6	38 0		
Oklahoma[i]	20 4 1y	5 4 1	24 5y	28 1y		
Connecticut[j]	8 1y	424 1y	32 0y	12 0y		
Ohio[k]	1 9 1	15 1	46 0y	23 4y		
Iowa[l]	86 1	18 6 1y	35 2y	28.9y		
Florida[m]	26 4 1y	23 1y	15.2y	26 9y		
Idaho[n]	102 1y	11 1y	16 6y	44 0y		
Illinois[o]	10 5 1y	4 6 1y	28 7y	39 9	88, 66	

[a] **Reynolds v Sims, 377 U S 533 (1964)** The court invalidated the existing apportionment and two alternative plans, one embodied in an amendment and the other in a statute

[b] **WMCA, Inc v Lomenzo, 377 U S 633 (1964)** The court examined the existing apportionment statute in terms of both the 1950 and 1960 census and the state constitutional provisions regarding apportionment in terms of the 1960 figures and found on the merits that both statutory and constitutional provisions compelled an impermissible dilution of the vote

[c] **Maryland Committee for Fair Representation v Tawes, 377 U S 656 (1964)** The court invalidated both the state constitutional provisions pertaining to apportionment and a temporary enactment reapportioning the lower house

[d] **Davis v Mann, 377 U S 678 (1964)** The figures under the relative value of the vote column refer to Arlington County, the City of Norfolk, and Fairfax County respectively Id at 687–88

[e] **Roman v Sincock, 377 U S 695 (1964)** The court held that Delaware was not constitutionally apportioned "either before or after the 1963 constitutional amendment " Id at 708

[f] **Lucas v Forty-fourth General Assembly of Colorado, 377 U S 713 (1964)** The court affirmed a lower court finding that the existing apportionment was unconstitutional and further held that an apportionment amendment adopted by referendum did not meet constitutional requirements It is noteworthy that the referendum apportionment of the lower house was not declared unconstitutional on its face The court conceded that it was "arguably" constitutional (id at 730), but refused to let it stand because there was "no indication" that lower house apportionment was "severable" from the rest of the apportionment which was clearly unconstitutional (id at 735) This is the closest the Supreme Court has come to sustaining an apportionment

[g] **In Schoife v Hare, 367 Mich 176 (1962)**, the Michigan Supreme Court upset the upper house apportionment provisions of the state constitution The Supreme Court denied certiorari, **Beadle v Schoife, 377 U S 990 (1964)**, apparently on the grounds that the provisions at issue were no longer effective since a new constitution had been approved in 1963 The apportionment provisions of the 1963 Constitution were overthrown in **Marshall v. Hare, 378 U S 561 (1964)**, reversing 227 F. Supp 989 (1964)

The cases summarized above provide a fairly clear picture of what apportionments will *not* pass judicial muster The closest the Supreme Court came to approving an apportionment was in *Lucas* when it noted that the apportionment of Colorado's lower house was "*at least arguably* apportioned substantially on a population basis . . ."[26] Since this apportionment contained a maximum variation ratio of 1.7 to 1 and minimum percentage to elect a majority of 45 1,[27] it *may be* safe to infer that any arrangement which falls on the permissible side of these limits—i e, 1 7 or less and 45 1 percent or more—would have a good chance of being sustained, provided, of course, (1) that inequities did not prove to be cumulative when the other house was taken into consideration and (2) that the inequities could be justified in terms of adherence to the boundaries of political subdivisions Yet, even this estimate may be subject to some uncertainty in light of the court's emphatic reluctance to sustain an attempt by a federal district court to impose a maximum population variance ratio of 1 5 1[28] From the court's opinion it appears, however, that this disavowal was based upon an unwillingness to accept "rigid mathematical standards" rather than any belief that such a ratio was perhaps too permissive[29]

One point which does appear clear is that temporary or "stop-gap" apportionments designed to elect a legislature which will accomplish a permanent reapportionment may permissibly contain deviations which would be unconstitutional in a permanent plan In *Hill* v. *Davis* the Supreme Court affirmed a district court finding that both houses of the Iowa Legislature were unconstitutionally apportioned However, the court declined to pass on the "temporary plan" which the lower court approved for use in the 1964 elections[30] Since the plan had maximum population variance ratios of 2 23 to 1 and 3 20 to 1 and minimum percentages required to elect a majority of 48 3 and 38.9 in the House and Senate respectively, it appears that temporary apportionments will be accorded the benefit of the judicial doubt

IV. TYPES OF DISTRICTS

Another problem which has been left largely unanswered in the apportionment litigation is the type of districts which are permissible. In *Reynolds* v *Sims* the Supreme Court suggested that along with the normal single member districts states might permissibly choose to em-

[h] Meyers v Thigpen, 378 U S 554 (1964)
[i] Williams v Moss, 378 U S 558 (1964).
[j] Putney v Butterworth, 378 U S 564 (1964)
[k] Nolan v Rhodes, 378 U S 556 (1964)
[l] Hill v Davis, 378 U S 565 (1964)
[m] Swann v Adams, 378 U S 553 (1964)
[n] Hearne v Smylie, 378 U S 563 (1964)
[o] Germano v Kerner, 378 U S 560 (1964) The relative value of the vote figures refer to Chicago and Cook County (less Chicago) The Cook County (less Chicago) figure reflects the extreme underrepresentation of the Cook County suburbs which supports the generally accepted view that suburbs have been more underrepresented than central cities
[x] Figures based on Table 10, White, "An Analysis of the Michigan Plan of Legislative Apportionment," Apportionment and Representative Institutions 281 (1963)
[y] Figure based on data contained in 22 Congressional Quarterly Weekly Report 1217 (1964)
[26] *Lucas* v *Forty-Fourth General Assembly*, *supra* note 14, at 730 (Emphasis added)
[27] *Id* at 727.
[28] *Roman* v *Sincock*, *supra* note 7, at 710
[29] *Ibid*
[30] 378 U S 565 (1964) It should be noted that the temporary plan was enacted *after* a federal district court had found the existing apportionment unconstitutional and had directed the legislature to adopt a temporary apportionment for use pending the approval of a constitutional amendment See *Davis* v *Synhorst*, 225 F Supp 689 (1964)

ploy either multimember or floterial districts.[1] Despite this apparent approval, post-*Reynolds* events have suggested that the choice of such districts may well have constitutional significance. The attempt by certain states to comply with the court's population requirement through the use of single member districts in conjunction with either weighted or fractional voting has suggested further questions. We will examine the possible constitutional questions presented by the utilization of each type of district.

A. Single Member Districts

Single member districts have been the general rule in America[2] and their legitimacy was taken for granted by the Supreme Court in the apportionment cases Nevertheless, under certain circumstances the employment of such districts can raise some potentially critical questions under the Equal Protection Clause For example, as Justice Stewart pointed out, even "with legislative districts of exactly equal voter population, 26 percent of the electorate, (a bare majority of the voters in a bare majority of districts) can, as a matter of a kind of theoretical mathematics embraced by the court, elect a majority of the legislature under our simple majority electoral system"[3] Or, at the other extreme, it could be noted that with the right population distribution a bare 51 percent of the electorate could elect the *entire* legislature. To the extent that either possibility is statistically unlikely, the court may not be required to confront these questions However, as we shall suggest below, if the court attempts to confront the problems raised by multimember districts or weighted or fractional voting by establishing permissible ratios between votes cast and representatives elected, single-member districts may ultimately not be immune to constitutional challenge At present, this would seem to be highly unlikely, but not inconceivable

B. Multimember Districts

Although multimember districts were approved in principle in *Reynolds*,[4] the effects of such districts have already proved troublesome for federal district courts In *Dorsey* v *Fortson* a district court, adopting a highly restrictive and literal interpretation of the Equal Protection Clause, struck down a provision in the Georgia apportionment statute for multimember districts on the grounds that. "The statute causes a clear difference in the treatment accorded voters in each of the two classes of senatorial districts It is the same law applied differently to different persons The voters select their own senator in one class of districts. In the other they do not They must join with others in selecting a group of senators and their own choice of a senator may be nullified by what voters in other districts of the group desire."[5] A district court similarly outlawed a similar provision in a recently adopted Pennsyl-

[1] 377 U S 533, 579 (1962). "Single member districts may be the rule in one state, while another state might desire to achieve some flexibility by creating multimember or floterial districts" (Footnotes omitted) *Cf id* at 577 "One body could be composed of single-member districts while the other could have *at least some* multimember districts (Emphasis added).

[2] Klain, "A New Look at the Constituencies The Need for a Recount and Reappraisal," XLIX *American Political Science Review* 1109 (1955)

[3] *Lucas* v. *Forty-fourth General Assembly*, 377 U S. 713, 750 n 12 (1964). (Dissenting opinion.)

[4] See note 1 *supra*

[5] 228 F. Supp. 259, 263 (1964).

vania apportionment [6] Again the grounds were the possible submerging of a minority in multimember districts In both cases, the courts were concerned that the "winner take all" aspect of multimember elections could deprive a minority party or group of any representation at all, and presumably believed such privation would be at least less likely in smaller single-member districts.

The action in the Pennsylvania case was stayed pending the outcome of the 1964 elections, which were to be held under the previous statute [7] In the Georgia case, however, the Supreme Court, citing its *dictum* in *Reynolds* as to the allowability of multimember districts, over-ruled the lower court.[8] Justice Brennan, writing for an eight-man majority, based his opinion on the facts that there was "clearly no mathematical disparity," i e, all districts met the population standard, and that the claim of the nullification of minority voting strength was "highly hypothetical." [9] Further, "[i]f the weight of the vote of any voter in a Fulton County district, when he votes for seven senators to represent him in the Georgia Senate, is not the exact equivalent of that of a resident of a single member constituency, we cannot say that his vote is not 'approximately equal in weight to that of any other citizen of the State'." [10] He went on, however, to qualify the court's approval of the Georgia arrangement with the following

> It might well be that, designedly or otherwise, a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster.[11]

Only Justice Douglas was of the opinion that multimember districts were impermissible *per se* [12] His position is surprising in the light of his apparently unreserved acquiescence in *Reynolds*.

The Supreme Court's recent decision in the Colorado case will have the effect of implementing multimember districting. At issue in that case was a provision of the Colorado Constitution providing that no county be divided into districts for the election of state legislators The Legislature had ignored this provision in reapportioning the state in compliance with a court order to apportion the Legislature on the basis of population A federal district court upheld for temporary use the apportionment which subdistricted the more populous counties entitled to more than one representative [13] But in a separate suit the State Supreme Court ruled in favor of a plaintiff who alleged that since subdistricting violated the State Constitution, and was not *necessary* for compliance with the Federal Constitution, an at-large election of representatives from multimember counties was required [14] On appeal the United States Supreme Court remanded to the district court for

[6] *Drew* v *Scranton*, 229 F Supp 308 (1964).
[7] See, *Scranton* v *Drew*, 85 S Ct 207 (1964) (Per curiam.)
[8] *Fortson* v *Dorsey*, 85 S Ct. 498 (1965).
[9] *Id* at 500
[10] *Id* at 501.
[11] *Ibid*
[12] *Id* at 502–503.
[13] *Lucas* v. *Forty-fourth General Assembly*, 232 F Supp 797 (1964).
[14] *White* v *Anderson*, 394 P 2d 833 (1964).

reconsideration in light of the state court's interpretation of state law.[15] Since state courts are regarded as having the final word in interpreting state law, it appears certain that upon reconsideration the state court's view will prevail, i.e., multimembered districts will be required

The major test of multimember districts will not occur until a given arrangement is challenged on the ground that it in fact deprives an identifiable racial or political minority of the representation to which its numerical strength would appear to entitle it When this occasion arises the court, as always, will have a number of alternatives before it. However, these alternatives would appear to be sharply circumscribed by several factors. On the one hand, the court could not very well realistically adopt a position of "hands off." The adoption of such an attitude would be an open invitation to various groups now in power to submerge completely significant minorities by placing them in multimember districts where they would be victimized by the winner-take-all stipulation which almost invariably accompanies such districting.[16] It is not difficult to predict the result (if not the reasoning) of a case in which Negro plaintiffs in a southern county allege that despite the fact that they constitute 45 percent of the population they were precluded by multimember districting from capturing any of the county's 10 seats. On the other hand, the court cannot very well say that any and every nullification of a group's voting strength is unconstitutional *per se*. Such a ruling would for all intents and purposes render its previous approval (indeed encouragement) of multimember districts virtually meaningless since, as a matter of fact, multimember districts customarily involve winner-take-all elections whose effect is invariably at least *some* submerging of minority representation.[16a] To effectively preclude the employment of multimember districts at this date would seem to place the court in the rather awkward position of at least implicitly conceding that its earlier *dicta* were misleading and/or thoughtlessly devised.

If, as we have suggested, the Supreme Court is in a position neither to approve nor reject minority-submerging multimember district out of hand, neither can it, without opening a veritable Pandora's Box, contrive on an *ad hoc* basis a set of constitutionally allowable relationships between a group's electoral strength and its legislative representation. Once such relationships were accorded constitutional status it would appear that the court would be logically compelled to espouse some form of proportional representation as a constitutional principle; that is, the court would have to say in essence that an identifiable group with "X" votes has a constitutional right to "Y" representatives Although "one person, one vote" may be, as Justice Stewart argues,

[15] *Forty-fourth General Assembly* v *Lucas*, 85 S Ct 715 (1965) (Per curiam)
[16] Baker, *State Constitutions Reapportionment* 2 (1960) According to Baker, only Illinois, with a system of cumulative voting which allows the voter to distribute his votes—he has as many as there are seats—in any manner he pleases, giving them all to one candidate if he wishes, has adequately provided for minority representation In all other states the winner-take-all principle applies, i e, the major party or group, assuming that its members act in a concerted manner, will take all the seats With cumulative voting a minority may concentrate all of its votes on one seat and thus generally secure itself some representation See also Silva, "Seats Apportioned to a Legislative District," XVII *The Western Political Quarterly* 742 (1964), for a good overview of the various ways in which multimember districts may be constructed.
[16a] Silva, *op cit supra* note 16, at 744

the logical progenitor of "X" votes, "Y" representatives,[17] the two propositions are surely distinguishable in practice The former is at least arguably an aspiration of American democracy The latter, however, has never been an acceptable principle in American thought or practice[18] It seems highly unlikely that the court would embrace it and all of its manifold ramifications, the most significant one of which is that it would encourage a proliferation of political parties[19]

If we are correct in ruling out the more or less simplistic alternatives discussed above, what remains for the court is to approach the constitutional questions raised by multimember districts as though they were questions of gerrymandering This would involve the making of a series of individual determinations taking into consideration a variety of factors If this approach is adopted, the burden of proof would be placed upon the plaintiffs who would be required to show *inter alia* that (a) their underrepresentation was the result of a conscious state policy and (b) that such underrepresentation was in fact curable by subdistricting In other words, the plaintiffs would be required not only to show that the underrepresentation was intentional and not just the luck of the draw, but that with nongerrymandered subdistricting—i e subdistricting which involved districts constructed either in a compact and contiguous fashion or in conformance with the boundaries of political subdivisions—the particular group would actually receive better representation Since these requirements of proof would be generally difficult to meet except in the case of marked inequity, the court would not be compelled to intervene except in the more extreme cases[20]

In handling alleged inequities in a case-by-case fashion the court, of course, would not be precluded from developing at some point a set of general principles applicable to districting problems It might for instance conclude by judicial fiat that there is some arbitrary maximum number of seats which can be encompassed in one district The imposition of such a maximum, while it would not preclude the submerging of minorities, would certainly statistically reduce the possibilities of manifest inequities An electoral system comprised of a number of relatively small multimember districts quite obviously has a better likelihood of reflecting minority opinion than one consisting of a huge multimember district

To the obvious objection that treating the problems of multimember districts as gerrymandering questions would open the way for judicial discretion and involve the court in the making of palpably political judgments, there is apparently only one answer This is, quite simply, that the court itself elected after dutiful deliberation to enter the fabled "political thicket" The only meaningful question remaining is whether it prefers to perform its political role with flexibility or with a dogmatic and perhaps inopportune decisiveness

[17] *Lucas* v *Forty-fourth General Assembly*, 377 U S 713, 750 n 12 (1964) (Dissenting opinion) For a penetrating analysis of Justice Stewart's position, see Dixon, "The Reapportionment Cases," *1964 Supreme Court Review* 1, 30–61 (Kurland ed , 1964)

[18] See, *e g* , de Grazia, *Public and Republic* (1950)

[19] See, in general, Hermans, *Democracy or Anarchy? A Study of Proportional Representation* (1941)

[20] For a general discussion of the Supreme Court's treatment of gerrymandering, see section VI *infra*

C. *Weighted and Fractional Voting*

Weighted voting involves the weighting of a representative's vote in the Legislature in relation to the population of his district. The vote of the representative in the smallest district is given a value of one, and other values are computed on the basis of population. Thus, if the smallest district should contain 1,000 inhabitants, a district with 6,000 inhabitants would have a representative who would cast six votes at every rollcall. Fractional voting is similar, except that the largest district is represented by one vote, while the smaller districts have votes of fractional value relative to their population Thus, if the largest district contained 6,000 inhabitants, it would have one vote and a district of 1,000, one-sixth of a vote. Unless one has a decided preference for either multiplication or division, or feels more secure with whole numbers than with fractions, the systems for practical purposes are identical. They shall be treated here as indistinguishable and covered under the general rubric of "weighted voting."

The alleged advantages of weighted voting are three

(1) It permits reapportionment without redistricting or altering the size of the Legislature (and thereby not depriving any sitting legislator of his seat), since population growth or shifts may be taken account of by simply recomputing the value of the votes in the Legislature
(2) The number of representatives may be kept small without depriving the less populous areas of accessible representation.
(3) It does not result in any "dilution of the vote," at least in the sense that that notion has been applied to date.

Clearly weighted voting may diminish minority electoral effectiveness within a district In this regard, we may expect that its constitutional fate will be analogous to multimember districting However, it also possesses its own peculiar and allegedly objectional features, which are perhaps of constitutional import.

In the first place, the system accords the citizens in the more populous districts less access to their representatives in the sense that individually they have a relatively smaller claim on their representatives' time. In the second place, the system raises a series of dilemmas as far as legislative organization is concerned Are votes to be weighted in committee and party caucus? If they are, it could be argued that party organization would be determined by a handful of "heavies" and that committees would be dominated by one or two members who could constantly override their more numerous but light-voting colleagues If, on the other hand, weighted voting were to apply only on the floor, it could be argued that the more populous areas were being disadvantaged in a crucial and integral part of the legislative process.

Further, weighted voting creates problems in the making of committee assignments Does a five-vote representative receive five times as many assignments as a one-vote representative? If he does, he might be overworked and perhaps ineffective If he doesn't, it will be argued that his constituents have received less than their mathematical share of committee representation. Finally, weighted voting raises problems in terms of the representatives of the smaller con-

stituencies. Their actual influence may be less when confronting one man with five votes than when facing five men, each possessing a single vote

It was on the basis of the above problems that the federal district court struck down fractional [weighted] voting in *WMCA* v. *Lomenzo*,[21] after it had acknowledged that such a system, at least as implemented in New York's apportionment, "would probably not offend 'the basic standard of equality' among the districts"[22] The core of the New York decision is contained in the following three sentences:

> . . . legislators have numerous important functions that have nothing directly to do with voting: participation in the work of legislative committee and party caucuses, debating on the floor of the Legislature, discussing measures with other legislators and executive agencies, and the like The Assemblyman who represents only one-sixth of a district can *theoretically* give each constituent six times as much representation in these respects as the Assemblyman who represents a full district This disparity of representation persists even if the state is right in arguing that the Assemblyman with one-sixth of a vote will carry only one-sixth as much political weight when he engages in these activities.[23]

If the New York case is appealed, we can only guess at the Supreme Court's ultimate response However, it should be pointed out that the objections we outlined above, and apparently accepted by the District Court,[24] may well be countered. Some of the questions raised by these objections are subject to reasonable answer; and other objections appear rebuttable on the grounds that the alleged abuses are not easily distinguishable from existing practices which have never been constitutionally questioned

The objection concerning access could possibly be removed simply by according the representatives from the larger districts additional staff to assist in the handling of constituent requests and needs[25] Further, it might be pointed out that the Supreme Court was not particularly impressed with the access argument when it was presented by the denizens of sparsely settled and overrepresented areas as a rationalization for a deviation from the population standard[26] A court that apparently rejects the view that a rural citizen who has to travel 300 miles to a county seat to see his representative on a weekend is the victim of some discrimination may well be unimpressed by the fact that an urbanite, because of the greater demands on his repre-

[21] Civil Docket 1559, S District of New York, filed February 1, 1965 (Mimeo)
[22] *Id* at 19
[23] *Ibid* [The connection between the second and third sentences is obscure Sentence (2) is a "theoretical" statement, while (3) evidently contains some factual premise The joining of them would appear to result either, at best, in question-begging or, at worst, in a *non sequitor*]
[24] We say "apparently" because the district court, after mentioning these objections, proceeded to accept their validity with a summary *ipse dixit* to the effect that a representative with 1/x vote can "theoretically" give his constituents X times the representation that a representative with a full vote can See quotation cited *supra* note 22
[25] Additional staff certainly would also aid these representatives in their dealings with both fellow legislators (and their staffs) and executive officials
[26] *Reynolds* v. *Sims*, 377 U S 533, 580 (1964).

sentative's time, has to stand in line for several hours to see his representative

As far as voting in committee and caucus is concerned, it would appear that the obvious answer would be to dispense with weighted voting on the grounds that, so long as committee and caucus decisions were subject to reversal on the floor where all votes are weighted, no constituency would be deprived of political influence proportionate to its numerical strength Furthermore, it is highly questionable whether majority rule in any meaningful sense ever prevails in either committee or caucus It is probably fair to say that the only place the numerical majority ordinarily rules is on the floor Domination of caucus and committee by party leaders and powerful committee chairmen is a recognized and not necessarily unfortunate aspect of American political life

In regard to committee assignments, a review of the practices in the national Congress and the various state legislatures should dispel any notion that committees are, or ever were, expected to represent the electorate *in camera* On the basis of experience, it would be difficult to argue that there was any constitutional requirement for committee assignments to be reflective of district population or, for that matter, anything except that which the legislature itself considers relevant

In answer to the objection that representatives from the smaller districts will exercise little influence in legislative councils, there are two answers The first is simply that that is precisely the purpose of the one person, one vote norm The less populous areas, by definition, are expected to exercise less influence than the more populous The alternative answer is that legislative influence, depending as it does on a variety of factors ranging from seniority to personality, is really incalculable and as such is susceptible to neither measurement nor effective control To make equality of legislative influence an operable constitutional norm would raise difficult if not insurmountable problems of implementation The only way such a requirement could even be approximated would be to organize the Legislature by drawing lots

In the final analysis, it would seem, first, that on its face weighting voting is probably no more repugnant to the "one man, one vote" criterion than multimember districting; second, that in our present state of knowledge, it is extremely difficult to anticipate whether or not weighted voting will produce actual consequences which are constitutionally offensive To be sure, it may, but constitutional rulings, as distinguished from judgments about convenience, are generally and wisely based on determined fact, not hypothetical horribles

A very great danger in precipitous judicial action against weighted voting is that it could commit the courts to broadening its analysis of apportionment beyond the simple and apparently manageable numerical relationship between population and votes cast in the Legislature If this could occur, the courts would be making judgments in areas where knowledge is both incomplete and the subject of controversy (The irony of weighted voting is that it has already forced the courts to reconsider those very "qualitative" aspects of representation which the Supreme Court worked so laboriously to dismiss when it enunciated its "quantitative" norm in *Wesberry* and *Reynolds*) For the courts to begin to employ majoritarian assumptions beyond the electoral process

would be to open up a whole panoply of issues involving such manifestly political problems of legislative organization as committee assignments, the selection of committee chairmen, the proper roles of the various committees, the rules of debate, staffing, the seniority system, etc

If *WMCA, Inc* v. *Lomenzo* is at present uncertain precedent, the other decisions involving weighted voting are clearly of questionable import In two cases, *Maryland Committee for Fair Representation* v *Tawes* [27] and *Thigpen* v *Meyers*,[28] lower courts have endorsed weighted voting as a temporary expedient, pending the adoption of a permanent apportionment plan In neither case, however, was the plan implemented, and in the latter case the court accepted a stipulation by the parties to the effect that weighted voting was not required At most, these cases may be considered precedent for the temporary employment of weighted voting after an existing apportionment has been voided

With the exception of *Lomenzo* the cases in which weighted voting has been struck down are all inapposite to the resolution of the federal constitutional question In each case the decision was based either on state law [29] or state constitutional provisions [30] The unelaborated *dicta* in the New Jersey case to the effect that certain members of the court considered weighted voting to run afoul of federal constitutional standards may by virtue of its off-hand presentation be taken with the proverbial grain of salt [31]

When all is said and done, and whatever may be the fate of weighted voting in terms of federal requirements, the immediate problem before the California Legislature is whether or not weighted voting is permissible, even as a temporary expedient, under the California Constitution This query, unlike most of those asked in this section of the report, is not easier to posit than answer Pretty clearly, weighted voting is contrary to the California Constitution if that document is construed literally. Section IV, Art 15, provides, in refreshingly clear terms, that "no bill shall become law without the concurrence of a *majority of the members* elected to each house" [Emphasis added] [32] If this clause is binding, and there appear to be no reasons why it should not be, weighted voting, even as a temporary expedient, is impermissible without a constitutional amendment

D. Floterial Districts

A floterial district is a "legislative district which includes within its boundaries several separate districts which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular

[27] 180 A 2d 656 (1962) (Maryland)
[28] 231 F Supp 938 (1964) (Washington)
[29] *Jackman* v *Rodine*, 205 A 2d 735 (New Jersey) The court suggested *obiter* that "some members of the court wish to state now that both constitutions bar weighted voting A majority of the court feel the question need not be decided now" *Id* at 736
[30] *Brown* v *State Election Board*, 369 P 2d 140 (Oklahoma 1962), *Forther* v *Barnett*, No 59, 965, Ch, Hinds County Mississippi (1962), *Cargo* v *Campbell*, No 33, 273, Dist Court, Santa Fe, New Mexico (1964)
[31] *See In 29 supra*
[32] The phrase "members voting" or its equivalent is used consistently throughout the Constitution See *e g*, Art IV, secs 16 (overriding a veto), 17 (impeachment), 229 (state retirement system), 25½ (removal of commissioners), 34a (appropriations), Art XI, sec 7½ (ratification of charter)

legislative body being apportioned." [33] Such a district is essentially an at-large district superimposed over several single-member districts. For example, assume that on the average each county is entitled under the population norm to one representative for every 20,000 inhabitants and that two adjacent counties, A and B, have populations of 26,000 and 34,000 respectively By employing a floterial scheme, each county could be allocated one representative and the two counties could then be combined into a floterial district for the election of an additional representative The result would be three seats for 60,000 persons, an average of one seat per 20,000 persons The advantage of such an arrangement is that it allows county boundaries to be observed while at the same time providing for mathematical equality of representation *for an area as a whole.*

The problem inherent in the employment of floterial districts is that these districts, unlike either multimember districts or weighted voting, do not necessarily produce equality of the vote In fact, it cannot produce such equality unless each of the districts which constitute the floterial district are of roughly the same population Take the example above and assume, for simplicity's sake, that the average district population is 20 and that districts A and B have populations of 26 and 34, respectively:

1 If districts A and B were combined into one district with three representatives elected at-large, each voter would have a vote worth 1/60th of 3, or 05
2. Similarly, if A and B were combined into a single member district having one representative whose vote in the Legislature was weighted by three, then each voter would have a share of a vote in the Legislature worth 1/60th of 3, or 05
3 However, if the district A and B each were allotted one representative, and combined to elect a third representative in a floterial district, then the voters in districts A and B would have the following shares of a vote · a voter in district A would have *1/26th* of 1 (or 035) share in the single-member district plus 1/60th of 1 (or 017) share in the floterial district for a total value of *052:* the voter in district B, on the other hand, would have shares of 1/34th of 1 (.029) and 1/60th of 1 (017) for a total of *046.* But, .052 > .046.

Quite clearly, then, floterial districts do not provide for mathematical equality All floterial districts really do is. (1) provide areas, but *not* individual districts, or individual voters within those districts with the representation to which they are entitled (e g , in the situation above it permitted counties A and B to receive the representation to which they were collectively entitled, but it did not provide B or the voters within it with the representation to which it and they individually were entitled), and (2) it *slightly* reduces the existing inequities between districts within the floterial district (e g., the ratio of disparity between .046 and 052 is somewhat less than that between 029 and 035)

The thrust of the above argument, quite simply, is that floterial districts, while acceptable, as the Supreme Court indicated in *Reynolds,* are not a means of miraculously transforming unequals into equals In

[33] *Davis* v. *Mann,* 377 U.S. 678, 686–87 n. 2 (1964).

other words, if the component single member districts are not substantially equal in population, the utilization of a floterial district to take account of their excess (over the norm) populations can neither make the component districts equal nor provide equal weight to each of their members The only condition under which a floterial district will survive judicial scrutiny is when the component districts are of substantially equal population The controlling question, as in *Reynolds*, must remain one of whether or not the individual districts comply with the population criterion.

The further observations are worth making First, if a floterial district combines districts in a manner that requires more than one additional seat, it will present the problems inherent in any multimember district, and presumably the courts would treat them as such. Second, if noncontiguous counties are combined, a whole series of problems may be created Not only are noncontiguous districts generally associated with gerrymandering, but a floterial district encompassing counties at opposite ends of the state might be considered by the courts so irrational and unnecessary as to constitute a *prima facie* case of "*invidious discrimination*" How the courts would actually respond to a case in which a floterial district incorporated widely separated districts can not, of course, be predicted with any certainty Nevertheless, prudence would seem to dictate that floterial districts be composed of contiguous counties, at least whenever it is practicable, and that the number of additional seats be kept at a minimum

V. GERRYMANDERING

Gerrymandering, in the very narrowest sense, is the drawing of legislative districts in such a way that a certain group is able to maximize its electoral strength, i e , to capture as many legislative seats as possible.[1] It is a matter of drawing districts, not of apportionment. An example of a "perfect" gerrymander would be where a party with 50 percent plus one of the electorate is able, because of the distribution of voters and the artful construction of districts, to elect all of the Legislature Ordinarily, the purposes of a gerrymander are far more modest, involving such practicable aims as protecting seats for incumbents, giving representation to special minority groups, and, of course, providing majority parties with the best arrangement for the maintenance of their legislative dominance At exactly what point "districting" becomes "gerrymandering" is invariably a matter of opinion. The general rule appears to be that a given scheme is "gerrymandering" when your opposition supports it and "districting" when your side supports it.

The law regarding the constitutional status of gerrymandering is far from clear. The Supreme Court has dealt with the problem in two recent cases, neither of which provided very many answers. In *Gomillion* v *Lightfoot* the court unanimously struck down a blatant gerry-

[1] There are two methods of "gerrymandering"·
(1) spreading the opposition party's vote among the various districts so that the opposition can carry few, if any, districts,
(2) concentrating the opposition party's vote in a few districts so that the opposition's popular support will be dissipated in the form of large electoral margins in these few districts
Silva, "Legislative Representation," 27 *Law and Contemporary Problems* 409, 420 (1962) The classic study on gerrymandering is still Griffith, *The Rise and Development of the Gerrymander* (1907).

mander attempt by the Alabama Legislature.[2] The Legislature had remapped the boundaries of the city of Tuskegee so that all but a handful of the 400 qualified Negro voters were "districted out" of the municipality. No white voter was so affected.[3] Petitioners—Negro voters who had been deprived of their votes in the municipal elections—argued *inter alia* that the redistricting represented a violation of the Fifteenth Amendment's prohibition against a state depriving any citizen of the vote "on account of race, color or previous condition of servitude." Respondents did not deny a discriminatory purpose, but rather relied upon a demonstrably erroneous theory that a state has *unrestricted* power over districting. The Supreme Court, noting that the redistricting altered the boundaries "from a square to an uncouth 28-sided figure,"[4] had little difficulty in inferring an unconstitutional purpose. Speaking through Mr. Justice Frankfurter, it threw out the Alabama statute with the cryptic comment that "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination."[5] Since the discrimination involved was both manifest and grotesque, the decision provides a precedent of singularly narrow applicability.

In *Wright* v *Rockefeller*[6] the Supreme Court faced a more difficult and subtle situation. In performing its decennial reapportionment of New York's congressional districts, the state legislature redrew the boundaries of New York's (Manhattan's) four districts.[7] Plaintiffs argued that the Legislature had established "irrational, discriminatory, and unequal congressional districts . . [which] segregate eligible voters by race and place of origin," in short, the Legislature had "ghettoized" the Island of Manhattan.[8] The evidence adduced by plaintiffs contained a recounting of the percentage of nonwhites in each of the four districts and showing that the changes in the boundary of the famed "Silk Stocking District" (the 17th) resulted in adding predominantly white areas and dropping areas which contained a high percentage of Negroes and Puerto Ricans. These nonwhite areas were added on to Adam Clayton Powell's equally famed 18th District. The resulting boundary between the 17th and 18th was "an 11-sided, step-shaped" one.[9] From these facts the plaintiffs inferred that the boundaries "were drawn with regard to race" and argued that such a consideration was impermissible in light of the Equal Protection Clause.

Justice Black, speaking for a seven-man majority, accepted the lower court's finding of fact that the plaintiffs had failed to prove that the Legislature had been motivated by considerations of race or national origins, or had in fact drawn districts on racial lines.[10] Justice Douglas and Goldberg wrote separate dissents with each subscribing to the other's. Both thought that the trial court's finding of fact was clearly erroneous. As far as they were concerned the plaintiffs had established a *prima facie* case for racial motivation.[11] Since the state presented

[2] 364 U S 339 (1960)
[3] *Id* at 341
[4] *Id* at 340.
[5] *Id* at 342, citing *Lane* v *Wilson*, 307 U S 268, 275 (1939)
[6] 376 U S 52 (1963). For a good critical analysis of *Wright*, see Note, *Wright* v *Rockefeller and Legislative Gerrymanders*, 72 *Yale Law Journal* 1041 (1962)
[7] *Id* at 53.
[8] *Id* at 53
[9] *Id* at 60 (Dissenting opinion)
[10] *Id* at 56
[11] *Id* at 60–61 and 71–73.

no evidence in rebuttal, the plaintiff's evidence should have been controlling[12] Justice Douglas' dissent stressed the position that race is never a permissible legislative classification Even if considerations were designed to benefit racial minorities, they were still impermissible[13] Justice Goldberg articulated the view that once a *prima facie* case for racial motivation had been established, the burden of proof should be switched from plaintiff to respondent (i e, the state) who should then be required to prove that race *was not* in fact the legislative motivation[14]

The court's opinion is not very helpful To begin with, as the dissenters compellingly demonstrated, the court's reliance on the district court's determination was highly questionable in light of the fact that it was by no means clear exactly what, aside from the fact that plaintiff's claim was without merit, the district court had actually decided Two of the lower court judges appeared to have been of the persuasion that plaintiffs could meet the burden of proof through circumstantial evidence[15] However, they disagreed on whether the plaintiffs had in fact met his burden The third judge, while of the belief that plaintiffs had not met the burden of proof, implied that this burden included actual evidence of hostile intent on the part of the legislature, not simply evidence of racial motivation[16] What we have, as a result, is an ambiguous district court decision the two judges who agree upon the evidentiary requirements differ on whether they have been met, while the two judges who agree on whether the burden of proof has been met, employ different requirements

As a result of this ambiguity in the trial court's opinion, the Supreme Court's opinion leaves unresolved the crucial constitutional questions involved in racial gerrymandering Is the consideration of racial factors in districting impermissible, and, if so, under what circumstance? Clearly, it is impermissible when, as in *Gomillion*, its purpose is to disadvantage a given group But what if its purpose is to guarantee a minority group at least some representation? For Justice Douglas, racial considerations, beneficent or not, are always impermissible[17] But the majority was silent on this issue If the propriety of racial motivation depends upon circumstances, as might be inferred from the court's opinion, is such a motivation improper only when it is the only criterion, when it is the dominant criterion, or simply one of many criteria? Again the majority is silent

Further, what standards of evidence are to be employed? This is perhaps the most critical question of all If the burden of proof is assigned to the plaintiffs, the result in the instant case suggests that obligation would seldom ever be met Direct evidence is always difficult to produce in this area, and it is difficult to conceive of more persuasive circumstantial evidence than that provided in *Wright* Justice Goldberg's frustrated query of "what more need appellants have proved?"[18] suggests a very real question On the other hand, if Justice Goldberg's recommendation that the burden of proof be placed under the state once

[12] *Id* at 61
[13] *Id* at 66–67
[14] *Id* at 73
[15] *Id* at 68 (Dissenting opinion)
[16] *Id* at 56–57.
[17] *Id* at 61–62.
[18] *Id* at 73

plaintiffs have established a *prima facie* case is adopted, the state will be confronted with equally difficult problems of proof Justice Douglas, despite his categorical disapproval of using race as a criterion for drawing legislative districts, would apparently allow the state to offer its desire to preserve "neighborhoods" in rebuttal to a gerrymander charge.[19] However, he doesn't define "neighborhood" One wonders how he would have greeted a claim by the state that Harlem is a "neighborhood."

Since *Wright* the Supreme Court has made only passing reference to gerrymandering In both cases the reference was to Partisan gerrymandering. In *Reynolds* the Chief Justice noted that "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines may be little more than an open invitation to partisan gerrymandering"[20] and that "a state may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering"[21]

While these *dicta* suggest that the court is aware of gerrymandering, they fall far short of a guarantee that the court will actually assume jurisdiction over cases where partisan (as opposed to racial) gerrymandering is alleged The court may well recognize the fact that questions of partisan gerrymandering are generally solvable only in the subjective terms of "whose ox is gored," and consciously avoid dealing with such gerrymanders Such an approach would have much to recommend it since each of the available "objective" standards designed to thwart gerrymandering possesses troublesome aspects The employment of a permissible ratio between votes cast and seats won in an effort to guarantee equity in districting, for example, has several serious shortcomings In the first place population patterns are often such that a satisfactory ratio between votes and seats cannot be practically achieved. In the second place, such a standard involves an implicit acceptance of the questionable theory of proportional representation and tends to obscure the fact that electoral systems are generally expected to produce working majorities, as well as to provide for adequate representation. Finally, if it were constitutionally incumbent upon the apportioning agency to provide for "competitive" districts (i e , districts where party strength was reasonably well distributed), a state might end up with serpentine districts running the length of the state

Another allegedly "objective" standard, the requirement that districts be "compact and contiguous,"[22] possesses its own drawback Since "neighborhoods" are often not compact and contiguous, this requirement might preclude rather than encourage rational districting[23] The employment of a criterion requiring adhrence to natural and political subdivision boundaries possesses a similar disadvantage.

[19] *Id* at 59
[20] 377 U S 533, 578–579 (1964).
[21] *Id* at 581
[22] Several of the bills currently before congress relating to congressional districting contain provisions requiring districts of compact and contiguous territory See "Congressional Districts," 22 *Congressional Quarterly* 286 (1965) Such a provision was in the Apportionment Acts of 1901 and 1911, but was omitted from subsequent acts Celler, "Congressional Apportionment—Past, Present, and Future," 17 *Law and Contemporary Problems* 268, 272 (1952)
[23] There is, of course, a further difficulty compactness is a matter of degree, and, as a result, the employment of such a criterion, whether at the behest of Legislature or judiciary, may prove troublesome See Hacker, Congressional Districting 66–69 (1963) See also, Reock, "Measuring Compactness as a Requirement of Legislative Apportionment," 5 *Midwest Journal of Political Science* 71 (1961)

Any discussion of gerrymandering must end with the paradoxical warning that standards designed to limit gerrymandering may, when actually imposed by either judicial decree or legislative fiat, actually force the result they were designed to thwart. In the last analysis all that can be said about any of these standards is that they make successful gerrymandering more difficult by cutting down discretion. Whether reducing the probabilities of grotesque gerrymanders is worth the price of perhaps requiring and excusing less spectacular but nevertheless undesirable inequities is a question for which we have not devised any general answers. Reasonable men may perhaps agree on whether given districts are of substantially equal populations, but, if our experience suggests anything, it is that the same is generally not the case when the question becomes whether or not districts are gerrymandered.

VI. THE PROBLEM OF REMEDY

In *Reynolds* the Supreme Court eschewed consideration of "the difficult question of the proper remedial devices." Nevertheless, certain general principles concerning remedy can be culled from *Reynolds* and the companion cases, and further propositions can be inferred from the decisions and practices of the inferior courts. The principles governing remedy which have been suggested by the post *Baker* experience are summarized and commented upon below.

(a) ". . . *[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.*"[1] Courts may take into account such factors as the imminency of elections and the mechanics and complexities of the electoral system in determining whether or not a given case is "unusual."[2] To date, the inferior courts, both state and federal, have been generally reluctant to demand immediate reapportionment once the election machinery has started to grind.[3]

(b) "*[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a Legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having an adequate opportunity to do so*"[4]

(c) *When state "constitutional provisions relating to legislative apportionment . . . [are] held unconstitutional, the . . . [l]egislature presumably has the inherent power to enact at least temporary reapportionment legislation pending adoption of state constitutional provisions relating to legislative apportionment which comport with federal constitutional requirements*"[5]

(d) "*Clearly, courts should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions insofar as is possible.* [i.e., insofar as these provisions are not in conflict with the federal constitution]"[6]

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[1] *Reynolds* v *Sims*, 377 U.S. 533, 585 (1964) (Emphasis added.)
[2] *Ibid.*
[3] See, e.g., *Toombs* v *Fortson*, 205 F. Supp. 248 (1962), *League of Nebraska Municipalities* v *Marsh*, 232 F. Supp. 411 (1964).
[4] *Reynolds* v. *Sims*, *supra* note 1, at 586. (Emphasis added.)
[5] *Maryland Committee for Fair Representation* v *Tawes*, 377 U.S. 656, 675–676 (1964). (Emphasis added.)
[6] *Reynolds* v. *Sims*, *supra note* 1, at 584. (Emphasis added.)

(e) *Although state courts are the final interpreters of state constitutional provisions,*[7] *when "* *a federal court's jurisdiction is properly invoked, and the relevant state constitutional and statutory provisions are plain and unambiguous, there is no necessity for the federal court to abstain pending determination of the state law questions in a state court"* [8]

(f) *Upon determining that a given apportionment is unconstitutional, inferior courts can and will at their discretion establish a reasonable time table for legislative elections,*[9] *regardless of state constitutional provisions relating to election dates, and tenure of office* [10] Whether or not a court may prohibit a Legislature from conducting other business until the reapportionment is accomplished is at present unclear [11]

(g) *Upon the failure of a state legislature to accomplish a reapportionment within the time specified by a court order, the court in question has available various courses of action* Experience to date suggests that the following alternatives are available to a court

(1) To stay the execution of its order in order to give the legislature additional time to comply [12]

(2) To accept and implement as its own a plan or combination of plans drawn up by friends of the court [13]

(3) To order elections at-large [14]

(4) To reapportion the legislature itself [15]

(5) To appoint a special master to reapportion [16]

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[7] This proposition is supported by a long line of decisions, going back well beyond *Murdock* v *Memphis* 20 Wall. 590 (1875) For more recent restatements see, e.g., *Wolff Packing Co* v *Court of Industrial Relations* 267 U S 552 (1924), *Berea College* v *Kentucky* 211 U S 45 (1908) See also, *California Adjustment Co* v *Atchison T & S F R R*, 179 Cal 140 (1918)

[8] *Davis* v *Mann*, 377 U S 678, 690 (1964) (Emphasis added)

[9] See, *e g*, *Hughes* v *WMCA*, 85 S Ct 713 (1965) (Per curiam), *Davis* v *Mann*, 85 S Ct 718 (1965) (Per curiam), *Parsons* v *Buckley*, 85 S Ct 503 (1965) (Per curiam)

[10] See, *e g*, cases cited note 9 *supra*

[11] Federal district courts have issued orders limiting legislative business until reapportionment has been accomplished in both Georgia and Vermont However, in both instances the courts modified the orders upon stipulation by the parties *See, Parsons* v *Buckley, supra*, note 9, *Fortson* v *Toombs*, 85 S Ct 593 (1965) (per curiam)

[12] See, *e g* *Butterworth* v *Dempsey* 227 F Supp 302 (1964) (per curiam) The district court modified its timetable because, despite "commendable efforts," the legislature was unable to act Account was also taken of the impending national election and the then current congressional debates concerning the role of the courts in reapportionment *Id* at 307

[13] See, *e g*, *Reynolds* v *Sims* 377 U S 533 (1964) The Supreme Court approved of a federal district court's implementation of a temporary plan combining sections of two plans

[14] No court ordered elections at-large have taken place as a result of the apportionment cases However, both federal and state courts have provided for election of congressmen at-large in the event that the legislature fails to redistrict *See, e g*, *Wilkins* v *Davis*, 33 LW 2364 (1965) (state court), *Bush* v *Martin* 224 F Supp 499 (1964) Since elections at-large for state legislatures are impermissible under most state constitutions, including California's, it seems questionable whether federal courts would or should compel elections at-large for state legislatures For federal courts to order such elections would be to invite conflict between the federal judiciary and the state courts Such conflict would augur ill for the federal courts since the state courts are the recognized guardians of the state law

[15] See, *e g*, *Moss* v *Burkhart* 238 F Supp 323 (1964), *State ex rel Reynolds* v *Zimmerman*, 125 N W 2d 16 (1964) Justice Harlan has questioned the propriety of federal courts entering the districting business itself *Parsons* v *Buckley*, 85 S Ct 503, 506 (1965) (concurring opinion)

[16] See, *e g*, *Butterworth* v *Dempsey supra* note 12 The federal district court provided for a master who would draw up a temporary plan in the event the legislature failed to act within the prescribed time limit The court subsequently named the Director of the Yale University Computer Center as Special Master Since the legislature ultimately met its deadline the Master's services were not required To date, no master has actually reapportioned a legislature

The principle which appears to have caused the most confusion to date is (d) The question involved is one of exactly what state constitutional provisions relating to apportionment are struck down when a given apportionment is voided The general rule of statutory or constitutional construction is that those provisions which are *severable* are to remain in effect Whether or not given provisions are severable is largely a matter of legislative intent, which involves the court in asking two questions (1) What was the purpose behind the enactment of the plan? (2) Would certain provisions if allowed to remain in effect contribute to the realization of that purpose?[16a] In *Duffy* v *Sincock*, a federal district court summarized this procedure as follows

> In accordance with the rules governing the invalidity of portions of a statute, it has been held that where part of an amendment to a state constitution is invalid because it violates the Fourteenth Amendment to the Federal Constitution, if the several parts of the amendment are separable, the valid portions *may* be saved, unless it is *obvious* that the intent of the adopters of the amendment was to accept one general scheme in an entirety, in which event, if part of the amendment falls, the whole must fall with it[17]

Unfortunately, this formulation does not provide very much guidance for a state confronted with the aftermath of a case such as *Silver* v *Jordan*,[17a] which declared the apportionment of the California Senate violative of the Federal Constitution The provisions involving the apportionment of the Senate are all contained in Article IV, Sec 6,[18] of the California Constitution and may be summarized as follows

(1) There shall be 40 senatorial districts,
(2) Each district shall elect one Senator,
(3) No more than three counties may be combined in any district,
(4) Multicounty districts shall be composed of whole contiguous counties, and
(5) No county may have more than one Senator

What are the valid or severable provisions? What provisions must the reapportionment agency, whether federal court or state legislature, anticipate that the state court will consider binding? On the face of it, it looks as though the agency would be compelled to guess In California, however, a rather firm answer is apparently available It appears clear that the provision requiring a 40-member Senate is still binding and that the provision for single-member districts is most likely binding[18a] This reasoning is based on several considerations Both provisions not only antedate[19] the adoption in 1926 of the "Little Federal Plan" in Article IV, Section 6, and thus presumably fulfill some purpose independent of the Federal Plan, but both are also contained in Article IV,

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[16a] See, *e g*, *Carter* v *Carter Coal Co*, 298 U S 238 (1935)
[17] 215 F Supp 169, 188–89 n 19 (1963), quoting 11 *American Jurisprudence* Sec 52 (1937)
[17a] No 62–453 MC, U S Federal Court S D Calif (3 Dec 1964)
[18] Calif Const, Article 27, Sec 6 These provisions have remained unchanged since adoption in 1926
[18a] The "most likely" qualification is explained in fn 20 *infra*
[19] The single member district provision has been part of the Constitution since statehood and the 40 member provision has been included since 1879

Section 5 (which was approved as recently as 1942) [20] as well as in Section 6, and thus presumably reflect the polity's most up-to-date thinking, insofar as that elusive element can be determined. They are the only two provisions of which this may be said

Moreover, the argument that any other combination of compatible provisions contained in Section 6—say, for example, numbers (2) and (3)—has equal claim to being severable, simply by virtue of being compatible, is unpersuasive Clearly all five of the provisions cannot be adhered to simultaneously, if the "one person, one vote" criterion is to be observed, i e, at least one must be disregarded and treated as unconstitutional. This being the case, a strong argument can be made to the effect that because at least one provision is treated as unconstitutional, the entire section must be so treated The Attorney General of California, for example, has argued that the rule that "constitutional portions of a statute may be separable from unconstitutional portions" does not apply to constitutional amendments

> This rule reflects the courts' traditional hesitancy to upset statutes for unconstitutionality The day-to-day relationship of court and Legislature is not at stake in constitutional amendment cases At stake instead are the constitutional requirement that amendments be voted on separately (Const Art XVIII, Section 1) and the principle that the voters have a clear and simple basis upon which to vote . The Constitution itself opposes separability by requiring proposed amendments to be presented so that they can be "voted on separately" (Const Art XVIII, Section 1) Moreover, to even qualify as a single "amendment," the proposed changes must be "germane to the general subject of the amendment, or so connected with or dependent upon the general subject that it might not be desirable that one be adopted, and not the other When the Legislature proposes a number of changes with one proposition it presumptively presents them as an integrated package which stands or falls as a unit This single package rule provides a much more accurate reflection of the voters will than does an approach calling for a refined analysis of each provision [21]

[20] The Article reads

> The Senate shall consist of 40 members, and the Assembly of 80 members, to be elected by districts, numbered as hereinafter provided One half of the Senators shall be elected every two years, those from the odd-numbered districts being elected when the number of the year is divisible by four
>
> [Textually, it is not beyond argument whether "districts" means "single member districts" However, it appears, in light of California practice, that the adopters intended this construction]

[21] Opinion No 59-242, 27 *Attorney General's Opinions* 52, 57–58 (1961)

> Several comments concerning the Attorney General's Opinion are perhaps in order First, the opinion is *authority* but not, of course, *precedent* Second, although the opinion can be easily read as involving an unqualified rejection of the *separability principle* as far as State Constitutional *Amendments* are concerned, it is, on the other hand, possible to distinguish the fact situation giving rise to the opinion from the one currently relevant to apportionment The Attorney General was concerned with a situation where two amendments which were noted in the voter's pamphlet to be mutually exclusive were both approved by the electorate The question at issue was whether or not the nonconflicting sections of the amendment receiving the lesser number of votes were separable and were to stand along with the amendment receiving the higher number of votes It was not, in other words, a question of what sections of a single amendment remained in effect when the amendment was in part found to be in conflict with some federal standard
>
> Whether or not the opinion should be accepted at face value or more narrowly construed is a matter of disagreement among the consultants Fortunately, this disagreement is academic to the extent that it does not affect the basic conclusion arrived at *concerning* the *binding provisions* relevant to the apportionment of the California Senate

If the Attorney General's view prevails in the state courts, clearly only the provisions of Section 5 would need to be adhered to in the coming apportionment, in other words, a combination of provisions (2) and (3), or any other combination contained in Section 6 [except, of course, (1) and (2)] would be void

If this argument is correct, then the apportionment agency would enjoy maximum discretion Even if the state courts fail to adopt the Attorney General's line of reasoning, it would appear that any apportionment of the Senate which contained a 40-member house (provision 1) elected from single-member districts (provision 2) and adhered to county boundaries (provision 4) *insofar as it was practicable* within the confines of the "one person, one vote" requirement would pass state constitutional muster For, as a matter of fact, it would be easily shown that such a scheme incorporated the maximum number of compatible provisions and included the two (provisions 1 and 2) which have a special status because of their inclusion in Section 5

PART THREE

AN ANALYSIS OF ALTERNATIVES

Five suits affecting state senate, assembly, and congressional districts in California provide the present legal framework for apportionment in the State of California In the first, *Silver* v *Jordan,* Civil Action No 62-953MC (S D Calif 1964), a three-man federal district court, in a 2-1 decision, declared that the existing apportionment of the State Senate is unconstitutional The court withheld relief in order that the 1965 California Legislature might "*properly reapportion itself as its first order of business,* " (*Silver* v *Jordan,* p 21, *italics* in the original) The court retained jurisdiction to act in the event that the Legislature failed to "fairly, adequately and validly redistrict state senatorial districts by no later than July 1, 1965 " (*Silver* v *Jordan,* p 21) If the Legislature fails to act, or if the Legislature reapportions the senate on other than a straight population basis, there is little doubt that the federal district court will provide by court order for the reapportionment of the senate

The second suit, *Silver* v *Brown,* Civil Action No 851488, Superior Court of Los Angeles County (Calif 1965), challenging the state's congressional districts, is currently pending While no decision has yet been made in this case there is a real possibility, in view of the population disparities among several of the state's 38 congressional districts and the United States Supreme Court's decision in *Wesberry* v *Sanders,* 376 U S 1 (1964), that the courts will—either in this or a subsequent case—declare the current California congressional districts to be unconstitutional

The third suit, *Silver* v *Jordan,* Civil Action No 65-1 MC (S D Calif 1965), challenged the state's assembly districts It was dismissed on March 2, 1965, on the ground that Silver lacked standing In essence, the court declared that Silver lived in an Assembly District (the 42nd) which was overrepresented and hence there was no dilution of Silver's vote

The fourth and fifth suits, *Ruth* v *Brown,* Civil Action No _____, Superior Court of San Diego County (Calif 1965) and *Johns* v *Unruh,* Civil Action No 552017, Superior Court of San Francisco County (Calif 1965), also challenge the state assembly districts, and action is pending

Whatever the disposition of these last two cases, it is generally assumed that, within the foreseeable future, the courts will be confronted with a case wherein the plaintiff can establish standing and which must, therefore, be decided on its merits While the 1961 reapportionment of California's assembly districts was performed essentially on the basis of population, there is a real possibility, in view of the population disparities that do exist among a number of the state's 80 assembly districts, and the United States Supreme Court's decision in *Reynolds* v *Sims,* 377 U S 533 (1964), that the courts will declare the current California assembly districts to be unconstitutional

The following is a discussion of the alternatives available to the State of California if its congressional and assembly apportionments, as well as its state senate apportionment, should be declared unconstitutional

I. AVOIDANCE OF REAPPORTIONMENT?

Can the Supreme Court rulings be avoided in California? Basically, there are four ways that a Supreme Court decision can be altered First, it may be ignored and or unenforced Second, the Court may overrule or substantially modify its own decision Third, Congress may, in certain kinds of cases, modify or reverse the court's decision Fourth, the United States Constitution may be amended

The first alternative is not really plausible in the case of reapportionment Inferior courts, both state and federal, have demonstrated a willingness—in some cases, an eagerness—to implement and enforce the Supreme Court's ruling If the California Legislature elects to ignore such court decisions, there is no doubt that the inferior courts will act In *Silver* v *Jordan, supra*, for example, the court declared that "should the California State Legislature fail to discharge its duty to fairly, adequately and validly redistrict state senatorial districts by not later than July 1, 1965, this court will, before or after that date, hold further hearings, or motions, devise redistricting plans, and make such further orders to take such further steps as may be necessary or appropriate " (p 21)

As the Supreme Court has stressed reapportionment is basically a legislative task, and it is presumably better that the people's elected representatives perform the duty in accordance with the constitutional law of the nation and state, rather than have these responsibilities devolve upon the judiciary [1]

The second alternative, that the Supreme Court will substantially modify or overrule itself, is not likely to occur in apportionment cases Eight of the nine justices supported the *Reynolds* holding and six supported the *Wesberry* holding A careful reading of all the opinions shows that six of the nine believe that the proper standard for each type of apportionment is "one person, one vote " Two others believe this is too rigid a standard but nonetheless agree with the six that the court has properly entered this "political thicket" in defense of constitutional rights Only one justice (Harlan) holds the older view that apportionment should never be a judicial concern Subsequent cases, including *Fortson* v *Dorsey,* 85 S Ct 498 (1965) indicate that the Supreme Court of the United States will not overrule itself nor permit any substantial deviation from the "one person, one vote" criterion for legislative apportionment [2]

The third alternative, congressional action to reverse or modify the Supreme Court's reapportionment decisions, could be accomplished in one of two ways (a) Congress could pass a law removing the juris-

[1] In *Reynolds,* for example, the court observed that "legislative reapportionment is primarily a matter for legislative consideration and determination, and judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so" 377 U S. 533, 586 (1964)

[2] In *Fortson* v *Dorsey,* 85 S Ct 498 (1965), which dealt in an introductory fashion with the knotty problem of multimember districts and which is discussed in Part Two of this report, the Supreme Court cited with emphasis key passages from the *Reynolds* opinion, thereby reasserting the essentials of that decision

diction of the federal courts over apportionment[3] Such a bill was passed by the House of Representatives on August 19, 1964, by a vote of 218–175 However, one month later, at the end of a long struggle over this and related measures, the United States Senate defeated the bill, 56–21. In view of the composition of the newly elected 89th Congress, it is not likely that such a bill could be passed this year or next Even if such a bill were to be passed, we do not know whether or not the President would sign it into law If he vetoed it, the 1964 votes suggest that there would not be a two-thirds majority in either house to override his veto And even if Congress passed such a law and the President signed it, there is always the possibility that the Supreme Court would declare it to be unconstitutional. A very grave constitutional crisis would probably then ensue with unpredictable consequences.[4] It would appear that a law removing the jurisdiction of the federal courts over reapportionment cases is only a remote possibility.

(b) The other thing that Congress could do would be to declare a moratorium on federal court action over reapportionment for a stated period of time—say two years However, while such a bill might have more support than an act removing the judiciary from apportionment controversies completely, it is not likely that it would pass the 89th Congress Perhaps the most important reason for this is the demonstrated willingness of Senators favorable to the *Reynolds* decision to filibuster any such proposal to death[5] But even if Congress were to pass such a law, there would remain the question of presidential approval and the possibility of the Supreme Court declaring it

[3] Article III, Section 2, of the U S Constitution defines "the judicial power" of the United States and in paragraph (2) provides that "In all the other cases before mentioned [excepting those 'affecting ambassadors, other public ministers and consuls, and those in which a state shall be party'] the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make" (See also note 4 below)

[4] In 1868, Congress passed an act, pursuant to Article III, Section 2 of the Constitution, altering the Supreme Court's appellate jurisdiction by denying to the high court the power to review judgments of the circuit court in certain classes of habeas corpus cases Later that year, the Supreme Court acknowledged the restriction on its appellate jurisdiction by dismissing a habeas corpus appeal in *Ex parte McCardle*, 7 Wall 506 (1868) This has been interpreted as indicative of the power of Congress to limit the jurisdiction of the federal judiciary (with the exception of the Supreme Court's original jurisdiction prescribed in Article III, Section 2 of the Constitution) as it sees fit However, the Supreme Court, while accepting this limitation on its appellate jurisdiction took pains to point out that this was only one limitation on habeas corpus appeals and that the rest of its appellate power in habeas corpus cases was unaffected by the statute It also asserted that its general appellate power was prescribed by the Constitution, and did not pass on whether or not the act would have been valid had it eliminated all of the court's jurisdiction in habeas corpus cases Thus, while the Supreme Court will normally accept Congress' determination of what the jurisdiction of the federal courts shall be, the court might well decide that a statute completely eliminating the jurisdiction of all federal courts in one class of cases, such as legislative apportionment, was unconstitutional

[5] On September 19, 1964, a motion to end a filibuster against the so-called "Dirksen-Mansfield" proposal was defeated, 63–30 The proposal was a mild one It would have stayed reapportionment orders, "in the absence of highly unusual circumstances," until January 1, 1966, or until a legislature had "reasonable opportunity in regular session" for reapportionment action It also would have explicitly authorized the courts, in the absence of legislative reapportionment within these time limits, to promulgate reapportionment plans so that apportionment would be "consistent with the requirements of the Constitution of the United States" This latter provision implied approval of the basic Supreme Court decision in *Reynolds* and, along with the other provisions, clearly showed how far the opponents of the decision were willing to compromise in order to gain even a slight delay In sum, the whole episode showed that unless sentiment changes rapidly in the U.S Senate, even mildly worded delaying action is unlikely to be accepted.

unconstitutional. It would appear that such a law is only a remote possibility.

The fourth alternative, amendment to the United States Constitution overruling or modifying the court's reapportionment decision, could be accomplished in one of two ways. First, Congress could propose such an amendment to be ratified by either state legislatures or state conventions in three-fourths (38) of the states. Second, Congress could be compelled, on application of two-thirds (34) of the states to call a national convention for the purpose of proposing such an amendment for ratification by the state legislatures or state conventions Both methods would be time-consuming, and certainly neither one could be accomplished before the July 1, 1965, deadline set by the federal district court for the reapportionment of the California State Senate In fact, it is unlikely that either method could be successfully employed to adopt such an amendment at any time during this year, or in the foreseeable future.

First, Congress can only propose a constitutional amendment by a two-thirds vote of both houses. The votes in the 88th Congress last fall, and the composition of the 89th Congress, suggest that a two-thirds majority for such a measure could not be secured in either house of Congress this year or next. Even if such a majority could be obtained, however, it is doubtful that such a proposal would be ratified in the required 38 states. There are two reasons for this doubt. One is that state legislatures have been and are being reapportioned rapidly since *Baker* v. *Carr,* 369 U.S. 186 (1962), and *Reynolds* v. *Sims,* and the resulting legislative bodies are not nearly as responsive to such a proposal as their predecessors may have been. The other reason is the result of the 1964 election. This landslide election, affecting both reapportioned and nonreapportioned legislatures, resulted in such an enormous increase in "liberal" state legislators that even if no state legislatures had been reapportioned lately, the prospects for the passage of such an amendment would have been seriously diminished.

The second method of amending the Constitution has never been used in American history. According to Article V of the U S Constitution, "The Congress, . . . on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments. . . ." As of early March 1965, 21 states had made application to Congress since 1962 for a constitutional convention for some kind of amendment regarding apportionment of state legislatures. Nevertheless, it would seem that securing the approval of 34 state legislatures for applications for a constitutional convention is nearly as unlikely as securing the approval of 38 state legislatures for any ensuing amendment In summary, constitutional amendment to overrule or substantially modify the Supreme Court's apportionment decision does not appear likely.

II. APPROACHES TO REAPPORTIONMENT

In the light of the foregoing analysis, it seems inescapable that the California Senate will be reapportioned prior to next year's elections, either by the Legislature or by the federal court. In this connection, it should be pointed out that the court may consider the apportion-

ment of the Assembly as well as the Senate in determining the validity of any Senate reapportionment In *Maryland Committee for Fair Representation* v *Tawes*, 377 U S 633 (1964), the Supreme Court declared that "in reviewing a state legislative reapportionment case this court must of necessity consider the challenged scheme as a whole in determining whether the particular state's apportionment plan, in its entirety, meets federal constitutional requisites It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral Legislature in the abstract, without also evaluating the scheme of representation employed with respect to the other house Rather, the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the state's voters, in both houses of a bicameral state Legislature "[6]

This ruling seems to suggest that federal courts are *required* to rule on the constitutionality of *both* houses when hearing cases involving only one As a matter of fact, however, no federal court has followed this course of action In adjudging the California Senate to be unconstitutionally apportioned, for example, the federal court made no judgment about the constitutionality of the Assembly's apportionment It did note that there was "no controversy here" regarding the Assembly "since the apportionment in the lower house is based solely on population " But in support of this statement it merely cited the relevant sections of the California Constitution and the California Elections Code, it did not inquire into whether the Assembly was *in fact* so apportioned[6a] It may have been that the court regarded the California Senate as so patently in violation of the "one man, one vote" principle that its reapportionment was clearly required regardless of the validity or compensatory characteristics of Assembly apportionment

Whatever its reasons for not adhering literally to the *apparent* command of the *Tawes* decision, the quotation cited above raises a number of possibilities in the present California context If the Legislature *does not* reapportion the Senate validly this year, then the federal court presumably will do so[6b] As it proceeds to do this—either by itself or through a special master—it may or it may not consider the apportionment of the Assembly If it chooses to do so, then a number of outcomes

[6] 377 U S 633, 673 (1964)

[6a] *Silver* v *Jordan*, No 62–953 MC, U S Federal Court, S D Calif (3 Dec 1964), p 4

[6b] Speculation to the effect that either the federal court or the Governor or Lieutenant Governor could convene the California Reapportionment Commission is probably misguided

The California Constitution, Article IV, Section 6, provides that 'should the Legislature at the first regular session following the adoption of this section or at the first regular session following any decennial federal census fail to reapportion the assembly and senatorial districts, a Reapportionment Commission, which is hereby created, consisting of the Lieutenant Governor, who shall be chairman, and the Attorney General, State Controller, Secretary of State and State Superintendent of Public Instruction, shall forthwith apportion such districts in accordance with the provisions of this section and such apportionment of said districts shall be immediately effective the same as if the act of said Reapportionment Commission were an act of the Legislature, subject, however, to the same provisions of referendum as apply to the acts of the Legislature "

A strict construction of this provision would hold that since it refers only to the regular decennial reapportionment, it has nothing to do with other reapportionments There is, by this reasoning, no role for the Reapportionment Commission at any time other than the regular decennial reapportionment

But a state or federal court *might* construe this language more loosely, arguing that since the framers of Article IV, Section 6, presumably gave no thought to the possibility of an irregular, court-ordered reapportionment, it was necessary to construe the 'intent" of the framers regarding these unanticipated

are conceivable It would presumably hold hearings on the matter and then render a judgment If it then found the Assembly to be constitutionally apportioned it could then proceed to reapportion—or have a master reapportion—the Senate Or, it might find the Assembly apportionment only temporarily permissible (i e , until after the 1970 census). Finally, it might find the Assembly apportionment unconstitutional and requiring prompt remedial action. Presumably, it would then order the Legislature to reapportion the Assembly well in advance of next year's primary elections

On the other hand, the court might prefer to proceed with its reapportionment of the Senate without considering the apportionment of the Assembly It could do so simply out of a sense of judicial restraint, *Tawes* notwithstanding, by concluding that the Assembly was at least arguably constitutional and that since the matter was not technically before the court, it would not deal with it (We regard this latter development as by far the more likely)

The same kinds of choices are open to the federal court if the Legislature *does* reapportion the Senate this year (It should be noted in this connection that the Supreme Court has warned against apportionment plans for entire state legislatures wherein minor disparities in the two chambers become cumulative instead of offsetting each other. " [W]here the same areas are disadvantaged in both houses of a state legislature, [such disparities] may . render the apportionment scheme at least constitutionally suspect " *Lucas* v *Forty-fourth General Assembly of the State of Colorado,* 84 S Ct 1472 (1964).)

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conditions If a court did so, it *might* conclude that it was permissible to convene the Reapportionment Commission following a legislative failure to reapportion in accordance with a court order We regard this as unlikely, but possible

The California Supreme Court has dealt obliquely but not definitively with this subject In 1963, Los Angeles Mayor Samuel W Yorty and others attempted to compel the Reapportionment Commission to convene and, in the light of the then recent *Baker* v *Carr* doctrine, reapportion the State Senate The California Supreme Court refused to do so The core of its reasoning was as follows (in *Yorty* v *Anderson* 384 P 2d 417, 419–420)

Under Section 6 of article IV the power of the commission to act is expressly conditioned upon the failure of the Legislature to reapportion the assembly and senatorial districts at the first regular session following each decennial federal census The reapportionment of the senatorial districts made by the Legislature in 1961 occurred at the first regular session after the 1960 federal census (Stats 1961, Chs 21, 1235 pp 879–880, 2983) If, on the one hand, this reapportionment is valid, the commission of course has no present power to act with respect to senatorial districts On the other hand, if we assume, as petitioners assert and as indeed they must establish in order to prevail in this proceeding, that the portion of Section 6 complained of here is both invalid and severable from the provision relating to the commission, the Legislature nevertheless has acted to reapportion the senatorial districts and the requisite condition to exercise of the commission's power has thus not been satisfied

Section 6 without doubt vests in the Legislature, not the commission, the primary duty and power to reapportion, and the obvious purpose of the provision establishing the commission is to provide an alternative method of reapportionment to be used only in the event of legislative inaction Here the Legislature did not fail to act, to the contrary, it enacted a complete reapportionment plan, and, in the event that this plan is held invalid by judicial decision, the Legislature, under a reasonable construction of Section 6, is entitled to an opportunity to adopt a plan that will meet the requirements of the Federal Constitution

"Our conclusion that the commission has no present power to act is in accord with an opinion of the Legislative Counsel relating to the analogous situation which would arise if a reapportionment by the Legislature of assembly districts were nullified on referendum (Legislative Counsel's Opinion No 5463, Dec 12, 1960, as reported in Assembly Interim Comm Rep 1959–1961, vol 7, No 6, pp 100–101) In concluding that a new reapportionment by the Legislature would be proper under Section 6, the Legislative Counsel stated with respect to the power of the commission 'The apparent purpose of the provision [relating to the duties of the commission] is to prevent the Legislature from failing to act to redistrict the state as soon as possible after each federal census It is clear that if the Legislature had failed to enact a statute establishing new assembly districts at this session, the Reapportionment Commission would be required to act The Legislature having acted, however, it is our opinion that the Reapportionment Commission is neither required nor authorized to take any action

The Legislature may, of course, decide to reapportion the assembly (and congressional) districts in anticipation of the courts ordering it to do so This could be accomplished together with Senate reapportionment or in separate measures [7] Another possibility would be for the Assembly (or the Legislature) to adopt a "contingency plan" reapportionment for the Assembly just in case the federal court—either in the course of its handling of the Senate case or as an independent decision growing out of some additional court action—or a state court decided to order Assembly reapportionment. This "contingency plan" would go into effect only upon a court order to reapportion the Assembly.

There is, finally, another possibility, namely, the passage by the Assembly alone of a reapportionment plan for the Senate only, for the Assembly only, or for both houses. The propriety of any such action is a matter quite obviously beyond the scope of this report. However, it is appropirate to note this possibility and to make a few comments upon it. An apportionment scheme embodied in such an Assembly action might be regarded favorably by the federal court which presumably is not anxious to reapportion the Senate (or the Assembly) by itself. An Assembly scheme, if it met constitutional standards, would have a certain legitimacy about it, since the Assembly is already apportioned largely on the basis of population. The court might, in other words, accept all or most of any such proposal.

III. THE PROBLEM OF VALIDITY

However the Legislature (or the Assembly alone) decides to proceed, one of the pressing questions is what portions of the California Constitution are still valid and therefore binding

This matter was partially discussed in an earlier section of the report (Part Two, VI). Therein, it was shown that there are five state constitutional provisions affecting Senate reapportionment:

(1) There shall be 40 senatorial districts
(2) Each district shall elect one Senator
(3) No more than three counties may be combined in any district
(4) Multicounty districts shall be composed of *whole* contiguous counties
(5) No county may have more than one Senator

With the possible exception of number (5), no single provision is invalid on its face; and it appears that no more than two of the existing provisions may be adhered to simultaneously. The question now arises as to what the Legislature can validly do by statute and what will require a constitutional amendment Before dealing with this question,

[7] Such an act might be challenged in the courts on the grounds that the California Constitution calls for reapportionment every 10 years only As a matter of fact, the California courts have held that the legislative power to form legislative districts can be exercised but once during the period between one federal census and the succeeding one (*Wheeler* v *Herbert*, 152 Cal 244, *Dowell* v *McLees*, 199 Cal 144) The disposition of the case would then depend upon whether the 1961 apportionment was adjudged to be constitutional or not If not, then another apportionment would clearly be both permissible and mandatory

It should perhaps be noted that in such proceedings the Assembly would be put in the awkard position of arguing that it was not presently constitutionally constituted

the state constitutional provisions affecting Assembly apportionment will be set forth.[8]

(1) There shall be 80 Assembly districts
(2) Each district shall elect one member of the Assembly
(3) Multicounty districts shall be composed of *whole* contiguous counties
(4) Assembly districts shall be as nearly equal in population as may be.

Again, no single provision is invalid on its face and number (4) clearly supports the philosophy of *Reynolds*. But the combination of (1) and (3) may often force apportionments which deviate impermissibly from the "one man, one vote" standard Therefore, as a practical matter, one or the other of them would quite probably have to be ignored in any temporary reapportionment and some constitutional change would seem to be indicated.

In advance of state constitutional change, and in the absence of any advisory opinions from the state courts, the Legislature must initially make judgments about which provisions are still valid and binding, and which are not.

One possibility is that the state courts may ultimately decide that the existing provisions are inseparable—part of a "package"—and that therefore none of them are binding any longer. The Legislature *could* anticipate this ruling and reapportion one or both houses without regard to *any* existing state constitutional provisions. Whether the state courts will in fact regard none of the provisions as binding is simply unknowable at this time. It can be pointed out, however, that a legislative reapportionment which ignores *all* existing provisions is *more likely* to be found in violation of the State Constitution than one which adheres to it as closely as possible In other words, for the Legislature to anticipate a court ruling declaring no provisions still valid would be the most risky procedure. But, of course, it might be upheld, risky or not.

Regarding the Senate, the alternative, as suggested in the earlier section (Part Two, VI), is to regard *two* of the *five* provisions affecting Senate apportionment as still binding. If this is to be the course of action, the question becomes· Which two? As argued in the earlier section (Part Two, VI), provisions (1) [40 Senators] and (2) [one Senator per district] would seem to have the best claim to being still valid. They are *clearly* compatible and, unlike the other provisions, enjoy special constitutional status

The only other clearly compatible pair is (2) and (3) As argued in the earlier section (Part Two, VI), however, the use of these two provisions—or any other two except (1) and (2)—is of doubtful validity.

Adherence to provisions (1) and (2) is clearly less risky than ignoring all existing provisions It is difficult to see how the state courts could invalidate a reapportionment which respected as much of the current state constitution as is it possible to do On the other hand, it should be

[8] The preceding and following lists of relevant state constitutional provisions are not given in the language of the California Constitution itself That language is very difficult to understand, especially on first reading The lists, then, are comprised of our own formulations of the state constitutional requirements For those wishing to read the constitutional language, see Appendix B

repeated that the first alternative—ignoring *all* existing state constitutional requirements for the Senate—*might* be upheld by the state courts

In the case of the Assembly, rather different questions arise It would seem even more unlikely than in the case of the Senate that the state courts would find *all* of the existing provisions (listed as 1 through 4 above) invalid The Assembly apportionment is already based largely on population, and, as noted above, it is only the combination of provisions (1) [80 Assembly districts] and (3) [multicounty districts shall be composed of *whole* contiguous counties] which raises the possibility that impermissible deviations will be unavoidable if these provisions are respected Whether such deviations would in fact be unavoidable is an open question, the answer to which would vary over time To repeat, therefore, it is impossible to predict with any confidence whether the courts will treat all of these provisions as binding or whether, on the other hand, they will regard some or all of them as invalid

The preceding paragraphs have been designed to suggest alternative courses of action available to the Legislature Which course of action the Legislature *should* adopt is, of course, a political, not a technical, question

Congressional Apportionment

It remains to touch on the issue of congressional apportionment There are fewer state constitutional restrictions regarding the drawing of congressional district lines than there are regarding Assembly or Senate districts (See Article IV, Section 27, Appendix B) A congressional district, unlike either assembly or senate districts, may cross a county line and include only part of one or more counties

There are basically three ways to form a congressional district. A whole county may become a congressional district (In this instance, the congressional district will necessarily be composed of whole assembly districts, because assembly districts may not cross county lines, except to include whole counties) Secondly, multiple whole counties may become a congressional district (In this instance, assembly districts may be divided) Thirdly, congressional districts may be formed within counties having populations which merit more than one congressional district and any residue consisting of a whole assembly district may be attached to contiguous whole assembly districts in another county (In this instance, assembly districts may *not* be divided)

This third circumstance is almost bound to create congressional districts which are substantially unequal in population There are two reasons for this First, assembly districts will probably vary in population and *may* compound the inequalities when combined to form congressional districts Second, and far more importantly, this third circumstance applies "only" in the large-population counties, but this is enough to insure that *most* congressional districts in the state will have to be based on whole assembly districts The problem arises from the fact that the number of assembly districts is not—and probably never will be—exactly divisible by the number of congressional districts This makes it inevitable that either (a) some congressional districts (within large counties) will contain more assembly districts than

others, or (b) some congressional districts (outside the large counties, and even though not bound by assembly district lines) will have disproportionately large (or, after California's congressional delegation goes beyond 40, disproportionately small) populations

If the state constitutional provision requiring, in effect, that most congressional districts be based on assembly districts is respected in any future reapportionment—*even if assembly districts are identical in population*—it is quite unlikely that the apportionment would meet the "one man, one vote" standard Therefore, it is probably fair to say that any future reapportionment, even if temporary, would have to treat that state constitutional requirement as no longer valid

Finally, it should be noted that, as argued earlier (in Part Two, III, A), the standards applied to congressional districts will probably be even more strict than those applied to state legislative districts.[9]

The only other restriction in the State Constitution which has any bearing on this issue provided that when a congressional district consists of two or more counties it shall not be separated by any county in another congressional district

IV. BASIC OPTIONS FOR THE FUTURE

Regardless of what temporary steps are taken by the courts and/or the Legislature to satisfy the *Reynolds* ruling, sooner or later the California Constitution is going to have to be amended What follows is an analysis of some of the basic questions and possibilities which are likely to arise in any such process

A. *A Unicameral Legislature*

One possibility is the adoption of a unicameral legislature While such a step—especially under present circumstances—would have many political ramifications which go beyond the purview of this report, there are certain traditional arguments for and against unicameralism which can properly be set forth herein

Perhaps the most common argument in behalf of a unicameral Legislature since the *Reynolds* decision is that if the apportionment in both houses is based on population, then a second chamber is superfluous, or redundant It is also contended that a unicameral Legislature would be more efficient and less costly Moreover, a unicameral Legislature would simplify the task of the voters, thereby increasing the possibility that they would cast informed ballots In addition, it would fix responsibility more clearly

Another argument which has traditionally been made on behalf of unicameral legislatures is that they reduce the possibility of legislative stalemate and inaction This argument is not entirely consistent with the newer contention that a second chamber also based on population is superfluous.

The opponents of unicameralism regard all or most of these arguments as either false or unproven or misleading As against the conten-

[9] The Judiciary Committee of the U S House of Representatives recently reported out a bill (H R 5505) which would require that all congressional districts be "composed of contiguous territory, in as compact form as practicable" and that no district shall have a population more than 15 percent greater or smaller than the average obtained by dividing the total population of the state by the number of congressional districts in the state [After this report was completed, the House of Representatives passed this bill See Appendix D]

tion that a second house based on population is superfluous, it is argued that two chambers inevitably develop different traditions, styles, and personalities In more concrete terms, they are likely to represent voters and interests differently regardless of the fact that they are both based on population.[10]

This would probably be true even if both houses of the Legislature were identical in size and districting—an unlikely circumstance—simply because different legislators behave differently. And each variation in their comparative electoral process will engender still more differences The chambers will probably be different in size and therefore in districts represented One house may have exclusively single-member districts while the other may have at least some multimember districts And the length of terms of office may differ

Since the houses will in fact be different, then it also follows that the traditional argument about "checks and balances" continues to apply Stalemate will perhaps be less likely than when one chamber was apportioned on a basis other than population, but there will inevitably be contention, rivalry, and differing perspectives as between the two chambers, and this—it is contended—is a good thing.

As for the contention that a unicameral Legislature will be less costly, that depends on a number of other considerations, especially size and staffing allowances. Moreover, if cost were the primary consideration, it would be possible to have a small and poorly staffed bicameral Legislature. "Efficiency" is a vague term. If it means that bills would be acted upon more expeditiously, this might be true, but needs to be weighed against the virtues of deliberation and the emergence of conflicting views and interests which are more likely to occur in a bicameral Legislature The greater and more diversified the points of access, the more likely that all legitimate factors will be considered. And having a "second look" is sometimes a prudent practice in legislative bodies The same sorts of things can be said about the merits of simplifying the voters' task. Simplicity should be weighed against the merits of diversity of representation.

This, in brief outline, is the nature of the claims and counterclaims regarding unicameralism and bicameralism. It should be stressed that even if it were possible to assess them without reference to immediate political considerations there would be no "objective" or "unbiased" or "scientific" way of resolving the debate. Nebraska seems satisfied with its unicameral Legislature, but its example has not spread This may be the result of a general institutional conservatism or the protective instinct of officeholders, or both, and it may be wise or unwise. Such judgments are beyond the scope of this report, and are, in any event, usually more expertly made by legislators than by outsiders.[11]

If a unicameral Legislature were to be adopted in California, it would have to be apportioned on the basis of population alone.[12]

[10] In 1963, there were nine states (Indiana, Massachusetts, Minnesota, Oregon, South Dakota Tennessee, Washington, West Virginia, and Wisconsin) which were required by their constitutions to apportion both houses of their legislatures on the basis of population There was only one unicameral legislature (Nebraska)

[11] For further discussion of unicameralism and bicameralism, see Hurst, *The Growth of American Law*, 43–45, 53–56 (1950), and Hogan, "The Bicameral Principle in State Legislatures," *Journal of Public Law* 310 (1962)

[12] The nation's only unicameral legislature (Nebraska) is under a federal court order to reapportion itself on the basis of equal population *League of Nebraska Municipalities* v *Marsh*, 232 F Supp 411 (1964)

The basic decision regarding a unicameral Legislature would therefore not be its basis of apportionment but its size The creation of a very large body would have certain obvious advantages from the standpoint of state Senators whose seats are currently endangered by the reapportionment order of the court There are, of course, many other political implications regarding the size of any such body, but these matters are not the concern of this report. As for the comparative "objective" merits of a small or medium or large-sized unicameral Legislature, they are generally well-known. A small one would *probably* be more "efficient" and less costly, while a larger one would probably better represent the diversity of interests in California as well as providing political opportunities for larger numbers of citizens. It is impossible to forecast whether a unicameral Legislature of, say, 60 districts, would be more "liberal" or more "conservative" than one of, say, 180 seats Much would depend, as usual, on who was responsible for districting and how the lines were drawn

A related question is whether the size of the unicameral Legislature should be fixed or should vary in relation to some standard, such as, for example, the number of congressmen or absolute population figures. In a state which is growing as rapidly as California, the arguments in favor of a larger body also point towards a flexible number of districts and, conversely, those in favor of a smaller body point toward a fixed number Whether there is a point at which legislative bodies become so large as to become unwieldly is a controversial question and one which clearly has political implications The United States House of Representatives has 435 members and it is probably fair to say that most observers do *not* regard it as too large and yet are not anxious to see it become any larger But clearly there is nothing magic about the figure 435 and, of equal saliency, any such comparisons are of limited utility In sum, there simply is no way of knowing what an optimum figure for a Legislature is, be it unicameral or bicameral This, again, is a matter for prudential judgment

B. Types of Bicameralism

1 THE CANADIAN PLAN. If bicameralism is to be retained in California the question arises as to the form that this bicameralism is to take. It has been suggested that the Legislature be modeled after the Canadian Federal Parliament Under this arrangement, the Assembly would continue to be elected on the basis of population while the Senate would be elected—rather than appointed for life, as is the case in Canada's upper house—on the basis of geographic areas as at present However, the Senate would act in an advisory or quasi-legislative capacity, rather than as a full partner with the Assembly Bills passed by the Assembly would be sent to the Senate If the Senate refused to pass the bill, or if the Assembly refused to concur in the Senate's amendments, the will would not then become law However, if the Assembly passed the bill again after a year (30 days for money items), then the bill would be sent to the governor without being resubmitted to the Senate In effect, the Senate would have only a suspensive veto The rural areas would be heard, but the population-based lower house would be able finally to assert its will

Would this intriguing arrangement be upheld as constitutional? The Supreme Court has made it clear that both houses of a bicameral state legislature must be based on population But is this arrangement a "bicameral legislature"? Does a merely suspensive veto constitute enough legislative power to require that its holders be elected from districts apportioned on the basis of population? This arrangement would raise new questions, ones which the Supreme Court has not been called upon to face It is not possible at present confidently to predict what the court's holding would be, but it would quite likely be negative

This "Canadian" arrangement also raises, of course, many questions which are not constitutional in character Would such an arrangement be an appropriate compromise between the existing system and a bicameral legislature with both houses based on population? Would it be preferable to either a unicameral or a fully bicameral Legislature? Might it be a plan which would appeal to the present Senate as a way out of its current problems regarding reapportionment?

2 TWO COEQUAL CHAMBERS The other basic alternative, of course, is to continue to have a bicameral Legislature in California with essentially the existing characteristics, i e , two legislative chambers coequal in power and responsibility As with a unicameral legislature, a basic question is what size the Legislature should be Again, it should be stressed that decisions in such a matter have political implications which are beyond the scope of this report, and that, from an "objective" standpoint, there are cogent arguments for and against large (or small) bicameral Legislatures In fact, the arguments about size are essentially the same ones noted above regarding unicameral Legislatures

In addition, there is the complex issue of what the relative sizes of the two chambers should be It is widely believed that having chambers of differing size is desirable There is also a considerable body of opinion which holds that the two chambers should be based, at least in part, on differing electoral systems Again, it should be stressed that there can be no "objective" opinions about such matters and that such judgments are distinctly political in character

C. *Electoral Systems*

1 SINGLE MEMBER AND "WINNER-TAKE-ALL" [13] MULTIMEMBER DISTRICTS There are several types of electoral systems which could conceivably be incorporated into a new state constitutional plan The two most prominent possibilities, however, are "single member districts" and "multimember districts" (with a "winner-take-all" provision), and either separately or in combination they would appear to be the most likely type of electoral systems to be adopted in any new state constitutional plan

Multimember districts in state Legislatures are by no means rare California is one of only nine states in which all of the legislators, both

[13] As used herein, 'winner-take-all' is intended to suggest that the electoral system is not designed to guarantee a minority party or group some representation as, for example, a "proportional representation" system tends to do The phrase does *not* imply that one party, for example, will necessarily win all the seats If the seats are listed separately on the ballot, rather than by slate, it is possible that the candidates of more than one party will win seats at any given election

upper and lower house, are elected from single member districts [14] While most state legislators do represent single-member districts, 39 percent, or nearly 2 out of every 5, are elected in multimember districts Three thousand seven hundred and four of the 5,883 members of lower houses of state Legislatures—46 percent—represent multimember districts, while 305 of 1,903 state senators—16 percent—also are elected from multimember districts [15] Many states use a combination of single and multimember districts in composing their legislative chambers

The issue of whether to create single or multimember districts for the election of legislators has long been the subject of considerable controversy, speculation, and debate both among politicians and among scholars. Unfortunately, there is almost no empirical evidence to sustain the arguments for or against single or multimember districts Except for a few fairly self-evident observations, we do not know what are the practical effects of utilizing single-member, rather than multimember districts, or vice versa

It is commonly assumed and argued that single-member districts strengthen the two-party system by polarizing the choice in a plurality election, i e, the candidate with the largest number of votes wins, even if he does not have a majority of the votes cast because he had two or more opponents According to the accepted theory, competing interests moderate their differences, compromise, and work together to achieve victory at the polls Hence, the two major parties are strengthened, while minor parties are destroyed because they lack the ability to win and receive little support except from single special interests However, there is no evidence that multimember districts result in encouraging third parties or in weakening the two-party system The 41 states with multimember districts do not have multiparty systems Indeed, New York, one of the nine states using single-member districts exclusively has long had a strong third—and often fourth—party on its ballot

It has also been argued that single-member districts strengthen democratic government by resulting in a more direct, more intimate, and hence, more responsible relationship between the legislator and his constituents than is possible when the citizen has more than one representative Again, however, there is really no evidence that legislators elected from multimember districts are less responsive to their constituents than are their colleagues who are elected from single-member districts Indeed, it can be argued that when the citizen has two or three or more representatives, he has greater access to the Legislature than when he has only one But, as with the converse proposition, there is no evidence that this is true either Inasmuch as almost all politicians wish to be reelected, or elected to another office, it is doubtful that they will ignore any citizen, regardless of the type of district from which they are elected There is no empirical data with which to prove that

[14] The others are Delaware, Kansas, Kentucky, Missouri, Nebraska, New York, Rhode Island, and Wisconsin Maurice Klain "A New Look at the Constituencies The Need for a Recount and a Reappraisal" 49 *American Political Science Review*, 1105 1106–1107 (1955)

[15] Paul T David and Ralph Eisenberg, "State Legislative Redistricting Some Practical Issues in the Wake of Judicial Decision," paper read before the meeting of the American Political Science Association, Washington D C, September 5, 1962, p 22

either single-member or multimember districts strengthen democratic government

The most common attack upon the single-member district is that it is most susceptible to the partisan gerrymander. At first blush, this would appear to be obviously true But in its own way, a multimember district can also result in a partisan gerrymander When a district elects several representatives, it is quite possible for a party with a majority of the votes in the district to take all of the seats, leaving the second party, which might have a large percentage of the registered voters with none. Indeed, while holding that multimember districts were constitutional, the Supreme Court of the United States recently acknowledged that· "It might be well that, designedly or otherwise, a multimember apportionment scheme, under the circumstances or a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population, "*Fortson* v. *Dorsey, supra,* p 6.

It is quite possible that multimember districts can work to destroy a community of economic and social interest which single member constituencies could serve well. Large multimember districts could be used to reduce the political effectiveness of minorities—whether racial, ethnic, economic, or political—by subsuming them in a district with larger numbers of people who are not a part of the minority community.

Advocates of the multimember district argue that members elected from such districts are less susceptible to pressures from "special interest groups" than are legislators from single-member districts. Being one of several legislators from the same district, they argue, gives the representative some immunity from the types of pressures which can be placed on a man who is a representative from a single-member district The latter, it is contended, becomes an easy target for pressure. The former, because he represents a larger, more diverse district, is harder to isolate. In addition, it is contended that the representative from the smaller, single-member district tends to develop a narrow outlook, to be concerned essentially with local, rather than statewide, issues, and to develop a passion for logrolling and porkbarrelling. Hence, it is asserted that the larger, multimember districts attract more independent, stronger, and abler men to run for public office.

Supporters of the single-member district, on the other hand, assert that because it is easier for the voter to control one representative than several, the legislator who has the support of his constituency has greater immunity from special interest pressures than does his colleague from a multimember district They argue that rather than being lost in the crowd as one of several, the single-member district focuses attention on the individual legislator and hence a concern for the man rather than the party This, they insist, results in more independent, stronger, and abler candidates in single-member districts than in multimember constituencies.

Again, there is no empirical evidence to support the contentions of either the advocates of single-member or multimember districts. They are arguments to support a point of view, but they have not been proved. Indeed, there has been no attempt to prove them

Inasmuch as it has not been proved that the practical effects of single-member districts are "better" than those resulting from multimember districts, or vice versa, and inasmuch as both types of districts are constitutional, the proposed constitutional amendment could be worded to permit the creation of either or both kinds of districts at the discretion of the reapportioning agency. However, in order to avoid the problems of the long ballot in multimember districts, it might be prudent for the proposed amendment to provide for a maximum number, such as three, to be elected from any one multimember district.

2 AT-LARGE DISTRICTS. A special kind of multimember district is one which covers a very large population, such as an entire large state or half of one. It has been suggested, for example, that the California Assembly continue to be elected from single-member districts, but that state senators be elected at-large from the entire state or that the state be divided into two equal population districts, each district to elect half the state senators Proponents of this apparently believe that, somehow, an at-large election would work to the advantage of the less densely populated areas of the state. It is alleged that an at-large election is not as susceptible to the gerrymander

An at-large election, however, has a number of practical disadvantages. It is possible for numerically smaller interests, whether political, economic, racial, ethnic, or social, to be completely submerged in an at-large election by the more heavily populated areas of the state or district Rather than insure rural representation, an at-large election could work to *eliminate* such representation altogether.

Moreover, a ballot with large numbers of senators, in addition to all the other offices being voted upon in the same election, makes a rational choice difficult, if not impossible This is especially true in primary elections where the number of candidates normally will be far larger than the number of persons to be nominated Voter control over the nomination and election of legislators is greatly weakened when the ballot is lengthy and cumbersome. Such a ballot puts a premium on ballot position, name familiarity, party label, or newspaper or other interest group endorsement. A voter entitled to ballot for a large number of names could help defeat his favorite candidate if he used all his available votes, especially since some factions will cast "bullet votes" for one group of candidates only. No voter—not even the most informed person—could vote such a ballot with any degree of discrimination in the general election, let alone a party primary.

At-large elections provide incentives for informal arrangements between the two major political parties to insure that one of them is not completely denied representation. In the Illinois at-large election for the state House of Representatives last year, for example, the leaders of the two major parties agreed to run only two-thirds as many candidates as there were seats (177 seats). One interesting twist developed in that election when a "blue ribbon" slate of candidates, attached to neither party and competing for every seat, offered themselves as an alternative. With its usual display of loyalty to the party system and an earthy disdain for the "anti-politics" pretentions of the blue ribbon slate, the voters overwhelmingly repudiated this insurgent group. But not before some anxious moments had been recorded in party circles.

There are various other schemes designed to insure minority representation They require multimember districts and specially designed electoral systems These will be discussed briefly below [16]

3 LIMITED VOTING Under this electoral system, a voter in a multimember district has fewer votes than there are representatives to be elected If, for example, there are three representatives to be elected from the district and each voter has only two votes, this is a "limited voting" system The obvious purpose of this system is to facilitate minority party representation Whether it does in fact do so depends upon how large the minority party is, how disciplined it and the majority are, and how many candidates each party offers for the three seats

Suppose, for example, that a "limited voting" district with three representatives was made up of 45,000 Republicans and 36,000 Democrats If the Republicans put up three candidates, received 100 percent support from their followers, and voted for their candidates in equal proportions, each candidate would receive 30,000 votes If the Democrats put up only two candidates and received 100 percent support from their followers, their two candidates would each receive 36,000 votes The Democrats would win two seats, the majority Republicans only one In the next election, the Republicans would almost certainly run only two candidates and both would probably win But the Democrats would still have one seat and this pattern would probably prevail indefinitely, thereby providing minority representation In a straight, at-large, "winner-take-all" election, by contrast, the majority Republicans would presumably win all three.

No state has ever adopted the "limited voting" system for the election of state legislators.

4 CUMULATIVE VOTING Under this electoral system, a voter in a multimember district has as many votes as there are representatives to be elected and he may distribute his votes in any way he chooses If, for example, there are three representatives to be elected from the district, he can cast all three of his ballots for one candidate, or two for one candidate and one for another, or 1½ for each of two, or one for each of three Once again, the obvious purpose of this system is to facilitate minority party representation.

Suppose, for example, that a "cumulative voting" district with three representatives was made up of 75,000 Democrats and 30,000 Republicans If the Democrats put up three candidates for the three seats —and if party lines held—each of the Democrats would receive about 75,000 votes If the Republicans put up only one candidate—and if party lines held—he would receive about 90,000 votes The Republicans would thereby win one of three seats despite the fact that they constituted less than 30 percent of the electorate

Illinois has had a "cumulative voting" system for its state House of Representatives since 1872 It has in fact worked to ensure minority party representation and very few districts have ever been swept by one party Perhaps the most criticized feature of the system is that it

[16] The following summaries are based in part on Ruth C Silva, "Relation of Representation and the Party System to the Number of Seats Apportioned to a Legislative District," *The Western Political Quarterly*, Vol XVII, No 4 (December 1964), pp 742–769 This article contains excellent discussions and extensive bibliographies on each of the plans discussed herein

tends to reduce competition in the general elections Party leaders can calculate with considerable accuracy their electoral strength and they ordinarily put forward only two candidates if they are in a majority and only one if they are the minority. The voter is left with little choice

Cumulative voting tends to produce narrow legislative margins This is a factor of some consequence when considered in terms of the two-thirds majorities required for the passage of certain key measures in the California Legislature.

5 PROPORTIONAL REPRESENTATION Under this electoral system—commonly called "PR"—a party wins a proportion of representation roughly equivalent to its proportion of the vote If, for example, there were ten representatives to be elected in a given district and the Republicans received 60 percent of the vote and Democrats 40 percent, they would win six and four seats, respectively

There are basically two types of PR The least complicated is the "list system" Parties offer a "list" of candidates and voters cast their ballots for a party. A party is awarded representation roughly equivalent to its percentage of the vote In one version, its winning candidates are taken from the top of the list (which was originally drawn up by party officials) In another version, the identity of its winning candidates is determined on the basis of preferences declared by the voters who, while voting for the party, also rank their candidates The list system has never been employed in the United States but has been widely used in Europe

The other and more complicated basic type of PR is the "Hare system" There are various ways in which this system can be employed, the following is an outline of one typical method First, an "electoral quota" is established This refers to the minimum number of votes needed to elect a candidate The electoral quota is determined by dividing the total number of votes cast by the number of representatives to be elected plus one, and then adding one. If, for example, three representatives are to be elected and 80,000 people cast ballots, the electoral quota would be determined as follows:

Number of Representatives, plus one = 4
80,000 divided by 4 = 20,000
20,000 + 1 = 20,001, the electoral quota

The voters vote for as many candidates as they wish but they must rank them 1, 2, 3, etc After the polls close, the ballots are separated according to the first choice on each ballot and a count is made Those candidates, if any, which have 20,001 or more votes are declared elected Their "excess" ballots are then distributed—by any one of a variety of methods—according to their second choice; and so forth

If, however, as is more likely, no candidate is elected on the first count, then the candidate with the least number of votes is eliminated and his ballots are then distributed according to their second choices This procedure, in combination with the re-distribution of "excess" ballots from winning candidates, is then repeated until the appropriate number of candidates is elected

The Hare system of PR has been used in more than 20 American cities at one time or another, but it has never really caught on at any level of government in this country. No form of PR has ever been used for the election of state legislators The arguments for and against it have usually been based more on abstract theory than on hard evidence And what evidence exists is, for the most, conflicting. A few generalizations, however, would appear to be indisputably valid: minority party representation is facilitated and, more than any other electoral system, PR does foster third or "splinter" parties For both reasons, legislative majorities are reduced

6 WEIGHTED VOTING Another possible variation in districting is to continue to elect respresentatives from existing or other nonpopulation-based districts and then to assign differential weight to their votes depending upon the size of the population represented It has been suggested, for example, that Assemblymen continue to be elected from single-member districts of equal population, but that the Senate be reapportioned to utilize a weighted vote system In this situation, senators would be elected from single-member districts of unequal population representing geographic areas Within the Senate, however, the members would be assigned a number of votes, say one to five, based on the size of their constituencies In this manner the less densely populated areas of the state would be represented by more senators than their numbers warranted, but the senators representing the more heavily populated areas of the state would have more votes than their rural colleagues A variation of this system would be the fractional vote in which senators would receive from one-fifth to one whole vote based on the size of their constituencies

The arguments for and against this system of representation have been adequately treated above in the section dealing with its constitutionality. (See Part Two, IV, C.)

7 FLOTERIAL DISTRICTS Except under unusual circumstances, floterial districts do not meet the constitutional standard of "one person, one vote." See the discussion in Part Two, IV, D

There are some rather exotic representation systems and variations on the ones discussed above which have not been treated in this report. For an exhaustive listing of and bibliography on such schemes, see Ruth C Silva, "Relation of Representation and the Party System to the Number of Seats Apportioned to a Legislative District," *The Western Political Quarterly*, Vol. XVII, No. 4 (December, 1964), pp 742–769

8 CONGRESSIONAL APPORTIONMENT It has already been suggested in an earlier section (see Part Three, III) that the state constitutional requirement that certain—and, in practice, most—congressional districts be composed of whole assembly districts should be removed If it is believed that counties or other political subdivisions should be preserved intact insofar as possible, then an amendment could be drafted to provide that political subdivisions may not be subdivided *except* to achieve equality of population among districts And it would probably be prudent—in the light of *Wesberry* and/or possible congressional action in this field—if the amendment also contained a

provision restricting the population deviations to a plus and minus maximum of 10 to 15 percent of the norm for all districts

The current provisions for contiguous districts could be retained without difficulty and legislative apportionment would presumably still be required after each federal census.

In any amending effort, it would seem to be advisable to rewrite entirely Article IV, Section 27, which is, to put it mildly, difficult to understand and laden with ambiguity

APPENDIX A

THE CURRENT APPORTIONMENT SITUATION IN CALIFORNIA

The current districting of California's congressional seats was made in 1961 on the basis of the population figures revealed by the 1960 federal census Although an attempt was made to create districts essentially on the basis of equal population, some deviations from the norm of 413,610 were unavoidable due to a complicated set of provisions in the state constitution which, with minor exceptions, require that congressional districts be composed of whole and contiguous assembly districts (For a discussion of these provisions, see Part Three)

Adherence to these provisions, plus the fact that the number of assembly districts was not exactly divisible by the number of congressional districts, made deviations from the norm for congressional districts inevitable [1]

The size of California's congressional districts ranges from 591,882 (28th C D) to 301,172 (5th C D), a ratio of 1 96 to 1 between the largest and smallest district The largest congressional district exceeds the state norm by 178,212 (43 1 percent) and the smallest is 112,438 (27 2 percent) under the norm for all congressional districts All together, 9 of the 38 congressional districts deviate from the norm by more than 15 percent, while five additional district deviate from the norm between 10 and 15 percent (see Table 1)

The current apportionment of California's assembly districts also was made in 1961 on the basis of population figures revealed by the 1960 federal census As noted above, it was impossible to create assembly districts of substantially equal population because of the State Constitution which provides that the boundaries of assembly districts may not cross county lines except in the formation of districts consisting of two or more *whole* counties (Art IV, Sec 6: see Appendix B). The norm was 196,465 (see Table 2)

The size of California's assembly districts ranges from 306,191 (74th A D) to 72,105 (75th A D), a ratio of 4 2 to 1 between the largest and smallest district The largest assembly district exceeds the state norm by 109,726 (55 9 percent) and the smallest is 124,360 (66 3 percent) under the norm for all assembly districts All together, 24 of the 80 assembly districts deviate from the norm by more than 15 percent, while seven additional districts deviate from the norm between 10 and 15 percent

The current apportionment of California's senatorial districts was adopted by the Legislature in 1930 to implement the constitutional amendment adopted in 1926 (Art IV, Sec 6) Under this apportionment, the size of California's senatorial districts ranges from 6,038,771 (38th S D) to 14,294) (28th S D), a ratio of 422.5 to 1 between the

[1] For the relevant provisions of the California Constitution (Article IV, Sections 6 and 27), see Appendix B

TABLE 1

California Congressional Districts in Order of Population

Norm 413,610

Rank	District	Area	1960 Population	Deviation (%)
1	28th	Part of Los Angeles County	591,823	+43 1
2	1st	Del Norte, Humboldt, Marin, Napa, Mendocino, Sonoma Counties	533,607	+29 1
3	18th	Kern, Kings, Tulare Counties	510,341	+23 4
4	33rd	San Bernardino County	503,591	+21 8
5	3rd	Sacramento County	502,778	+21 6
6	16th	Fresno, Madera, Merced Counties	496,859	+20 1
7	10th	Part of Santa Clara County	483,260	+12 0
8	34th	Part of Orange County	460,087	+11 2
9	35th	Part of Orange and San Diego Counties	447,333	+ 8 2
10	11th	San Mateo County	444,387	+ 7 4
11	6th	Part of San Francisco County	439,144	+ 6 2
12	36th	Part of San Diego County	430,573	+ 4 1
13	29rd	Part of Los Angeles County	423,253	+ 2 3
14	32nd	Part of Los Angeles County	419,781	+ 1 5
15	14th	Contra Costa County	409,030	- 1 1
16	24th	Part of Los Angeles County	407,654	- 1 4
17	15th	San Joaquin and Stanislaus Counties	407,283	- 1 5
18	2nd	Alpine, Amador, Butte, Calaveras, El Dorado, Inyo, Lassen, Mariposa, Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Trinity, Tehama, Tuolumne Counties	406,506	- 1 7
19	37th	Part of San Diego County	398,397	- 3 6
20	19th	Part of Los Angeles County	393,986	- 4 7
21	22nd	Part of Los Angeles County	392,660	- 5 1
22	30th	Part of Los Angeles County	389,762	- 5 8
23	25th	Part of Los Angeles County	389,625	- 5 8
24	26th	Part of Los Angeles County	389,216	- 5 9
25	9th	Parts of Alameda and Santa Clara Counties	381,225	- 7 8
26	31st	Part of Los Angeles County	380,679	- 8 0
27	29th	Part of Los Angeles County	379,671	- 8 2
28	20th	Part of Los Angeles County	379,370	- 8 2
29	12th	Monterey, San Benito, San Luis Obispo, Santa Cruz Counties	379,010	- 8 4
30	38th	Imperial, Riverside Counties	378,296	- 8 5
31	27th	Part of Los Angeles County	374,283	- 9 5
32	17th	Part of Los Angeles County	372,590	- 9 9
33	21st	Part of Los Angeles County	369,983	-10 5
34	8th	Part of Alameda County	368,421	-10 9
35	13th	Santa Barbara, Ventura Counties	368,100	-11 0
36	7th	Part of Alameda County	327,603	-18 4
37	4th	Colusa, Glenn, Lake, Solano, Sutter, Yolo, Yuba Counties	310,561	-24 9
38	5th	Part of San Francisco County	301,172	-27 2

SOURCE California Assembly Committee on Elections and Reapportionment

largest and smallest district (see Table 3) The largest senatorial district exceeds the state norm by 5,645,841 (1,436 9 percent) and the smallest is 378,636 (—96 4 percent) under the norm for all senatorial districts All together, 37 of the 40 senatorial districts deviate from the norm by more than 15 percent, while one additional district deviates from the norm between 10 and 15 percent

Population inequalities among state legislative districts are not peculiar to California Indeed, the pattern of legislative apportionment in the 50 states reveals widespread population inequalities in almost every state in the union Table 4 reveals the ratio of the largest to the smallest district in each of the 99 state legislative chambers as of January 1, 1965 As can be seen, the California Senate's ratio of 422 5 to 1 is the highest of all the 50 senates The lowest ratio, 1 2 to 1, belongs to Kansas Senate The highest ratio among all 49 lower houses is Vermont's 1,480 4 to 1 The lowest ratio is Colorado's 1 2 to 1

While the ratio of largest to smallest district population reveals a widespread pattern of population inequalities among the several districts in most state legislative chambers, it does not reveal the entire

TABLE 2

California Assembly Districts in Order of Population

Norm 196,465

Rank	District	Area	1980 Population	Deviation (%)
1	74th	Riverside County	306,191	+55 9
2	7th	Marin, Sonoma Counties	294,195	+49 7
3	34th	Monterey, Santa Cruz Counties	282,570	+43 8
4	72nd	Part of San Bernardino County	255,414	+30 0
5	36th	San Luis Obispo, Santa Barbara Counties	250,006	+27 3
6	12th	San Joaquin County	249,089	+26 8
7	73rd	Part of San Bernardino County	248,117	+26 3
8	22nd	Part of Santa Clara County	244,783	+24 6
9	71st	Part of Orange County	243,838	+24 1
10	70th	Part of Orange County	242,087	+23 2
11	25th	Part of San Mateo County	227,944	+16 0
12	78th	Part of San Diego County	222,179	+13 1
13	35th	Kings, Tulare Counties	218,357	+11 1
14	69th	Part of Orange County	218 000	+11 0
15	27th	Part of San Mateo County	216,443	+10 2
16	24th	Part of Santa Clara County	215,477	+ 9 7
17	44th	Part of Los Angeles County	212,181	+ 8 0
18	56th	Part of Los Angeles County	211,925	+ 7 9
19	38th	Part of Los Angeles County	211,868	+ 7 8
20	53rd	Part of Los Angeles County	211,595	+ 7 7
21	52nd	Part of Los Angeles County	211,414	+ 7 6
22	79th	Part of San Diego County	211,302	+ 7 6
23	64th	Part of Los Angeles County	210,472	+ 7 1
24	4th	Glenn, Butte, Sutter, Colusa, Yolo Counties	210,457	+ 7 1
25	76th	Part of San Diego County	208,394	+ 6 1
26	50th	Part of Los Angeles County	207,637	+ 5 7
27	39th	Part of Los Angeles County	207,600	+ 5 7
28	61st	Part of Los Angeles County	205,495	+ 4 6
29	10th	Part of Contra Costa County	204 898	+ 4 3
30	11th	Part of Contra Costa County	204,193	+ 3 9
31	80th	Part of San Diego County	203,495	+ 3 5
32	47th	Part of Los Angeles County	202,370	+ 3 0
33	13th	Part of Alameda County	202,185	+ 2 9
34	60th	Part of Los Angeles County	201 580	+ 2 6
35	5th	Napa, Solano Counties	200,487	+ 2 0
36	37th	Ventura County	199 178	+ 1 4
37	62nd	Part of Los Angeles County	196 984	+ 0 3
38	49th	Part of Los Angeles County	195,729	− 0 4
39	46th	Part of Los Angeles County	195,356	− 0 6
40	6th	Yuba, Nevada, Placer, El Dorado, Amador Calaveras, Alpine, Tuolumne, Mariposa, Mono, Inyo Counties	195,109	− 0 6
41	67th	Part of Los Angeles County	194,936	− 0 8
42	57th	Part of Los Angeles County	194,876	− 0 8
43	65th	Part of Los Angeles County	194 642	− 0 9
44	54th	Part of Los Angeles County	193,526	− 1 5
45	48th	Part of Los Angeles County	193,384	− 1 6
46	51st	Part of Los Angeles County	191 671	− 2 4
47	15th	Part of Alameda County	189,899	− 3 3
48	59th	Part of Los Angeles County	188,554	− 4 0
49	1st	Del Norte, Mendocino, Lake, Humboldt Counties	187 508	− 4 6
50	55th	Part of Los Angeles County	187,416	− 4 6
51	77th	Part of San Diego County	187,295	− 4 7
52	45th	Part of Los Angeles County	186,287	− 5 2
53	63rd	Part of Los Angeles County	186,037	− 5 3
54	9th	Part of Sacramento County	184,762	− 6 0
55	66th	Part of Los Angeles County	184 260	− 6 2
56	53rd	Part of Los Angeles County	182,567	− 7 1
57	41st	Part of Los Angeles County	182,198	− 7 3
58	68th	Part of Los Angeles County	181,988	− 7 4
59	25th	Part of Santa Clara County	179 040	− 8 9
60	14th	Part of Alameda County	178 529	− 9 1
61	40th	Part of Los Angeles County	177 837	− 9 5
62	69th	Part of Los Angeles County	177 654	− 9 6
63	42nd	Part of Los Angeles County	177 299	− 9 8
64	43rd	Part of Los Angeles County	177 060	− 9 9
65	8th	Part of Sacramento County	169 781	−13 7
66	17th	Part of Alameda County	169 206	−13 9
67	16th	Part of Alameda County	168 397	−14 3
68	2nd	Siskiyou, Trinity, Shasta, Tehama, Modoc, Lassen, Plumas Sierra Counties	164 176	−17 0
69	30th	Stanislaus County	157 294	−19 9
70	32nd	Part of Fresno County	151 340	−21 4
71	20th	Part of San Francisco County	150 832	−23 2

TABLE 2—Continued

California Assembly Districts in Order of Population

Norm. 196,465

Rank	District	Area	1960 Population	Deviation (%)
72	18th	Part of San Francisco County	150,340	−23 5
73	19th	Part of San Francisco County	149 985	−23 7
74	3rd	Part of Sacramento County	148 627	−24 3
75	23rd	Part of San Francisco County	147,699	−24 8
76	29th	Part of Kern County	146,510	−25 4
77	31st	Merced, Madera, San Benito Counties	146 310	−25 5
78	28th	Part of Kern County	145,474	−26 0
79	21st	Part of San Francisco County	141,460	−28 0
80	75th	Imperial County	72,105	−63 0

SOURCE California Assembly Committee on Elections and Reapportionment

TABLE 3

California Senatorial Districts in Order of Population

Norm 392,930

Rank	District	Area	Population	Deviation (%)
1	38th	Los Angeles County	6,038,771	+1436 9
2	40th	San Diego County	1,033,011	+ 162 9
3	16th	Alameda County	905,670	+ 130 6
4	14th	San Francisco County	742,855	+ 89 1
5	35th	Orange County	703,925	+ 79 1
6	18th	Santa Clara County	642,315	+ 63 5
7	36th	San Bernardino County	503,591	+ 28 2
8	19th	Sacramento County	502,778	+ 28 0
9	21st	San Mateo County	444,387	+ 13 1
10	17th	Contra Costa County	409,030	+ 4 1
11	30th	Fresno County	365,945	− 6 9
12	37th	Riverside County	306,191	− 22 1
13	34th	Kern County	291,084	− 25 7
14	20th	San Joaquin County	249,989	− 36 4
15	33rd	Ventura County	199,138	− 49 3
16	25th	Monterey County	198,351	− 49 5
17	31st	Santa Barbara County	168,962	− 57 0
18	32nd	Tulare County	168,403	− 57 1
19	22nd	Stanislaus County	157,294	− 60 0
20	12th	Sonoma County	147,375	− 62 5
21	13th	Marin County	146 820	− 62 6
22	15th	Solano County	134,597	− 65 7
23	11th	Napa, Yolo Counties	131,017	− 66 5
24	24th	Madera, Merced Counties	130 014	− 66 7
25	3rd	Humboldt County	104,892	− 73 3
26	23rd	Santa Cruz, San Benito Counties	99 615	− 74 6
27	6th	Butte County	82,030	− 79 1
28	20th	San Luis Obispo County	81,044	− 79 4
29	7th	Sierra, Nevada, Placer Counties	80,156	− 79 6
30	39th	Imperial County	72,105	− 81 6
31	5th	Trinity, Shasta Counties	69,174	− 82 4
32	10th	Yuba, Sutter Counties	67,239	− 82 9
33	4th	Mendocino, Lake Counties	64,845	− 83 5
34	8th	Colusa, Glenn, Tehama Counties	54,625	− 86 1
35	2nd	Del Norte, Siskiyou Counties	50,056	− 87 1
36	27th	Kings County	49,954	− 87 3
37	9th	El Dorado, Amador Counties	39,480	− 90 0
38	1st	Modoc, Lassen, Plumas Counties	33,525	− 91 5
39	26th	Calaveras, Mariposa, Tuolumne Counties	29,737	− 92 4
40	28th	Alpine, Inyo, Mono Counties	14,294	− 96 4

SOURCE California Assembly Committee on Elections and Reapportionment

TABLE 4

Ratio of Population of Largest to Smallest District, Each Chamber, American State Legislatures, January 1, 1965

State	Senate	Lower House	State	Senate	Lower House
Alabama	20 0	4 7	Montana	88 4	14 0
Alaska	19 1	2 4	Nebraska	1 7	Unicameral
Arizona	85 8	5 3	Nevada	223 6	22 1
Arkansas	2 3	6 4	New Hampshire	2 6	222 4
CALIFORNIA	422 6	4 2	New Jersey	10 0	3 0
Colorado	3 7	1 2	New Mexico	139 9	8 6
Connecticut	8 1	424 1	New York	3 9	20 9
Delaware	15 5	12 2	North Carolina	2 3	18 0
Florida	26 4	23 3	North Dakota	8 9	3 2
Georgia	1 5	98 8	Ohio	2 2	14 5
Hawaii	7 5	4 7	Oklahoma	2 5	5 4
Idaho	102 1	11 3	Oregon	2 1	2 3
Illinois	10 6	4 7	Pennsylvania	2 7	18 0
Indiana	2 6	2 2	Rhode Island	96 9	39 0
Iowa	3 2	2 3	South Carolina	25 1	3 4
Kansas	1 2	28 7	South Dakota	4 3	4 7
Kentucky	1 9	2 0	Tennessee	1 6	2 2
Louisiana	8 0	8 3	Texas	8 4	3 1
Maine	3 3	5 6	Utah	0 9	27 8
Maryland	31 8	5 8	Vermont	5 5	1480 4
Massachusetts	2 3	13 9	Virginia	2 6	4 4
Michigan	12 4	4 0	Washington	7 3	4 6
Minnesota	3 8	11 9	West Virginia	2 0	2 4
Mississippi	8 0	7 4	Wisconsin	1 4	2 4
Missouri	1 7	13 5	Wyoming	9 8	2 6

SOURCE National Municipal League

pattern It emphasizes the extreme situation, and does not indicate the overall effect of the pattern of apportionment in the legislative body. The Dauer-Kelsay Index of Representatives helps to complete the picture.

The Dauer-Kelsay Index of Representatives shows the theoretical minimum percentage of a state's population that can elect a majority of a legislative body [2] It indicates the general pattern of apportionment in a state and not simply extreme deviations (The ratio between the largest and smallest constituencies is, of course, entirely based on the extreme deviation) Table 5 reveals the Index of Representativeness for each state legislative chamber in the United States as a whole, as of January 1, 1965

According to the Dauer-Kelsay Index of Representativeness, the California Senate ranks 49th among the 50 state senates in representativeness Only the Nevada senate's index of 8 0 is lower than California's 10 7 The Assembly's index of 44 7, on the other hand, ranked 16th among the 49 lower houses of state Legislatures

[2] The calculation process is simple The several legislative districts of the chamber being analyzed are arranged in rank order from smallest population per member to largest The count then proceeds from the smallest district up the scale until the cumulative number of seats equals a majority of the chamber The percent that the population of the several districts able to elect a majority is of the total population of the state is the "Index of Representativeness" of that chamber For example, 21 members constitute a majority of California's 40-member Senate The population of the 21 smallest districts which together can elect a majority of the California Senate, is 1,678,630 This represented 10 7% of the state's total population of 15,717 204, and this percentage is the Dauer-Kelsay Index for the California State Senate See Manning J Dauer and Robert G. Kelsay "Unrepresentative States," 44 *National Municipal Review* 571 (1955). Figures corrected in 45 *National Municipal Review* 198 (1956).

TABLE 5

Index of Representativeness, Each Chamber, American State Legislatures, January 1, 1965

State	Senate	Lower House	State	Senate	Lower House
Alabama	27 6	37 9	Montana	16 1	36 6
Alaska	41 9	47 3	Nebraska	43 9	Unicameral
Arizona	12 8	48 0	Nevada	8 0	29 1
Arkansas	43 8	33 3	New Hampshire	45 3	43 9
CALIFORNIA	10 7	44 7	New Jersey	19 0	48 5
Colorado	33 0	45 1	New Mexico	14 0	42 0
Connecticut	32 0	12 0	New York	36 9	34 7
Delaware	29 6	27 6	North Carolina	47 6	27 1
Florida	15 2	29 7	North Dakota	31 9	40 2
Georgia	49 2	22 2	Ohio	44 8	29 4
Hawaii	23 4	47 8	Oklahoma	44 5	32 5
Idaho	16 6	44 0	Oregon	47 8	48 1
Illinois	28 7	39 9	Pennsylvania	43 4	42 7
Indiana	40 5	47 6	Rhode Island	18 1	46 5
Iowa	38 9	44 8	South Carolina	23 3	46 0
Kansas	50 1	19 4	South Dakota	38 4	38 6
Kentucky	46 6	44 0	Tennessee	44 5	39 7
Louisiana	33 0	33 1	Texas	30 3	38 7
Maine	46 9	39 7	Utah	21 3	33 3
Maryland	14 2	35 6	Vermont	47 0	11 9
Massachusetts	44 6	45 3	Virginia	41 1	40 5
Michigan	49 0	49 0	Washington	33 9	35 3
Minnesota	40 1	34 5	West Virginia	46 7	46 2
Mississippi	37 4	41 2	Wisconsin	48 4	45 4
Missouri	47 8	20 3	Wyoming	24 1	46 5

SOURCE National Municipal League

APPENDIX B

RELEVANT PROVISIONS OF THE CONSTITUTION OF CALIFORNIA, ARTICLE IV

Election and Terms of Members of Assembly

SEC 3 Members of the Assembly shall be elected biennially, and their term of office shall be two years Each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature

(Amendment adopted November 8, 1960)

Election and Terms of Senators—Qualifications of Members of Legislature

SEC 4 Senators shall be chosen for the term of four years, at the same time and places as Members of the Assembly, and no person shall be a Member of the Senate or Assembly who has not been a citizen and inhabitant of the state three years, and of the district for which he shall be chosen one year, next before his election

(Constitution of 1849, Art IV, Secs 4, 5, revised 1879)

Number of Senators and Assemblymen—Election by Districts

SEC 5 The Senate shall consist of 40 members, and the Assembly of 80 members, to be elected by districts, numbered as hereinafter provided One-half of the Senators shall be elected every two years, those from the odd-numbered districts being elected when the number of the year is divisible by four

(Amendment adopted November 8, 1960)

Senatorial and Assembly Districts

SEC 6 For the purpose of choosing Members of the Legislature, the State shall be divided into 40 senatorial and 80 assembly districts to be called senatorial and assembly districts Such districts shall be composed of contiguous territory, and assembly districts shall be as nearly equal in population as may be Each senatorial district shall choose one senator and each assembly district shall choose one Member of Assembly The senatorial districts shall be numbered from 1 to 40, inclusive, in numerical order, and the assembly districts shall be numbered from 1 to 80 in the same order, commencing at the northern boundary of the State and ending at the southern boundary thereof In the formation of assembly districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, and in the formation of senatorial districts no county, or city and county, shall be divided, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any assembly or senatorial district The census taken under the direction of the Congress of the United States in the year 1920, and every 10 years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the

Legislature shall, at its first regular session following the adoption of this section and thereafter at the first regular session following each decennial federal census, adjust such districts, and reapportion the representation so as to preserve the assembly districts as nearly equal in population as may be; but in the formation of senatorial districts no county or city and county shall contain more than one senatorial district, and the counties of small population shall be grouped in districts of not to exceed three counties in any one senatorial district, provided, however, that should the Legislature at the first regular session following the adoption of this section or at the first regular session following any decennial federal census fail to reapportion the assembly and senatorial districts, a Reapportionment Commission, which is hereby created, consisting of the Lieutenant Governor, who shall be chairman, and the Attorney General, State Controller, Secretary of State and State Superindent of Public Instruction, shall forthwith apportion such districts in accordance with the provisions of this section and such apportionment of said districts shall be immediately effective the same as if the act of said Reapportionment Commission were an act of the Legislature, subject, however, to the same provisions of referendum as apply to the acts of the Legislature

Population

Each subsequent reapportionment shall carry out these provisions and shall be based upon the last preceeding federal census But in making such adjustments no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law

(Amendment adopted November 3, 1942)

Readings and Passage of Bills

SEC 15 No law shall be passed except by bill Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members, nor shall any bill become a law unless the same be read on three several days in each house, unless, in case of urgency, two-thirds of the house where such bill may be pending shall, by a vote of yeas and nays, dispense with this provision Any bill may originate in either house, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house

(Constitution of 1849, Art. IV, Sec 16, revised 1879)

Bills to Be Presented to Governor—Veto—Procedure

SEC 16 Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it, but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections

upon the Journal and proceed to reconsider it If after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the Governor's objections If any bill shall not be returned within 10 days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within 30 days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill * In such case he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor

(Amendment adopted November 3, 1908)

Formation of Congressional Districts

SEC 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more congressmen, but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law Any county, or city and county, containing a population greater than the number required for one congressional district shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district In dividing a county, or city and county, into congressional districts no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts

(Constitution of 1849, Art IV, Sec 30, revised 1879.)

* See also Article IV, Section 34

APPENDIX C

THE CONSTITUTIONAL DOCTRINE OF STATE LEGISLATIVE APPORTIONMENT FROM *COLEGROVE* v. *GREEN* TO *REYNOLDS* v. *SIMS*

Modern constitutional doctrine in the area of legislative apportionment begins with the decision of the Supreme Court of the United States in a congressional districting case, *Colegrove* v *Green*, 328 U S 549 (1946) The judgment of the court was announced in a decision by Mr Justice Felix Frankfurter which held, in essence, that plaintiffs had no standing to sue, and that courts had no jurisdiction in such cases because the issue presented a nonjusticiable political question As Justice Frankfurter put it "Courts ought not to enter this political thicket The remedy for unfairness in districting is to secure State Legislatures that will apportion properly, or to invoke the ample powers of Congress" *Colegrove* v *Green*, *supra*, at 556

Although Frankfurter's reasoning was acceptable to only three of the four members of the majority (only seven members of the court participated in the four to three decision), his *Colegrove* doctrine of nonjusticiability based on the political nature of the issue came to prevail in federal and state courts over the next 14 years During that period, 13 cases affecting apportionment or districting reached the Supreme Court of the United States Most of them were disposed of in *per curiam* (unsigned) decisions without opinion, or by refusal of the High Court to review the case Only twice did the court give reasons for its actions

In *MacDougall* v *Green*, 335 U S 281 (1948), a majority of five justices sustained an Illinois statute requiring a new political party to secure signatures in at least 50 of the state's 102 counties on the ground that the due process and equal protection clauses of the Fourteenth Amendment did not "deny a state the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses" *MacDougall* v *Green*, *supra*, at 283-284 Similarly, in *South* v *Peters*, 339 U S 276 (1950), a challenge to the Georgia County unit system of elections, the court stated. "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions" *South* v *Peters*, *supra*, at 277

In 1960, the Supreme Court of the United States declared an Alabama statute redrawing the boundary lines of the City of Tuskegee to be unconstitutional because it was a "racial gerrymander" *Gomillion* v. *Lightfoot*, 364 U S 339 (1960) The act, which had the effect of removing all but four or five Negro voters from the municipality while keeping all white voters within the city limits, was held to violate the Fifteenth Amendment's prohibition against denying or abridging the right to vote because of race While the court in this manner distin-

guished the case from apportionment issues which involve the equal protection clause of the Fourteenth Amendment, the *Gomillion* case opened the door to a reconsideration of the *Colegrove* doctrine One week after Gomillion was decided, the Supreme Court decided to review *Baker* v *Carr*, 364 U S 898 (1960)

The *Tennessee Reapportionment Case*, *Baker* v *Carr*, 369 U S 186 (1962) was the vehicle which announced a new trend in Supreme Court decisions in apportionment cases. Breaking with *Colegrove* v *Green*, *supra*, the high court held 1) federal courts do have jurisdiction over apportionment disputes because the "cause of action is one which 'arises under' the Federal Constitution" and is neither "unsubstantial" nor "frivolous," *Baker* v *Carr*, *supra*, at 199, 2) individual voters have standing to sue because "appellants seek relief in order to protect or vindicate an interest of their own, and of others similarly situated," *Baker* v *Carr*, *supra*, at 207, and 3) the issue is justiciable and does not present a political question with which courts cannot deal, *Baker* v *Carr*, *supra*, at 209

Thus, the Supreme Court opened the courthouse door—shut by *Colegrove* in 1946—to apportionment conflicts But in so doing, the Supreme Court did not fully establish the new rules of the game The court did not indicate what standards were to be applied in examining a challenged apportionment nor what forms of relief could be granted should an inferior court find an existing apportionment to be unconstitutional With regard to standards, Mr Justice Brennan, for the court, said only "Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action " *Baker* v *Carr*, *supra*, at 226 Similarly, Justice William O Douglas, in a concurring opinion, pointed out that the "traditional test under the Equal Protection Clause had been whether a state has made 'an invidious discrimination' . . ." *Baker* v. *Carr*, *supra*, at 244 And in his concurring opinion, Justice Tom C Clark indicated that the test to be applied was whether the apportionment represents "a rational state policy" or reflects "no policy whatsoever" resulting in "a crazy-quilt without rational basis," was not "reasonable" and, hence, violated the equal protection clause. *Baker* v *Carr*, *supra*, at 252–254 But the specifics were left for future development, for while none of the justices endorsed the view that exact mathematical equality is required by the equal protection clause, neither did they indicate how much weighting of nonpopulation factors would be permissible in an apportionment scheme

The first key step in providing the basic ground rules implementing *Baker* v *Carr* was the decision in the *Georgia County Unit System* Case, *Gray* v *Sanders*, 372 U S 368 (1963) Rejecting an analogy to the federal electoral college, the Supreme Court declared· "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit This is required by the Equal Protection Clause

of the Fourteenth Amendment The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications" *Gray* v *Sanders, supra,* at 379–380. In summary, Mr Justice Douglas, writing for the court, stated: "The concept of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing —*one person, one vote*" *Gray* v *Sanders, supra,* at 381 (italics added).

The second post-*Baker* decision affecting legislative apportionment was a congressional districting case, *Wesberry* v *Sanders,* 376 U S 1 (1964). Although the Wesberry decision was not based on the equal protection clause, equality of population was evolving as the basic constitutional standard for apportionment and districting cases. Justice Hugo L. Black, writing for the court, stated that "The command of Article I, Section 2, that representatives be chosen 'by the people of the several states' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry* v *Sanders, supra,* at 7–8 Since it was "our Constitution's plain objective of making equal representation for equal members of people the fundamental goal for the House of Representatives," the concept of "by the people" means "*one person, one vote.*" *Wesberry* v. *Sanders, supra,* at 18 (italics added)

"We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state Legislature must be apportional on a population basis" *Reynolds* v. *Sims,* 377 U S 533, 568 (1964) With these words, Chief Justice Earl Warren, writing for six members of the Supreme Court, faced "the problem of determining the basic standards and stating the applicable guidelines for implementing our decision in *Baker* v. *Carr.*" *Reynolds* v. *Sims, supra,* at 568. Asserting that "Legislators represent people, not trees or acres Legislators are elected by voters, not farms or cities or economic interests," *Reynolds* v. *Sims, supra,* at 562, and that "citizens, not history or economic interests cast votes . . people, not land or trees or pastures, vote," *Reynolds* v. *Sims, supra,* at 580, the court held that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State" *Reynolds* v *Sims, supra,* at 568

But in establishing "one person, one vote" as the basic constitutional standard for state legislative elections, the court did recognize that "mathematical nicety is not a constitutional requisite." *Reynolds* v. *Sims, supra,* at 569. Hence, the Chief Justice wrote: "By holding that as a federal constitutional requisite both houses of a state Legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its Legislature, *as nearly of equal population as practicable* We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, citizens, or voters Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds* v. *Sims, supra,* at 577 (italics added). Therefore, each state

was to be permitted some degree of flexibility in determining its apportionment scheme "*so long as the resultant apportionment was one based substantially on population and the equal population principle was not diluted in any significant way*" *Reynolds* v. *Sims, supra,* at 578 (italics added)

While the Supreme Court declined to spell out any precise constitutional tests, preferring to permit the development of a body of detailed doctrine to be evolved on a case-by-case basis, *Reynolds* v. *Sims, supra,* at 578, the court made it clear that the basic constitutional standard for the apportionment of both houses of the state legislature was "one person, one vote"

APPENDIX D: H.R. 5505

[The following is the bill passed by the House of Representatives on March 16, 1965.]

89th Congress
1st Session

H.R. 5505

IN THE SENATE OF THE UNITED STATES, March 18, 1965
Read twice and referred to the Committee on the Judiciary

AN ACT

To require the establishment, on the basis of the eighteenth and subsequent decennial censuses, of congressional districts composed of contiguous and compact territory for the election of Representatives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Act of June 18, 1929, entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives" (46 Stat 26), as amended, is amended as follows

(1) Subsection (c) is amended by striking out all of the language in that subsection and inserting in place thereof the following:

II

"(c) In each State entitled in the Ninetieth Congress or in any subsequent Congress to more than one Representative under an apportionment made pursuant to the provisions of subsection (a) of this section, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled; and Representatives shall be elected only from districts so established, no district to elect more than one Representative Each such district so established shall at all times be composed of contiguous territory, in as compact form as practicable, and under apportionments made upon the basis of the eighteenth and subsequent decennial censuses, no district established in any State for the Ninetieth or any subsequent Congress shall contain a number of persons excluding Indians not taxed, more than 15 per centum greater or less than the average obtained by dividing the whole number of persons in such State, excluding Indians not taxed, as determined under the then most recent decennial census, by the number of Representatives to which such State is entitled under the apportionment made upon

the basis of such census Where a State has redistricted since the last decennial census, the most recent Federal special census conducted pursuant to the provisions of the Act of August 26, 1954, as amended (71 Stat 481, 13 U S C 8), may be used in determining whether any district within the State, invalid under the latest decennial census, meets the 15 per centum criterion There shall be not more than one redistricting during any decennial census ''

Passed the House of Representatives March 16, 1965
Attest RALPH R ROBERTS,
Clerk

APPENDIX E

MEASUREMENT OF POPULATION EQUALITY

by

CHARLES G. BELL

Assistant Professor of Political Science, California State College at Fullerton

I. INTRODUCTION

While the S C has established the rule of "one man, one vote"[1] it has not provided any definition of either the "man" or the "vote". So far the courts have not indicated, even in dictum, what specific standards are to be used in determining the validity of an apportionment[2] And although gross inequalities of population per election district may lead to an obvious conclusion of unequal representation and, according to the courts, invidious discrimination, the legislative body faced with reapportionment must decide for itself what is "equal" and what does not constitute invidious discrimination

However, the courts have referred to what is frequently called "practical equality" and under that rubric have allowed for deviation from a mathematically exact equality of population per legislative district. Thus "one man, one vote" has lost, if it ever had, a mathematical exactitude and can be practically considered as an approximate equality, to be aimed for while recognizing the impossibility of attainment[3] In light of recent congressional action, a 15 percent deviation from perfect equality would appear to be probably acceptable (barring an obvious pattern of discrimination within these limits)

Since *Baker* v. *Carr* and, more particularly, the Reynolds case, many lower courts have been faced with the concrete problem of determining what is equal and what is not The consultant suggests that final determination of "equality" is a policy issue which is beyond his purview. Moreover, a broad survey of research literature on the subject of reapportionment illustrates that political scientists and other concerned professionals have made little contribution to the fundamental techniques of measuring gerrymandering While there has been a copious outpouring of articles and books on the general subject of malapportionment, these have been largely normative in character and when attempting to prove, by the use of statistics, the existence of malapportionment or gerrymandering, have relied upon rather gross data

[1] *Reynolds* v *Sims*, 377 U S 533 (1964)

[2] The case of *Baker* v. *Carr* provides an excellent example of the problem of coming to grips with the technical nature of apportionment One finds in the majority opinion written by Mr Justice Clark and in the dissenting opinion of Mr Justice Harlan disagreements not only about the law and public policy of judicial intervention but disagreement as to the "facts" in the case One state court, however, did describe in detail the apportionment it would implement if the Legislature did not reapportion see *Fortner* v *Barnett*, Chancery Court, 1st Judicial Dist., Hinds County, Mississippi, circa 1961

[3] See *Baker* v *Carr*, 186, (1962) 260 (concurring opinion)

which in many cases illustrated wide variances of population between districts but did little to come to grips with the problem of how to measure objectively the *degree of malapportionment* (See Bibliography) The question of criteria of population is, therefore, the basic question considered herein

In trying to determine the proper criteria for apportionment by population both legislative bodies and the courts have, almost without exception, relied upon the most recent comprehensive federal decenial census data[4] A large majority of the states use census data as the source of population data for drawing legislative district lines for those legislative chambers apportioned by population (see Table B). In less than 10 percent of the cases is population defined by some other method

The courts, in examining criteria for legislative apportionment, have considered, in addition to total number of residents or citizens: the number of registered voters,[5] "history,"[6] geography,[7] "mass media,"[8] votes cast for Congress,[9] and direct taxes paid[10] Other factors considered have included male inhabitants, the exclusion or inclusion of servicemen, Indians,[11] and aliens Again, the use of census data has received preferred treatment In addition to various definitions of population the courts have considered several factors which would justify deviations from mathematical exactitude These include, for example, the "history," geography and "mass media" criteria cited above[12]

II. POPULATION

In the first place, the consultant assumed that any measure of malapportionment would be a measure of deviation from an ideal of equal representation based upon some definition of population The problem here, of course, is definition of "population" California has, in the past, used total population excluding aliens not eligible for naturalization There are, however, other criteria which might be used. These could be, aside from the most commonly used Census Bureau data (either total population or population 21 and over), the number of registered voters, total votes cast in the last general election, or votes cast in the last statewide election (whether Gubernatorial or Presidential)

However, it is suggested that use of either registration or votes cast be rejected. This recommendation follows analysis of the ratios: (1) between total registered voters per total population (1950 and 1960) for each county; and (2) between total votes cast, 1958, 1960 and 1962 and population (1960) for each county Both registration and vote

[4] To provide a valid base for reapportionment census data must be statewide While of more recent origin, legal special censuses are not comparable to the 1960 census data within the rest of a state and can therefore, not be used
[5] *Ellis* v *Mayer* and *City Council of Baltimore*, 234 F Supp 945 (1964)
[6] *Frank* v *Maryland*, 359 U S 360
[7] *McDougall* v *Green*, 335 U S 281
[8] *Moss* v *Burkhart*
[9] *Caesar* v *Williams*
[10] See the New Hampshire Supreme Court's decision in *Levitt* v *Maynard* (July 16, 1962) upholding that state's constitutional establishment of direct taxes paid as the basis for apportioning the State Senate (Part II, Articles 25 and 26) This was before *Reynolds* v *Simms*
[11] *Baker* v *Carr*, op cit, pp 146–147
[12] See 17 *Law and Contemporary Problems*, pp 253–469 (1952), 43 *Michigan Law Review*, pp 1091–1112, and the *Book of States*, 1960–61, pp 21, 54–58

showed wide fluctuation as indicators of population (see Table A) In addition, any measure used must be statewide in nature, therefore, special censuses of various cities or areas within the state should not be used in conjunction with census data of other dates and places.

A second problem in measurement occurs due to the nature of boundary lines of legislative districts In many instances lines do not follow census tracts and for that reason either enumeration district data or approximations must be made

Availability of population data: The State of California is a highly urbanized area There are, or there were, as of the 1960 census, 10 standard metropolitan statistical areas which included 18 counties In 1960 these 10 SMSA's made up 86 4 percent of the total population of the state Since these 10 SMSA's are tracted, tract data is available for 86 4 percent of the state's population The remaining 13 6 percent of the population resides in the other 40 counties of the state However, because the Bureau of the Census reports the population of places of 1,000–2,500 population, the committee staff will be able to analyze the population distribution of another 1 5 percent of California's population As a result only 12 1 percent of California's 1960 population was not reported in either census tract areas or in places which were clearly defined with small population units facilitating accurate assignment to appropriate electoral districts [13]

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[13] *PC (1) 6–b Final Report U S Census of Population, 1960 General Population Characteristics California* See pp 6–57 for percentage breakdown of California's Population by SMSA Urbanized Areas, urban places, counties and places of 1,000–2,500 Available from the Superintendent of Documents, Government Printing Office, Washington 25, D C, or from the U S Bureau of the Census

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TABLE B

Various Definitions of Population Used in Apportioning State Legislative Districts *

State	Population used to determine, in some way, the apportionment of the		Population defined by	
	Senate	House	Senate	House
Alabama	yes	yes	total	total
Alaska	yes	yes	total	civilian
Arizona	no	yes	----------	votes cast for governor of last general election
Arkansas	no	yes	----------	total
California	no	yes	----------	population excluding aliens ineligible for naturalization
Colorado	yes	yes	total	total
Connecticut	yes	yes	total	total
Florida	yes	yes	total	total
Georgia	no	yes	----------	total
Hawaii	no	yes	----------	total
Idaho	no	yes	----------	total
Illinois	no	yes	----------	total
Indiana	yes	yes	both Houses on basis of male i	nhabitants 21 years of age and over
Iowa	yes	yes	total	total
Kansas	yes	yes	total	total
Kentucky	yes	yes	total	total
Louisiana	yes	yes	total	total
Maine	yes	yes	excludes aliens and Indians not taxed	excludes aliens
Maryland	no	yes	----------	total
Massachusetts	yes	yes	legal voters	legal voters
Michigan	no	yes	----------	total
Minnesota	yes	yes	excludes nontaxable Indians	excludes nontaxable Indians
Missouri	yes	yes	total	total
Montana	no	yes	----------	total
Nebraska	yes	----------	excludes nontaxable Indians	(unicameral)
Nevada	no	yes	----------	total
New Jersey	no	yes	----------	total
New Mexico	no	yes	----------	total
New York	yes	yes	excluding aliens	excluding aliens
North Carolina	yes	yes	excluding aliens and Indians not taxed	excluding aliens and Indians not taxed
North Dakota	yes	yes	total	total
Ohio	yes	yes	total	total
Oklahoma	yes	yes	total	total
Oregon	yes	yes	total	total
Pennsylvania	yes	yes	total	total
Rhode Island	yes	yes	qualified voters	total
South Carolina	no	yes	----------	total
South Dakota	yes	yes	total	total
Tennessee	yes	yes	qualified voters	qualified voters
Texas	yes	yes	qualified electors	total
Utah	yes	yes	total	total
Vermont	yes	no	total	----------
Virginia	yes	yes	total	total
Washington	yes	yes	excluding Indians not taxed and members of the Armed Forces	excluding Indians not taxed and members of the Armed Forces
West Virginia	yes	yes	total	total
Wisconsin	yes	yes	total	total
Wyoming	yes	yes	total	total

* Information obtained from the Report of the Advisory Commission on Intergovernmental Relations, "Apportionment of State Legislatures," December 1962, Superintendent of Documents, Government Printing Office, Washington 25, D C

TABLE A

Registration-Population Ratios and Vote-Population Ratios

		1950 census	1960 census		1960 census		
		November 1950 registration	June 1960 registration	November 1960 registration	November 1958 total vote cast	November 1960 total vote cast	November 1962 total vote cast
1	Alameda	.547	.457	.517	395	449	.398
2.	Alpine	.784	506	537	.463	511	.488
3	Amador	614	521	559	.429	496	491
4	Butte	471	453	510	381	448	.417
5	Calaveras	613	582	617	517	.529	506
6.	Colusa	435	440	.466	384	410	.375
7.	Contra Costa	425	434	494	364	439	.406
8	Del Norte	514	373	434	312	360	299
9	El Dorado	.523	422	468	301	426	.403
10	Fresno	448	366	417	.305	363	327
11	Glenn	453	444	485	401	433	.398
12	Humboldt	459	375	431	.327	374	327
13	Imperial	290	306	338	234	279	263
14	Inyo	454	.504	538	448	470	466
15	Kern	395	358	.419	.293	364	325
16	Kings	352	341	383	278	337	255
17	Lake	635	557	.605	454	525	.550
18.	Lassen	426	.475	511	386	440	420
19	Los Angeles	530	423	.499	365	441	385
20	Madera	.350	352	.406	.209	354	.322
21	Marin	469	.425	490	363	.455	420
22	Mariposa	561	626	.691	.502	593	537
23	Mendocino	422	407	443	.335	375	335
24.	Merced	348	308	354	256	310	276
25	Modoc	482	.486	494	394	433	385
26	Mono	611	685	730	.476	628	622
27	Monterey	397	.295	342	244	303	.271
28	Napa	466	452	503	.370	441	424
29.	Nevada	562	516	571	423	493	458
30	Orange	479	344	459	.266	412	410
31	Placer	494	428	481	.352	425	404
32.	Plumas	566	624	560	.441	470	447
33	Riverside	463	362	445	295	.389	356
34	Sacramento	459	380	444	308	392	382
35	San Benito	427	418	454	358	392	345
36	San Bernardino	462	370	437	.302	386	343
37	San Diego	491	375	437	287	386	353
39	San Francisco	.554	497	547	.431	470	.399

39	San Joaquin	389	.374	.421	.316	373	.355
40	San Luis Obispo	.529	.428	.493	.340	413	.380
41	San Mateo	504	420	.507	361	.452	.396
42	Santa Barbara	476	375	.459	285	410	333
43	Santa Clara	437	359	.435	290	393	373
44	Santa Cruz	533	497	.563	415	502	.494
45	Shasta	514	.401	.465	.337	415	394
46	Sierra	630	.661	.682	.585	555	.626
47	Siskiyou	549	475	524	.404	462	399
48	Solano	.442	345	.390	.295	345	333
49	Sonoma	500	441	501	.373	440	410
50	Stanislaus	512	.388	.446	.334	393	367
51	Sutter	379	363	.408	.307	363	355
52	Tehama	475	442	503	371	443	396
53	Trinity	663	477	.510	.350	398	357
54	Tulare	395	338	.375	287	329	302
55	Tuolumne	613	591	.629	.507	529	486
56	Ventura	392	347	.414	271	360	358
57	Yolo	.423	347	.394	287	343	339
58	Yuba	430	306	352	249	.306	281
	State	495		475			

Forty-eight states use some definition of population to some extent in apportioning at least one house of their Legislature, and of these, 30 use some definition of population to some extent in apportioning both houses As a result, there are 78 legislative chambers in the United States in which population has played some role in determining the apportionment of seats However, while the definitions of population vary, the overwhelming majority (72%) use total population figures

Listing	*Criteria*	*Number of chambers*
1	Total population	56
2	Total population, nontaxed Indians excluded	3
3	Total population, aliens excluded	3
4	Total population, nontaxed Indians and aliens excluded	3
5	Total excluding Indians not taxed and members of the Armed Forces	2
6	Total population, aliens not eligible for naturalization excluded	1
7	Male inhabitants 21 years and over	2
8	Civilians only	1
9[a]	Qualified voters	3
10[a]	Legal voters	2
11[a]	Qualified electors	1
12[a]	Votes cast for Governor in last general election	1
		78

[a] Political criteria

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963–1965
VOLUME 8 NUMBER 8

REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

to the

1965 General Session of the California Legislature

House Resolution No. 500.10, 1963

MEMBERS OF THE COMMITTEE

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GEORGE E DANIELSON
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JAMES E WHETMORE

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ALFRED H. SONG, *Vice-Chairman*
TEDDY WILCOX, *Committee Secretary*

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
Sacramento, California, January 4, 1965

HON JESSE M UNRUH
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
Assembly Chamber
Sacramento, California

Gentlemen:

Pursuant to House Resolution No. 500.10, 1963 Session of the California Legislature, your Assembly Interim Committee on Governmental Efficiency and Economy herewith submits its final report covering its studies during the 1963–65 interim

We here summarize the committee's findings and recommendations. Suggested bills are included when specific legislation is recommended. Exhibits, statements, and research material will be found included in the complete transcripts of each hearing. In the interest of readability and economy this report has been kept as concise as possible

The report of the Subcommittee on Subdivision Mapping, chairmaned by Assemblyman Greene, is being printed as a separate section as its probable circulation would be among a special group.

Respectfully submitted,

LESTER A. MCMILLAN
Chairman

MEMBERS OF COMMITTEE

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BUILDING DESIGNERS AND THE LAW GOVERNING THE PRACTICE OF ARCHITECTURE

House Resolution No 70 (McMillan—1964 Regular Budget Session) was heard by the Assembly Interim Committee on Governmental Efficiency and Economy in Los Angeles on September 25, 1964. This measure requested a study of the recently revised law governing the practice of architecture, which included in the revision the regulation of the practice of building design through the registration of building designers Representatives of professional and trade associations, as well as individuals, testified as to the impact brought on by the changes made to the Architectural Practice Act during the 1963 regular session of the Legislature At the hearing a number of persons testified as to the equity in the administration of the revised act, and the effect that it had upon the practitioners of the building design profession.

FINDINGS

1. It was not the intent of the Legislature when the Architectural Practice Act was revised by Assembly Bill 2239 in the 1963 session of the Legislature, to work a hardship on anyone Reports coming back to members of the committee had indicated a disturbance on the part of some persons claiming that they were being denied their rights to practice in the field of building design and thereby were deprived of earning their livelihood as a result of the interpretations and administration of the measure.

2. It was conceded that some of the complaints over the administration of the statute could be corrected administratively

3. In the event that the administration of the statute is arbitrary and discriminatory and is not remedied administratively, amendments should be proposed at the 1965 session of the Legislature to correct any of these inequities

4. Serious objection was raised over the fact that the period for applying for registration as a building designer was concluded on March 18, 1964, and that there were a minimum of at least 180 applications or requests for applications received following the deadline. The Attorney General's office informed the Designers Qualifications Advisory Committee that they could not consider these late applications or the requests for the applications according to the wording of the present statute. Most of those persons testifying agreed that it might be advisable to amend the statute to allow an additional period for making application for registration

5. Considerable testimony was presented opposing the interpretation which has been placed upon the qualifying experience for registration as building designers While there were sharp dif-

ferences expressed as to the interpretation of the statute, opinion was expressed that the interpretation should be rather liberal, and if there was a question of a doubt the applicant should be registered as a building designer The basis for this expressed opinion was that ultimately building designers as a classification would eventually be phased out

6 Concern was expressed by members of the committee that experience acquired while in the employment of someone else was not counted in the qualification for registration as a building designer, as it is entirely possible that in any profession an employee may in the terms of ability and capacity exceed that of his employer Therefore, many competent people may be excluded from registration

7 The need was expressed to clarify in the statute the terms "associate with" and "the degree of responsibility."

8 A suggestion was presented calling for radical changes in the statute regulating the practice of architecture and the registration of building designers The committee felt that recommendations calling for wholesale changes in the act regulating the practice of architecture and the registration of building designers was both unrealistic and impractical

RECOMMENDATIONS

1 There should be a change in the statute that would permit the re-opening for a reasonable length of time the period in which applications for registration as building designer may be submitted.

2 In the event there was a continuation of the problems of interpretation of the statute with regard to the registration of building designers, changes in the statute should be introduced giving a little more discretion to the Designers Qualifications Advisory Committee in the matter of applicants lacking time and experience requirements and of interpreting qualifying experience to include persons in key or responsible positions while in the employment of others.

3. Include a definition section for the purpose of interpreting the terms "associate with, responsibility, and supervision"

CITY AND REGIONAL PLANNERS

House Resolution No 338 by Assemblyman Clair Burgener (1963 Regular Session), relating to a study of the advisability of licensing city and regional planners, was heard by the committee in San Diego, Tuesday afternoon, January 21, 1964.

FINDINGS

1. City and regional planning is a relatively new activity, only about 40 years old Today planners are employed by cities and counties and the state, all agencies of government, as well as by large private developments Two-year Master's degrees in City and Regional Planning are now available from many universities However, there are no established qualifications for persons in the profession in California, no minimum standards of education and experience by which competency can be judged

2 The California Chapter, American Institute of Planners, has been seeking a method to establish such standards for the profession They have had a committee working on legislation and circulating it within their own group and among interested persons and organizations in related fields Although there is a problem of definition and overlap with other professions, and it is unlikely that a field such as planning can be neatly contained and packaged, they feel it is probable that a minimal core of professional competence can be defined Their representatives would like to license, or register, the title of planning on the state level, rather than the practice, leaving the practice of planning still open to any person, and other professional groups would not be excluded from the practice Some of the other states do have such registration at present.

3 Opponents to the proposals, representing the League of California Cities, the Building Engineers Association of California, Society of Professional Engineers, etc stated that merely registering persons does not in itself insure competency, and that a "proliferation of additional boards for registration is not in the public interest." They stated that the "area of planning is very broad and complex, and is an 'art' rather than a science. Public safety aspects are in the field of civil engineering and are already safeguarded " It was also suggested that if some form of registration is found necessary, it be put under the umbrella of the present board of registration for civil and professional engineers. They protested the need for such registration or licensing, as public bodies already select their planners by open competitive examinations The representative of the County Supervisors Association while taking no stand, suggested that any legislation or definition include the words "County Planner" as county government is very active in this field.

4 The State Planning office has already established its own standards The Planning Advisory Committee, under the Urban Planning Assistance Grant Program, has a statement of minimum qualifications for urban planners and approves consultants suggested by cities The statement provides that.

The minimum experience and education required of the individual shall be as follows.

1 Experience—Six (6) years of professional planning work involving the preparation of comprehensive plans for cities, counties or urban area

2 Education—One only of the following educational degrees may be substituted for a portion of the required experience on the following basis

a Ph D in planning or a MCP—3 years,

a Ph D or MA in a related field, or an AB in planning—2 years;

an AB in related field—1 year

3 The term "related field" as used in paragraph (2) above, is intended to mean architecture, civil engineering, economics, geography, landscape architecture, public administration, and traffic engineering.

or

The contractor shall present evidence of demonstrable experience in the accomplishment of similar studies of relative complexity as those proposed as a part of the urban planning assistance program

5 The problem before the committee of the advisability of licensing these planners boiled down to three basic questions·

Is there a public need?

Will registration of the title of planner protect public agencies?

Under what professional group should they be?

RECOMMENDATIONS

1 Licensing legislation is not recommended at this time, but further investigation of the matter should be made.

COSMETOLOGY

Two hearings were held by the Committee on the subject of Schools of Cosmetology and related problems (House Resolution No 616—Kennick and Assembly Bill No 3087—Meyers), one in Los Angeles on November 7, 1963, and one in San Francisco on August 6, 1964

FINDINGS

1 It was alleged that competition for patronage between schools and licensed shops has resulted in problems detrimental to the public and to the industry Mrs Naomi Lovett, representing the the California State Association of Journeyman Barbers, Hairdressers, Cosmetologists, Masseurs and Proprietors, stated

"It must be quite evident to everyone concerned that something must be done to stop the practice of the schools from openly and legally competing with shops for the patronage of the public, without considering those students in the schools of cosmetology as employees Either the workers must be considered as employees and be compensated as such under the laws of the state as set forth in the Labor Code, or they should be prevented from working on the public for pay by patrons, in the same manner as licensed operators work on the public in shops The incentive to operate a school under such a system far overweighs the incentive to operate a shop and abide by the laws governing workers The minimum wage and the maximum hour law for women and minors should be respected and observed in every field of endeavor where the law is applicable This law applied to beauty shops This was the reason for A B 3087 It should be re-introduced and passed by the Legislature so it will become law. The failure to pass A B 3087 prompted the introduction of H R. 616 A thorough study by this committee perhaps will lead you to conclude, as we have, that such a law should be enacted by the Legislature

Then, too, we submit that a junior operator, one who learns this vocation in a shop, is covered by the minimum wage and maximum hour law of California This is pure and unadulterated discrimination A beauty shop must pay the minimum wage to the learner, but the so-called school does not

We are of the opinion that the Legislature should give serious consideration to providing for a full-time board of three or five members so as to specifically place responsibility for the administration of the act upon individuals who are practitioners, and provide for these individuals conducting the examination, conducting the hearings, and establishing policy California had 73,966 licensed cosmetologists in 1962 with 13,792 shops, and this large number certainly justifies a full-time board

Then too, we suggest that serious consideration be given to enacting legislation which will provide for a ratio of population for each cosmetology school such as was provided for in A B 1599 of the 1963 session Such a law is existant in this state governing barber colleges, and many states are giving, or have given, serious consideration to similar legislation A B 1599 passed the Assembly but was referred for interim study in the Senate

In cosmetology, a person can graduate from trade school after 1600 hours of training and instruction, apply for, and take, the examination to become a full-fledged licensed operator If the candidate is successful in passing the examination, he can immediately become a shop owner and operate independently We are convinced that this is not in the best interest of the student, the vocation, or the public The Legislature may well consider a law which will provide for a period of apprenticeship or internship for a period of one or two years 1600 hours is a very short time in which to prepare a person to become an entrepreneur or a manager of a business as complex as cosmetology "

Mr William G Sinn, however, representing the California Association of Schools of Cosmetology, denied that such competition exists to any significant degree He submitted figures to the committee to show that there were as of June 30, 1964, 201 schools of cosmetology in California and 17,436 beauty salons; that school clinic sales in California are only 1½ to 2% of the total spent for beauty services in California; that the people who patronize school clinics are principally drawn from the lower income groups who would not regularly patronize beauty salons, and that if effective competition existed, beauty salons could not have expanded as they have—an increase in beauty salons of 100% during the last 12 years compared to a population increase of only 50%

2 It was established that schools have a cost advantage on supplies purchased at special discounts

3 Complaints were made that there are too many schools and that there is not enough room in the profession to take care of the trainees Representatives of the schools claimed that competition among the schools is taking care of this problem automatically.

4 No criticism was offered of public schools teaching cosmetology

5 Examples were submitted of misleading and illegal advertising

(a) By schools, in which cosmetological services were offered at cut prices, but the fact they were schools rather than licensed shops was concealed.

(b) By pseudo barber shops operating in the Los Angeles area, who advertised themselves as barber shops but which were really beauty shops licensed under the Cosmetology Board. These shops had been illegally competing with legitimate barber shops This situation had been reported to the Board

months prior to the November, 1963 hearing At the succeeding hearing on August 6, 1964, it was found such shops were still operating in the San Fernando Valley despite the new rule adopted and placed into full force and effect by the Cosmetology Board The Chairman suggested the Cosmetology Board must be derelect in its duty or extremely understaffed not to have revoked the license of such shops, or that legislation should be introduced clearly defining the difference between barber and beauty shops

6 The representatives of the school groups admitted there are apparently some unethical and unlawful practices followed by some individual schools of cosmetology, but did not agree that legislation is necessary to correct them They contended that the Board of Cosmetology and the Department of Investigation and Inspection already have the power to eliminate such practices, or that the other problems can be solved by changes in the Cosmetology Board Regulation As a voluntary step, the California Association of Schools of Cosmetology has embarked upon an Accreditation Program of private schools of cosmetology in California to elevate the standards and practices of the schools above the legal requirements The criteria would require that all advertising state that work is performed by students, that applicants be screened, that the school represent correctly the probable earnings of the student in the industry, charge tuition at least sufficient to pay the salary of teachers, and in cases of dismissal, that the student shall receive a pro-rata refund It was the contention of this group this program would shortly correct the abuses attributable to the minority of school establishments.

RECOMMENDATIONS

1. The Board of Cosmetology should be a policy making body, meeting once a month to lay down the policy Regular notices should be sent out announcing such meetings. There should be a strong executive officer to carry out such policy, and the staff and budget of the Board should be augmented to enable them to enforce their regulations The Board should submit to the Legislature at the next session a clear cut definite program, with a request for legislation for any additional authority or finances needed

2. Problems in the industry should be settled as far as possible by regulatory measures decided upon by the Board and enforced by them rather than by putting details into the law

3 The Board should be more aggressive in enforcing their regulations on false advertising in cases such as school ads and pseudo barber shops If necessary, legislation should be introduced to define clearly the functions of a beauty shop as distinguished from a barber shop.

4. It is recommended that Board membership should be balanced among salon owners and operators and school owners and teachers.

5. The Board should be given the power to raise the standards of the schools, the requirements for opening schools, the student training programs, and to insure that they operate as schools rather than in competition with licensed shops The latter could be accomplished in one of the following ways
   (a) Students to receive a minimum wage for services performed on the public
   (b) Schools to provide cosmetological services to the public for not more than the cost of materials, with the schools deriving their income from paid tuitions
   (c) Board to supervise schools more closely to eliminate abuses
6. There should be some limitation on the number of schools or cosmetological students in proportion to the need Three methods to accomplish this were suggested by committee members
   (a) Direct legislation as in the case of barber schools
   (b) Legislation giving the Cosmetology Board the power to issue or withhold a license, based upon the finding of public convenience and necessity
   (c) A moratorium be established on the issuance of school licenses until an economic study of the problem has been completed

DRY CLEANERS

House Resolution 547 and Assembly Bill No 2890 (Cusanovich—1963) relating to the Dry Cleaning Industry were heard by the committee Thursday morning, November 7, 1963, in Los Angeles

FINDINGS AND RECOMMENDATIONS

1 The Dry Cleaner's Law which has not been changed since 1945 does need revision due to the changes in the industry and the development of the self-service dry cleaning business New types of equipment and new processes, such as the coin-ops, present new problems.

2 New categories such as the clean only and clean and spot categories have been handled administratively A redefinition of educational and experience requirements should be established by the Board of Dry Cleaners but legislation is necessary to give a legislative base to the rulings of the Board A difference of opinion exists in the industry as to the number of hours of training that should be required before an appleant is eligible to take the examination.

3 At present, public protection is afforded solely through the screening of applications as to moral character and testing ability through examination Protection to the public in other areas would require additional legislation.

4 Problems of law enforcement exist which would require some legislative action.

5 Some of the new synthetic materials are not renovatable by the usual cleaning methods It was suggested that legislation might be introduced to require that in garments sold in California, manufacturers use materials that can be renovated, and attach labels on garments recommending the proper cleaning method

6. Two schools have already been started in California in Los Angeles and San Francisco to train persons in the Drycleaning business, financed by Federal Funds under the Manpower Development Training Act.

7 All groups expressed their willingness to work with the Board in formulating legislation satisfactory to all It was recommended that a study group be established for this purpose comprised of representatives of the Legislature, the State Board of Dry Cleaners, the Department of Professional and Vocational Standards, the public, various segments of the industry, and labor The Board agreed to take the initiative in setting up and arranging the meetings A series of hearings were thereafter conducted by the Department of Professional and Vocational Standards with representation from all segments The report presented by this group is as follows·

BOARD OF DRY CLEANERS

INTRODUCTION

Pursuant to recommendations made by the Assembly Governmental Efficiency and Economy Committee and the Senate Business and Professions Committee, Director Harold J Powers of the Department of Professional and Vocational Standards, in January 1964, appointed a Committee to resolve problems in the dry cleaning industry

Representation on the Committee was had by various segments of organized labor concerned with all phases of the dry cleaning industry, representatives of Coin-Operated dry cleaning equipment manufacturers and Coin-Operated dry cleaning establishments, conventional dry cleaning plant owners and operators, representatives of the California Dry Cleaning Association, the State Board of Dry Cleaners and public members Well attended meetings were held throughout the State and testimony was taken and considered by the Committee from all those attending

Meetings were held each month commencing in January 1964 and ending in June 1964 A summary of the problems encountered and the Committee's proposed solutions are as follows.

1. Classification of Coin-Operated Establishments

Coin-Operated dry cleaning establishments are of such recent origin that the dry cleaner's law up to the 1963 session of the Legislature, could not and had not considered the problems of such enterprises An Attorney General's opinion decided that Coin-Operated dry cleaning establishment was a dry cleaning plant as defined in the dry cleaner's law The result of the opinion made it incumbent upon Coin-Operated establishments to have a fully qualified and properly licensed plant operator on the premises at all times the establishment was open and operating This posed a burden, both financially and in man power for the owners of these businesses, due to the scarcity of qualified operators and the cost of using them

The present law also provides, that as a pre-qualification for the examination for licensure as a plant operator, the applicant must possess either one years experience in the industry or the completion of 360 hours of approved instruction in a dry cleaning school. The examination consists of a written test and a manual spotting and pressing practical examinations

The owners of many of the Coin-Operated establishments had no previous experience or training, and, therefore, could not qualify to take the examination to operate their own establishment Many therefore, were required to hire a qualified operator. Others, are owned by one or more persons who merely invested their capital in these establishments and who were led to believe that being Coin-Operated the general public could operate it and no attendant was required.

The Dry Cleaners law does not permit the Board to adopt rules and regulations which would alleviate some of these problems and legislation is required

Additionally, the public safety is greatly involved as the machines use solvents which are highly toxic and can do great bodily injury if not properly handled and controlled

It is now universally agreed and accepted that an attendant is required at all times that an establishment is in operation for the protection of the public and the owner It is also agreed that knowledge of equipment, types of fabrics, dry cleaning solvents, their use and dangers, are knowledges an attendant should possess.

RECOMMENDATIONS

After careful consideration, the Committee proposes that the Dry Cleaner's law establish three categories of plant operator. They are:

a Clean only.
b Clean and spot.
c Clean, spot and press

The clean only category would be available to those Coin-Operated establishments where only cleaning will be done by use of Coin-Operated equipment, operated either by the public or an operator with a clean only certificate To obtain a license as a clean only operator, the applicant need pass only a short written examination and need either four months of experience or possess 120 hours of approved schooling

The clean and spot license would permit the operator to spot clothing in addition to cleaning as mentioned and the test would additionally include a practical examination for spotting ability. Spotting would involve an additional four months experience or 120 additional hours of training in an approved school for spotting

The clean, spot and press category would be similar to the present plant operator certificate and embrace cleaning, spotting and pressing with these same requirements as at present (See proposed new Section 9550 5 attached.)

2. Sales of Equipment to New Installations and Sale of Existing Establishments

Some salemen sold expensive Coin-Operated dry cleaning equipment without informing the purchaser that there was a dry cleaner's law and that a license would probably have to be obtained or that a qualified operator would have to be on the premises, etc Another problem often encountered, was that of an establishment which had been sold to a new owner without the previous owner advising the purchaser that a license was required and that to obtain such license an examination, or the hiring of a licensed operator, was involved

The problem of closing these establishments to protect the public works a great financial hardship upon these purchasers To permit them to operate until they could either secure a qualified operator or pass the required examination is both a moral and legal problem These problems were greatly accentuated with the advent of Coin-Operated machines

Needing solution, is how to protect the public and at the same time acquaint the purchasers of either equipment or establishments, with the requirements of the California Dry Cleaner's law

RECOMMENDATION

It was unanimously agreed to insert a provision in the Dry Cleaner's law to require sellers of equipment and businesses, to notify prospective purchasers that a license or licenses may be required and to provide penalties for failure to do so (See proposed new Section 9538)

MINORITY RECOMMENDATION (Assemblyman Leroy Greene)

If proposed Section 9538 becomes law, how does the seller know he has this new obligation? The proposed section even implies that the agreement is null and void if the seller neglects to inform a properly licensed buyer that a license may be required

This proposal could establish a precedent that would eventually require a seller of an automobile to inform the purchaser that he must obtain a driver's license

3. Dry Cleaning Agencies—Rural Areas

There are in the rural areas of the State many businesses, such as barber shops, grocery stores, and the like, who, as an accommodation to their customers, serve as a "dry cleaning drop" The license fee for a dry cleaning establishment is often more than the profit obtained from serving as a drop The problem is, therefore, how to provide a service and protection to the public at a reasonable cost

RECOMMENDATION

It was agreed that after properly qualifying for an agency license and paying the required fees, that those agencies who thereafter can show to the satisfaction of the Board that their gross business for the preceding year was $150 00, or less, then the renewal fee for such agency should be $2 00 per year, for each year in which such gross business shall remain at $150 00 or less (See proposed new Section 9582e)

MINORITY RECOMMENDATION (Danielson and Greene)

No fee should be charged in such an instance A dry cleaning agency is merely a place to leave and pick up dry cleaning that is done elsewhere The dry cleaning establishment is licensed to perform the work The dry cleaning agency furnishes a pickup and delivery type of service exercising no skill or judgment beyond transmitting clothes and information supplied by the customer The service rendered by a dry cleaning agency is not of such character as to require a license from the state

4. Bonding Requirements

Although the present Dry Cleaner's law, section 9547, provides for a bonding requirement a technical deficiency makes it inoperative for all practical purposes The committee felt that public protection required an effective bonding provision, but also felt that discretion on the part of the Board was advisable to prevent an undue financial burden on those operators of establishments who are able to demonstrate to the Board's satisfaction financial stability It was also felt that a levy on the bond be made only upon a court order directing a payment in settlement of a claim

Another aspect of the problem was to prevent the Board from either adjudicating claims or acting as a collection agency for claimants.

RECOMMENDATION

The Committee proposes that Section 9547 be amended to give the Board authority to levy bonds whenever in its judgment the financial abilities of the licensee may be of doubtful mature It is understood by the Committee that rules would have to be adopted by the Board to detail the manner in which the bonding principle would be carried out

5. Composition of the Board

Both organized labor and the Coin-Operated segments of the industry expressed strong feelings about their lack of representation on the Board. The Coin-Operated industry had proposed a revision to the present composition of the Board to attain representation After considerable discussion it was agreed by the Committee to recommend that a representative of the Coin-Operated industry and a member of organized labor appropriately associated with the dry cleaning industry be added to the present Board The Committee felt this compromise solution was the best that could be arrived at

PROPOSED LEGISLATION AMENDING THE DRY CLEANER'S LAW CHAPTER 18, DIVISION 3, BUSINESS AND PROFESSIONS CODE

Add a New Section 9550.5 to Read:

9550 5 The board shall issue certificates of registration in the following categories

(a) Clean Only, to a person who has qualified to act as the registered operator in charge of a clothes cleaning establishment or a cleaning and dyeing establishment which performs a dry cleaning service but not a spotting or pressing service

(b) Clean and Spot, to a person who has qualified to act as the registered operator in charge of a clothes cleaning establishment or a cleaning and dyeing establishment which performs a dry cleaning and spotting service but not a pressing service

(c) Clean, Spot, and Press, to a person who has qualified to act as the registered operator in charge of a clothes cleaning establishment or a cleaning and dyeing establishment which performs a dry cleaning, spotting and pressing service

Amend Section 9551 5 to Read·

9551 5 An applicant for a certificate of registration shall:

(a) Be of good moral character Lack of good moral character may be established by showing that any of the grounds specified in Section 9540 3 of this code are applicable to the applicant

(b) Demonstrate by examination that he possesses the knowledge and skills necessary to qualify him to act as a registered operator in the particular category for which the certificate is sought

Add a New Section 9551.6 to Read:

9551.6 Except as otherwise provided by Section 9551 7, an applicant for a certificate of registration shall at the time he files his application have had the following active experience in the dry cleaning industry, in this or another state or, in lieu thereof, the following training in a school approved by the Board

(a) For a certificate in the Clean Only category, four months of experience or 120 hours of training

(b) For a certificate in the Clean and Spot category, eight months of experience or 240 hours of training

(c) For a certificate in the Clean, Spot and Press category twelve months of experience or 360 hours of training.

Add a New Section 9551.7 to Read:

9551 7 The board may by regulation reduce the amount of experience or the number of hours of training required by Section 9551 6 for the certificates described therein and may by regulation provide for the issuance of certificates of registration in other categories and prescribe the amount of experience or number of hours of training required to qualify for such certificates, except that in no event shall the board require more than twelve months of experience or 360 hours of training as a condition of qualifying in any category

Amend Section 9582 (b) to Read:

(b) Except as otherwise provided in subdivision (e) of this section, the renewal fee is thirty dollars ($30)

Add a New Section 9582 (e) to Read·

(e) The renewal fee for an agency license is two dollars ($2) if at the time he applies for renewal of this license the licensee establishes by proof satisfactory to the board that the gross receipt from his agency business during the preceding twelve-month period did not exceed one hundred fifty dollars ($150)

Add a New Section 9538 to Read.

9538. Prior to entering into an agreement to sell to a person in this State who is not licensed under this chapter any article of equipment which the seller knows or in the exercise of reasonable care should know is intended to be used by the purchaser in the performance of a dry cleaning service for which a license is required by this chapter, the seller shall notify the purchaser in writing that a license is required under this chapter for such intended use Failure to give such notice shall render the agreement null and void

Proposed Draft for Amendment of Section 9547

9547. The Board shall require that all licensees conducting, maintaining, or operating establishments as licensed by the Board, shall file with the Board a surety bond in the sum of $1,000 for the protection of the customers in the public interest The bond shall be executed by a surety company authorized to do business in this State and shall

be in such form and on such conditions as the Board may, in the public interest, by regulation, require for the protection of persons with whom the licensee may deal as a licensee, provided that where the Board has determined, upon application and required proof, that the financial responsibility of the licensee is unquestioned, the Board may waive the filing of the surety bond in accordance with such conditions as may be laid down by the rules and regulations of the Board

Payments to be made from the bond shall be for settling claims only after a court decision has been made in favor of such claim

Proposed New Section 9538 to Read:

9538 Prior to entering into an agreement to sell to any person in this State who is not licensed under this chapter any business for which a license is required under this chapter or any article of equipment which the seller knows or in the exercise of reasonable care should know *may be* intended to be used by the purchaser in the performance of a dry cleaning service for which a license is required by this chapter, the seller shall notify the purchaser in writing that a license *may be* required under this chapter for such business or such use of equipment, as the case may be Failure to give such notice shall render the agreement null and void

PROPOSED CHANGES IN COMPOSITION OF THE STATE BOARD OF DRY CLEANERS

(1) Amend Business and Professions Code Section 9530 to increase the membership of the board from seven to nine, one of the new members to be the owner of a coin-operated dry cleaning plant and one a representative from organized labor in the dry cleaning industry Keep in mind that because coin-operated plants are relatively new it might be necessary to exempt the coin-op member first appointed from the requirement that each member of the board "shall have been actively engaged in his respective branch of the cleaning industry for a period of at least five years prior to his appointment"

Minority opinion of Mr. Greene. "If the purpose of adding one of these new members on the Board is to insure the presence of a non-owner on the Board, the section should so state rather than requiring " . . a representative from organized labor " I am uncertain as to the situation when an owner-member of the Board is also a member of organized labor I also question whether this law should differentiate between 'labor' and 'Organized labor' "

(2) Amend Business and Professions Code Section 9531 to describe expiration dates for the terms of the first appointees in the two new categories, keeping in mind the constitutional prohibition against terms in excess of four years and the practical desirability of staggering expiration dates in such manner that a proper balance of representation is maintained on the board

GAMBLING AND GAMES OF CHANCE

A subcommittee of the full committee, to be known is the Subcommittee on Gambling and Games of Chance, was authorized by the Speaker of the Assembly on July 15, 1964, to investigate the facts surrounding the recent rapid growth of gambling activities throughout California particularly relating to the playing of the card game pangumgue A hearing on the matter was held in the City of Santa Monica on Friday, August 21, 1964.

FINDINGS

1 During the first nine months of 1964, a substantial number of establishments devoted to the playing of the card game pangumgue and involving gambling among the patrons commenced or sought to commence operations in California with most such activities concentrated in the Los Angeles Metropolitan area

2 The legal theory of preemption of the field of gambling regulation by the state was relied upon to legalize these activities and to prevent local law enforcement officials from interfering on the basis of local ordinances designed to prohibit or regulate such activities.

3 Applying the preemption theory as it has been developed by a series of California Supreme Court decisions (exemplified by the Carol Lane case which involved a Los Angeles resorting ordinance) local law enforcement agencies were in fact enjoined by the courts from enforcing local ordinances and gambling operations were conducted despite the existence of local regulations which otherwise could have been used to prevent them

4 Local officials were unanimous at the subcommittee's hearing in petitioning the Legislature for relief from this situation in the form of a specific amendment to Section 330 of the Penal Code to state that the Legislature did not intend to preempt the field of gambling regulation by the prohibitions contained in that section Some support was expressed for either a general nonpreemption statute to afford relief in all areas where preemption has been asserted by court decisions or alternatively for a constitutional amendment to cover either the general situation or specifically the gambling situation

5 Subsequently, on November 30, 1964, the California Supreme Court ruled in the case of Prival vs Mooney (a Long Beach case) that the Legislature did not intend to preempt the whole field of gambling by its enactment of the Penal Code statutes and that therefore local regulatory ordinances were valid As a result, the situation of local law enforcement agencies has reverted to its former status in regard to gambling activities and the operation of pangumgue gambling has ceased where it is opposed by local officials under local ordinances

6 The problem still remains concerning preemption by the state in other areas of law inforcement.

RECOMMENDATIONS

1 Legislation is recommended to specifically state the legislative intention not to preempt the field of gambling regulation in California in order to reinforce and stabilize the decision of the Supreme Court in Prival vs Mooney

2 Consideration should be given to the entire problem of preemption in all fields of law enforcement activity

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INCOME TAX RETURN PREPARERS

House Resolution 228 (Quimby—1963 Regular Session) called for an interim committee study of regulation of persons purporting to be experts in the field of preparing income tax returns and offering their services in this capacity for a fee In some cases members of the public have been victimized by such persons who have been unqualified and who were no longer available to their clients when the returns were questioned A hearing was held on this subject by the committee in San Diego on Tuesday, January 21, 1964

FINDINGS

1 For many years the Internal Revenue Service has sought some effective and practical means of controlling persons who prepare income tax returns for others To date, no satisfactory solution has been found The traditional stand of the Federal Government is not to interfere with the right of the taxpayer to engage anyone he wishes to assist him in the preparation of tax returns.

2 There is no law or regulation or requirement for persons engaging in this activity at present, other than laws regulating Public Accountants, which many have felt have been ineffective. A problem does exist due to some "fly-by-night" operators.

3 At present there is no effective regulation of a person who prepares a fraudulent or inaccurate return who doesn't sign it as a preparer.

4. Although there is a Federal Statute making it a Federal crime dishonestly to prepare a Federal income tax return, there is an amorphous area in the State definitions of persons engaged in "preparation" of income tax forms and "routine and clerical activities" such as filling out short forms

5. Competent income tax preparers and advisors are very much needed in the field in California, with the increase in population, particularly of those over 65

6 Fear was expressed that licensing or registration might give the group the aura of state approval as if they had passed a competency examination, or had the professional standing of tax attorneys, certified public accountants, or public accountants

7 There is a problem of the cost of enforcement of any regulatory statute It was suggested it could be brought under the existing State Board of Accountancy for enforcement.

RECOMMENDATIONS

1 The most important factor in any proposed legislation is to require those who hold themselves out as being experts to be account-

able to the taxpayer and easily accessible following tax return time.

2 A survey should be taken by the Franchise Tax Board to obtain a breakdown of the people who prepare income tax returns for profit and to ascertain the extent of the problem. A questionnaire could be sent at the time the taxpayer's tax informational forms are sent by the Board The questionnaire should apprise the taxpayer that if he retains a party to prepare his return for compensation said preparer should complete the questionnaire and return it to the Board upon filing the tax return The questionnaire should solicit, among other things

(a) Name

(b) Business Address

(c) How long have you conducted business from this address?

(d) Are you a C P A _____ ___, Attorney _____, Public Accountant _____, Tax Consultant _____, Other _____?

(e) Do you also prepare Federal income tax returns for compensation?

3. A simple penalty statute might be introduced requiring preparers for compensation to sign returns and maintain a current correct mailing address with the Franchise Tax Board (perhaps to within three months of any change), or have a permanent place of business There would be a misdemeanor penalty for violation This would provide year-round service and availability

4. All preparers for compensation might be required to maintain current registration with a State agency for a period of perhaps two years following the filing of returns Such registration seems to be working well with the new law controlling TV and Radio Repair Dealers

5 There should be stricter enforcement of existing laws prohibiting misleading advertising The Franchise Tax Board might be given jurisdiction over the form and content of advertising by tax preparers

6 A strong public information program should be developed aiming at informing the taxpayer how to choose a tax advisor

7 Legislation might be introduced to require that any person holding himself out to the public as capable of preparing tax returns for the public be bonded, unless he is a licensed attorney, C P A or P A, or he is licensed to practice before the Internal Revenue Service Preparation of tax returns by unlicensed persons who are not bonded would be a misdemeanor.

JANITORIAL MAINTENANCE CONTRACTORS

House Resolution 390 by Assemblyman Charles Meyers (1964), directing the committee to study the subject of janitorial maintenance contractors including the need for state licensing and regulation of this occupation, was considered by the committee in San Francisco on Tuesday, December 15, 1964

FINDINGS

1 A proposed bill to create a State Board of Janitorial Maintenance Contractors in the Department of Professional and Vocational Standards to license and regulate persons in the business was submitted for the consideration of the committee by Assemblyman Meyers and officers of the Institute of Janitorial Maintenance Companies, representing various building maintenance companies The bill included a provision that licensees shall at all times meet the statutory requirements regarding Workmen's Compensation Insurance, and in addition shall maintain bodily injury and property damage liability insurance, for the protection of the public and the customer, and a third party blanket indemnity bond covering all employees It would not apply to paid employees who work directly for establishments operated by owners or governmental entities

2 Witnesses testified that legislation to make maintenance contractors responsible to the public is desperately needed in California due to multiple hazards inherent in the business—fire and safety risks, danger of theft and property damage, and injury to the public Potentially harmful chemicals are used and accidents sometimes caused by careless personnel Cases of theft were reported where the public had no recourse on a Janitorial Maintenance Contractor because he was not covered by bond and insurance liability, and the liability became that of the property owner It was asserted that constant danger of liability faces the property owner when he contracts with or hires a Janitorial Contractor who does not have the proper coverage or does not have the financial responsibility for his company operations

3 The volume of business was estimated at $200,000 000 to $300,000,000 a year Over 1200 contractors are in the business employing around 50,000 persons and the total is increasing each year The proponents of the legislation stated the public must be protected by requiring persons in the business to be properly trained and by having minimum requirements for insurance and bonding and financial responsibility and evidence of a knowledge of the business They felt the proposed legislation would accomplish this purpose

4 Opponents claimed the sponsors of the bill did not represent the whole industry, that licensing and regulation are not necessary

and would not solve any of the real problems in the industry, and objected to the establishment of another board and the cost of administration

RECOMMENDATIONS

1 The committee would recommend legislation requiring some financial responsibility in the form of insurance and bonding for janitorial contractors but further licensing and regulation of the occupation is not feasible at this time

LOCAL BUILDING AND ZONING LAWS

Assembly Bill No 2617 (Allen—1963) which redefined the term "local agency" so that cities and counties would no longer be exempted from being subject to the other's local law, was heard in San Diego on January 22, 1964

FINDINGS

1. Under present law, as interpreted by the court in the Hall vs Taft case in 1957, when one governmental agency builds in the jurisdiction of another, it is not subject to any enforceable control Counties can build in cities or cities in counties without having to comply with any law whatsoever It is the only situation where there is no law binding either the construction or land use (zoning)

2 The problem presently is confined to Los Angeles but the bill would have statewide effect AB 2617 was sponsored by the City of Los Angeles but was opposed by the County The County of Los Angeles feels the legislation would be a burden primarily to the county, particularly as to zoning Counties have to provide certain countywide services without being subject to the restrictions of cities.

RECOMMENDATIONS

1 The problem might be solved through voluntary cooperation between the city and county as in San Diego, rather than through a mandatory law.

2 There should be master planning laws city and countywide and joint uniform building codes, without exceptions

3 Governmental agencies should be required to conform to the same building restrictions as private enterprise for the same reasons and because many governmental buildings eventually house private enterprise projects.

4. Where there is no authority over construction a jurisdiction might request the State to step in and inspect to assure compliance with the code. Where there is no authority in zoning cases the local agency should have the right of appeal to the courts.

LOCKSMITHS

The subject matter of legislation to regulate and license locksmiths and key duplication machines and to create a State Advisory Board of Locksmiths in the Department of Professional and Vocational Standards was considered by the committee in San Francisco, Wednesday morning, December 16, 1964.

The original bill, AB 2106, was introduced at the 1963 Regular Session by Assemblyman Moreno, and was sponsored by the California Locksmiths Association, Inc. Assemblyman Donovan plans to introduce similar legislation at the next session and presented the topic to the committee.

FINDINGS

1. At present any person may call himself a locksmith after obtaining a business license and a retail tax permit. No bond is required, and no police permit is required except in a few communities. Proponents claimed that the public is endangered by the lack of regulation. Incompetent or dishonest persons may leave locks easily opened, in a condition so that they may jam, or may make duplicate keys for illegal purposes. Locksmiths may obtain lock picks by mail, car opening tools, code books, and safe opening information. No official records are kept of keys made, and no identifying number is required on keys, to help in crime detection. Proponents of the legislation believe an individual desiring to enter the locksmith industry should be thoroughly screened as to his character.

2. The bill was opposed by representatives of retail stores, especially those in the hardware business, and other small business establishments. Many such stores have key duplicating machines as an incidental accommodation to their customers. They objected to the additional "bureaucracy", red tape, bookkeeping, and extra expense that would be passed on to the public, and charged that the legislation would be difficult to enforce. They claimed that it would be a harassment to the legitimate persons in business and would not protect the public against the dishonest.

RECOMMENDATION

1. The committee feels that such legislation is unlikely to be successful at this time unless it is modified to apply only to professional locksmiths, eliminating key duplicating that is done incidental to other businesses.

MOTOR VEHICLE REPAIR AND SMOG CONTROL DEVICES

The committee heard testimony on Assembly Bill 2348 by Assemblyman Kennick (1963 Session) and Assembly Bill 2638 by Assemblyman Meyers (1963 Session) in San Francisco on Friday, August 7, 1964. The two bills provide for the registration and regulation of persons in the business of motor vehicle repair. A follow-up hearing on AB 2638 was held in San Francisco on Wednesday afternoon, December 16, 1964.

Public attention had been called to this problem in recent months due to new legislation providing for the installation of smog control devices on automobiles. Many complaints had been received by the committee chairman and the authors of the bills that the devices had been improperly installed, charges were excessive, and motor damage had resulted.

Assembly Bill 2638 creates within the Department of Professional and Vocational Standards the California State Board of Vehicle Repair composed of nine members appointed by the Governor. It vests in the board the duty to register persons engaged in the business of auto repairing and to issue certificates to journeyman auto mechanics, and prohibits a person from engaging in that business or from acting as a journeyman auto mechanic without being registered or certified. It was introduced at the request of the California Labor Federation and the California Conference of Machinists.

Mr. Meyers had introduced similar legislation at the General Sessions in 1959 and 1961 and the subject matter was referred for interim study to the Governmental Efficiency and Economy Committee during the 1959–61 interim and to the Committee on Transportation and Commerce during the 1961–63 interim.

Assembly Bill 2348 by Assemblyman Kennick creates within the Department of Motor Vehicles a Bureau of Automotive Repair. Dealer Registration under the supervision and control of the Director of Motor Vehicles. The Director is vested with the duty of enforcing this law, assisted by an advisory board composed of five members appointed by the Governor and confirmed by the Senate, with terms of four years. It provides for the registration of service dealers, defined as persons who, for compensation, engage in the business of repairing motor vehicles. The bill has no application to an employee of a service dealer if the employee repairs motor vehicles only as such an employee or to any person, who, for compensation, engages in the business of repairing the motor vehicles of a single commercial, industrial, or governmental establishment. It provides a procedure for handling of complaints made to the Director by the public against a service dealer.

AB 2348 was sponsored by the Office of the Consumer Counsel. Based on an estimate of 28,000 licensees who would be covered, a proposed budget totaling $531,116 a year was submitted to the committee as the cost of administering AB 2348. To provide the revenue a sliding fee

scale of not less that $20 nor more than $50 for each place of business in the state would be required

Since the problems due specifically to the installation of smog control devices go beyond the aspects of the proposed bills on motor vehicle repair, the findings and recommendations of the committee are listed under separate headings

MOTOR VEHICLE REPAIR

FINDINGS

1. All witnesses agreed a serious problem exists in California and some remedial legislation is needed The motoring public needs to be protected from unsafe mechanical work on cars and exhorbitant costs Mr Don Vial, representing the California Labor Federation, stated

"It is our conviction that the necessity of action stems both from the sheer volume of consumer expenditures for automotive repairs, and the important role which the automobile plays in our society as a primary mode of transportation . . . Today's automobile is an intricate piece of machinery, and most consumers of automotive repair services are incompetent to judge the quality of those services, and under these circumstances the automobile owner is unable to attest to the safety of his vehicle beyond the confidence he has in the services rendered on it "

Mr George Brunn, representing the Association of California Consumers told the committee·

"That rackets and incompetence exist in more than isolated cases in the auto repair field is hardly news. . . . The legislature last year brought TV repair under effective regulation by enacting the Electronic Repair Dealer Registration Law. The need is even more urgent with respect to auto repair, for cars have become a necessity of every day life, the money spent on auto repair is far greater than on TV repair and auto repair is of obvious importance for the safety of the driver, passengers, and other drivers on the road."

2 The major differences between the two bills considered by the committee were the different departments under which they would be set up, the certification of mechanics called for in the Meyers bill, and the registration approach in the Kennick bill The Meyers bills have been consistently opposed by owner groups on the ground that compulsory unionization should not be incorporated in the legislation Labor representatives expressed themselves as willing to make concessions, but recommended that provision be made for establishing the competency of mechanics, and that a final bill include the voluntary certification of mechanics All elements in the industry were willing to go along with the approach of open registration rather than licensing.

3. Some opposition was based on the possibility licensing or registration would increase costs to the public and would deter smaller communities and more remote areas from furnishing repair services.

4. Exemption for service station operations and dealers was requested by their representatives

5 The Department of Motor Vehicles objected to the Kennick bill as presently drawn, on the ground the establishment of a "bu-

reau" would be violative of the present organization of the department The department would recommend that the duties proposed for the bureau be (a) assigned to the existing Division of Registration; or (b) assigned to a new Division of Regulation, which would include present investigative activity.

RECOMMENDATION

1. Sponsors of the legislation should get together on one compromise bill to include the essential concepts and desirable aspects of each, to be introduced at the 1965 session.

SMOG CONTROL DEVICES

FINDINGS

1 Devices installed upon used cars are causing problems which have not developed in new cars which were engineered and designed for the use of a particular device

2 It was asserted that smog control devices required on old used cars is the first such retroactive or "aftermarket" program and leads to forced obsolescence of cars Additional motor tune-ups, new engines, etc , sometimes necessitated are an unfair and undue expense for the public The complaints, according to the Smog Control Board, are usually due to the incorrect installation of the device All agreed that crankcase devices on new and old cars have increased mechanical problems and the need for additional upkeep and expense

3 Charges were made that the devices even on new cars cause the consumption of more oil and gasoline which eventually can cause an increase in atmospheric pollution

RECOMMENDATIONS

1 Present law concerning inspections should be reconsidered

2 There should be a publicity program to inform the public of the necessity for servicing devices on cars

3 A modification of the present law is recommended in cases where installation would be detrimental to the vehicle or the installation charge out of proportion to the value of the car, or the law should be changed to require only new cars to have such devices.

OPTICIANS AND OPTOMETRISTS OPERATING IN DISCOUNT STORES

Assembly Bill 290 (Bane—1963 Regular Session) was heard by the committee in Los Angeles on Thursday, September 24, 1964 The bill provides that any dispensing optician or optometrist who maintains an office in any retail store which lays claim to a policy or a continuing practice of generally underselling competitors shall be deemed as offering to render his services under the representation that the fee for such service is at a discount or less than the average fee charged under like conditions by other persons so licensed

Under Section 651 of the Business and Professions Code, enacted in 1955, it is unlawful for any person licensed under this division to offer for sale or to sell any commodity or to offer to render or to render any service under the representation that the price or fee which is to be, or is charged for such commodity or service, or both, is at a discount . .

This legislation, therefore, would have the effect of making illegal the practice of optometry or dispensing opticians in such retail stores It would affect about 100 such practitioners, out of a total of about 2800 licensed in California

The bill had received a thorough hearing in committee in 1963 but was referred to interim study Similar legislation was introduced in 1961 (S B 1062—McCarthy) and was referred for interim study by the Senate Fact Finding Committee of Public Health and Safety This committee held two interim hearings on the subject matter, and its recommendation was against the bill, although they urged the passage of legislation to provide minimum standards for optometric services and sanitary and health standards for offices of optometrists in discount store locations and/or elsewhere * The latter legislation was subsequently passed at the following session

Testimony proffered at the hearing of the Assembly Committee on Governmental Efficiency and Economy by both the proponents and opponents was almost identical to that submitted at the prior hearings

Speaking in favor of the bill were Dr Bernard R Garrett, Chairman of the Legislative Committee of the California Optometric Association, Anthony Kennedy, Jr, California Association of Dispending Opticians, and a letter was submitted from Benjamin J Kingwell, President of the California Pharmaceutical Association, requesting that the bill be amended to include pharmacists The opponents were represented by J Howard Sturman, General Counsel for the California Association of Optometrists in Mercantile Establishments, Dr Philip S Young and Dr. Arnold Opengart, Optometrists, and a letter was submitted opposing the bill from Vincent D Kennedy, Managing Director of the California Retailers Association

* See Report of Senate Fact Finding Committee on Public Health and Safety, January 1963, pp. 56–61.

Proponents claimed that optometrists working in discount houses and retail stores tended to downgrade the profession and that the volume of business resulted in incomplete examinations

Opponents denied that the public received inferior care in these retail establishments or that discounts were offered in violation of the law All optometrists and dispensing opticians are licensed by the state, subject to sanctions for improper practices, and have had their practices periodically checked by the State Optometry Board investigator If their practice procedures or quality standards are found to be unlawful or dangerously inferior, they are already subject to suspension or revocation of their licenses.

FINDINGS

1. No evidence was offered conclusively indicating that the public is receiving inferior care in these establishments. Existing law appears to be sufficient for the protection of the public
2. A profession is not necessarily downgraded by location of offices where they may be available to the most people.
3. The problem as such is now dissolving as the discount houses themselves are undergoing a change in advertising policies.
4. It is lawful at present for any person, licensed or not, to sell eyeglasses containing refractions as merchandise, so long as he does not hold himself out as competent to "examine, test, or prescribe for the human eye." Thus dime stores and drug stores and their clerks can presently sell such glasses It was the consensus of the committee that this practice is harmful to the patients' eyes and endangers the public.

RECOMMENDATIONS

1 Legislation should be introduced to prohibit retail sales of eyeglasses containing refractive values except by or under the supervision of a duly registered optometrist or duly licensed physician or surgeon.

2 Legislation might be introduced prohibiting percentage lease arrangements when it could lead to a mass kind of practice adverse to the public welfare

PAWNBROKERS

Assembly Bill 2416 by Assemblyman John Quimby providing for the state licensing of pawnbrokers was heard by the committee Friday morning, September 25, in Los Angeles The bill would require all pawnbrokers to have a license issued by the Commissioner of Corporations, with an investigation fee of $100 and an annual license fee of $200. A bond in the amount of $1000 would also be required, with the commissioner given authority to require additional bonds if the original bond is depleted or impaired.

FINDINGS

1. There are at present about 220 pawnbrokers in the State of California They are supervised by local police departments but not by any state agency, although the Corporation Commissioner has authority over small secured loan operators, and the state law governs the interest charged and minimum rates and the laws of usury

2 Proponents claimed that the local ordinances concerning pawnbrokers are inconsistent and enforcement varies with the locale, and that a state agency should have supervision of the operation, without pre-emption of the field.

3. No serious complaints of injury to the public were reported. Complaints that have been brought to the attention of the authorities have dealt primarily with misleading advertising

4. Opponents of the bill declared that in the larger communities there is adequate protection to the public at present, and that in smaller areas the fees and requirements would be prohibitive The necessary permits now cost each pawnbroker about $350 a year, plus the license. In the small town the pawnbroking part of the usual business is subordinate, and the majority of the activity is in retail sales. If the proposed legislation were to pass, such operators would go out of the pawnbroking business and buy and sell instead, decreasing their services to the community.

5. Representatives of the Los Angeles Police Department testified that the proposed bill would deprive citizens of local remedies of action by a local agency and result in the loss of local police supervision and control. They doubted that a state agency could or would provide for the close supervision considered desirable for this type of business, and feared a state law might be interpreted as state pre-emption of the field.

RECOMMENDATIONS

1. Present state and local laws seem to be adequate for the protection of the public. The proposed bill would be a duplication of authority and regulation.

2. If any legislation is introduced it should include a paragraph to the effect that it is not the intent of the legislature to pre-empt the field and to replace local ordinances, rules, and regulations.

COMMUNITY PLANNING—PROPRIETARY HOSPITALS

Numerous complaints having been received by the Chairman of the Committee of restrictions on the development of proprietary hospitals, a subcommittee was set up for the purpose of investigating the complaints. The subcommittee, consisting of Chairman McMillan and Assemblymen Ferrell, Greene, Kennick and Whetmore, held a meeting in Sacramento, November 21, 1963

REPORT OF HEARING

Letters were presented to the committee from Dr Erle M Blunden, Director of the American River Hospital in the Carmichael area, and Fred Sullivan, Executive Director of the Davi-Cruz Investment Company which was constructing the Clark Binning General Hospital between Davis and Woodland They stated that in spite of the need for hospital facilities their expansion was being opposed and state and federal funds were being allocated to support hospitals in competition with the proprietary hospital built with private funds

John R Derry, Chief of the Bureau of Hospitals, Department of Public Health, explained the administration of the hospital licensing program, under the Hospital Advisory Board and the Council, and the allocation of Hill Burton Funds

Dr. Glenn Pope, President of the Sacramento County Medical Society, testified concerning the opposition of the society to the proprietary hospital which provides minimal services, but stated they had no objection to the expansion program of the American River Hospital He said his organization concurred in the stand of the Hamilton Report recommending that no hospital construction be condoned or supported that doesn't start with a minimum of 150 beds

John V. Lemmon, President of the Sacramento Regional Hospital Planning Council for the Sacramento Region, explained the background and activities of the Council, and stated the Hamilton Plan for hospital development disapproved the development of a proprietary hospital in the north area and supported the expansion of the Mercy-San Juan non-profit hospital there instead.

Dan Kelly, Administrator, Woodland Memorial Hospital, presented the point of view of that hospital group and the need for funds to rehabilitate the Woodland Hospital

James E. Ludlam, attorney for the California Hospital Association representing all types of hospitals, testified in favor of the planned approach to hospital building.

Dr Erle Blunden. President of the Board of Directors of the American River Hospital, reviewed the history of the development of that hospital He stated that they had been having difficulty getting zon-

ing and use permits to build and expand, due to concerted opposition, and had not received recognition of their request for representation on the Regional Planning Council *

Fred Sullivan, Executive Director and Coordinator of the Davi-Cruz Corporation which is building the Clark Binning General Hospital on Road 99 between Davis and Woodland, explained the background of their project. He stated a need for a hospital in that area had been demonstrated but they had been assured there was no possibility for many years of an allocation of Hill-Burton funds for such construction A group was therefore orgainzed to build the hospital with private funds After construction was started, Hill-Burton funds were allocated to the Woodland Memorial Hospital in the same area to modernize and enlarge.

Dr James Kennedy, Chief of Staff of the Clark Binning General Hospital, urged that the allocation of the Hill-Burton funds be more consistent.

Jerry B. Whitney, Attorney for the Clark Binning Hospital and the American River Hospital, charged that public funds under the Hill-Burton Act were being used to stifle the proprietary hospitals in their establishment and/or expansion.

Sherwin Memel, representing the Proprietary Hospitals Association of California, stated his group felt they had not had adequate representation in the hospital field.

John McMurdy, Councilman in the City of Davis, stated that the community of Davis did not wish to jeopardize the efforts of the community of Woodland to improve and rehabilitate their existing hospital, and that they would also be happy to see the Clark Binning Hospital go ahead. He did not feel they were incompatible.

Erwin W Meier, County of Yolo Manager-Executive stated that a chronic shortage of hospital beds existed in the county and that they were faced with an exploding population in the near future They expect such an increase in the need for indigent beds that unless a substantial amount of beds are provided by some other source, it will be necessary for the county to put up an additional wing for private patients, which it does not wish to do His opinion was that both the Woodland and Clark Binning Hospital facilities would be needed in the area

FINDINGS

1. The California Hospital Survey and Construction Program was established by the State Legislature in 1947. The legislation defined the purpose as follows:

   "The purpose of this act is to provide for the better protection of the public health, which is hereby declared to be a matter of statewide interest and concern, by cooperation with the United States Government in developing and carrying into effect a program for the construction of such hospitals as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and similar

* Subsequent to the hearing, American River Hospital was granted its permit by the County Planning Commission

services for all of the people of the State, and to that end to comply with and implement the Federal Hospital Survey and Construction Act; and by supplementing the federal assistance provided pursuant to said federal act by providing state financial assistance for the construction of such hospital and other facilities to those agencies empowered to construct and operate hospitals and similar facilities to which the State Constitution permits assistance to be made available."

2 The Bureau of Hospitals in the State Department of Public Health administers the Hospital Licensing Act of 1945 and the Hospital and Construction Act of 1947 with the assistance, advice, and guidance of a citizen group appointed by the Governor for each of these programs. The Advisory Board advises the Department on the standards for licensed facilities The Hospital Advisory Council advises regarding hospital planning and construction and on the allocation of state and federal funds. It is responsible for the Hill-Burton program, and the policy through which federal and state funds are allocated annually The Department has always followed the recommendation of the Council The last fiscal year, under the Hill-Burton Act, federal funds available to California were approximately $11,000,000, matched by state funds of $11,000,000, totaling a little over $22,000,000 allocated to approved projects. Proprietary hospitals are not eligible for such aid

3 Many hospitals that are today classified as non-profit started as proprietary hospitals

4 There is a trend in California toward the development of the large institutional type hospital with total health services administratively operated

5 There apparently is no significant difference between the cost of hospitalization to the patient whether it is in a non-profit or a proprietary hospital, although the non-profit hospital may have Hill-Burton aid in construction, may have the benefit of funds raised by public subscription, and pays no taxes.

RECOMMENDATIONS

1 The Hill-Burton program having been established to fill the need where funds and facilities are deficient, these public funds should not be allocated where private capital can furnish adequate services

2 Legislative authority might be given to the principle that regional hospital planning councils are necessary and helpful, but should not be recognized unless the proprietary hospitals in the area are also represented on their boards

3. Further study of the allocation of State and Federal Aid for hospital construction in California is recommended.

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Report of the

Subcommittee on

SUBDIVISION MAPPING

of the

ASSEMBLY INTERIM COMMITTEE ON
GOVERNMENTAL EFFICIENCY
AND ECONOMY

to the

1965 General Session of the California Legislature

HOUSE RESOLUTION NO. 500.10, 1963

MEMBERS OF THE SUBCOMMITTEE

LEROY F GREENE, Chairman
LESTER A McMILLAN
JOHN T KNOX
ALFRED H SONG

Published by the
ASSEMBLY
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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
Sacramento, January 4, 1965

HON JESSE M UNRUH
Speaker of the Assembly
Members of the Assembly
Assembly Chamber
Sacramento, California

Gentlemen:

Pursuant to House Resolution No 500.10, 1963 session of the California Legislature, your Subcommittee on Mapping Laws Revision of the Assembly Interim Committee on Governmental Efficiency and Economy herewith submits its report covering the studies of the committees during the 1963–65 interim.

This report is being submitted as a separate section from the main body of the report of the Assembly Interim Committee on Governmental Efficiency and Economy since it was determined its probable circulation would be among a special group

Respectfully submitted,

LEROY F GREENE
Chairman
Subcommittee on
Mapping Laws Revision

LESTER A. MCMILLAN
Chairman
Assembly Interim Committee
on Governmental Efficiency
and Economy

MEMBERS OF SUBCOMMITTEE:
Lester A. McMillan
John T. Knox
Alfred H. Song

2—L-1413

SUBDIVISION MAPPING

Assembly Bill No 700 (Knox—1963) dealt with the subject of subdivision maps. The Assembly Interim Committee on Governmental Efficiency and Economy heard testimony on this subject at a Los Angeles meeting November 8 and 9, 1963

Chairman Lester A McMillan suggested to the witnesses at that meeting that they form an advisory committee of persons interested in legislation in the field of subdivision mapping He asked Assemblyman John T. Knox to act in a liaison capacity between the interim committee and its Citizens' Advisory Committee

The Citizens' Advisory Committee met twice in Los Angeles and once in Sacramento. Assemblyman Alfred H Song presided at the first two meetings when heavy legislative activity prevented Mr Knox from attending. At these meetings the advisory committee worked in two groups: Subordinate Committee No. 1 was chaired by Charles R Martin, Monterey Park City Attorney; Subordinate Committee No 2 was chaired by Walter J. Hanna, Jr, a Gilroy engineer

March 20, 1964, Chairman McMillan of the Assembly Interim Committee on Governmental Efficiency and Economy, with the consent of Speaker of the Assembly Jesse M. Unruh, established the Subcommittee on Mapping Laws Revision Assemblyman Leroy F. Greene was appointed chairman of the subcommittee. Members appointed to the subcommittee were John T Knox, Lester A McMillan and Alfred H Song.

Written reports dated March 16, 1964, and May 29, 1964, were received from the Citizens' Advisory Committee These were discussed at a hearing of the subcommittee in Los Angeles June 12, 1964 Some 30 persons participated in the work of the advisory committee There were representatives of governmental agencies including city engineers, city planning commissioners, city attorneys, county engineers and surveyors, county planning commissions, county recorders Also participating were representatives of title insurance companies and finance houses, also persons from American Institute of Planners, Building Contractors Association, California Council of Civil Engineers and Land Surveyors, California Legislative Council of Professional Engineers, California Real Estate Commissioner, County Engineers Association of California, Home Builders Association and State Board of Landscape Architects Groups which did not participate in the work of the advisory committee but did testify at the June 12, 1964, hearing were· City of Fresno, International Conference of Building Officials and League of California Cities. Subsequent to the hearing the committee received communications from the State Building Standards Commission and the California Council, The American Institute of Architects.

FINDINGS AND RECOMMENDATIONS

1. Legislation should be enacted embodying the advisory committee's proposal for a new type of map, the "parcel map," defined in proposed new Sections 11503.1 and 11570 through 11575 of the Business and Professions Code, shown following this discussion. This proposal would authorize local agencies to provide in their ordinances for a "parcel map" to be used by planning bodies in processing land divisions that fall outside the definition of a "subdivision" It thus provides a vehicle for the administration of so-called lot-split ordinances.

Proposed new Section 11503.1, Business and Professions Code

11503.1. "Parcel map" refers to a map showing the division of land as described in subsections 11535(b) and (c)

Proposed new Sections 11570 through 11575, Business and Professions Code:

Article 6. Parcel Maps

11570. A parcel map under the provisions of this chapter shall comply with all the provisions of the chapter and, if there is a local ordinance, with all its provisions.

11571 (a) The parcel map shall be prepared by a registered civil engineer or licensed land surveyor It shall show ties to the centerline of streets or property lines bounding the property for the purpose of showing street widening, comformity with proposed building setback lines, and other information required by the governing body for the orderly administration of their zoning and building regulations.

Minority Recommendation—Assemblyman Lester A. McMillan:

11571 (a) The parcel map ~~shall be prepared by a registered civil engineer or licensed land surveyor. It~~ shall show ties to the centerline of streets or property lines bounding the property for the purpose of showing street widening, comformity with proposed building setback lines, and other information required by the governing body for the orderly administration of their zoning and building regulations. *The governing body may require that a parcel map be prepared by a registered civil engineer or licensed land surveyor.*

(b) In any case where the division of land creates four or less parcels, the parcel map may be compiled from record data available when sufficient survey information exists on filed maps and when the location of any boundary of the parcel map, either by monuments or possessory lines, is certain.

(c) In any case where the division of the land creates five or more parcels, as authorized in Section 11535, subsections (c) (1), (c) (2), or (c) (3), the parcel map shall be based upon a field survey of the land made in conformance with the Land Surveyors Act. In any case the parcel map may be based upon a field survey made in conformance with the Land Surveyors Act Where the

parcel map is based on a field survey, it shall be submitted to the county surveyor or city engineer for his examination prior to filing

(d) Within 20 days after receiving the parcel map, or within such addtitional time as may be reasonably necessary, the county surveyor or city engineer shall examine it for the survey information shown thereon, and if he is satisfied that it is technically correct, he shall place the following certification on the map:

COUNTY SURVEYOR'S CERTIFICATE
(OR CITY ENGINEER'S CERTIFICATE)

This map has been examined this ___ day of _____, 19___, for conformance with the requirements of Section 11571 of the Subdivision Map Act.

Signed_____
County Surveyor/City Engineer

(e) Where the field survey discloses conditions existing as described in subsections 8762(a), (b), (c) or (d) of the Land Surveyors Act, a record of survey map shall be filed as required by the Land Surveyors Act. The parcel map may then be based upon this survey.

11572. The parcel map shall conform to all of the following provisions

(a) It shall be a map legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film, including certificates, except that such certificates may be legibly stamped or printed upon the map with opaque ink when recommended by the county recorder and authorized by the local governing body by ordinance If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility

(b) The size of each sheet shall be 18 x 26 inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end The particular number of the sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each adjoining sheet shall be clearly shown

(c) Each parcel shall be numbered or otherwise designated.

(d) The exterior boundary of the land included within the parcel map shall be indicated by colored border The map shall show the definite location of the original parcel or parcels, and particularly its relation to surrounding surveys.

11573. If the parcel map satisfies the condition of this article and those applicable provisions of Section 11535 of this code, no final map need be filed.

11574. Certificates shall appear on a parcel map as follows.

SURVEYOR'S CERTIFICATE

This map was prepared by me or under my direction (and was compiled from record data) (and is based upon a field survey) in conformance with the requirements of the Subdivision Map Act at the request of (Name of person authorizing map) on ___ ____, 19___ I hereby certify that it conforms to the approved tentative map and the conditions of approval thereof; that all provisions of applicable state law and local ordinances have been complied with

(Signed and sealed) _____
L S *(or R C E) No* _____

RECORDER'S CERTIFICATE

Filed for record this ___ day of _____, 19___, at ___m in Book ___ of _____ at Page ___ at the request of _____
_____

(Signed) _____
County Recorder

11575 After affixing his certificate as required in subsection 11571(d) the county surveyor shall present the map to the county recorder for filing In cases where the county surveyor's or city engineer's certificate is not required then the surveyor, after affixing his certificate as required in Section 11574, shall present the map to the county recorder for filing

When any parcel map is presented to the county recorder and is accepted by him he shall so certify on the face thereof and shall fasten the same securely in a book of parcel maps which he shall keep in his office The recorder may not have more than 10 days to examine the parcel map before accepting or refusing it for filing The charge for filing and for indexing by the recorder shall be the same as provided for subdivided and under Section 27372 of the Government Code Upon acceptance by the recorder, the parcel map shall be a public record

2 The terminology of existing law carries the implication that an "advisory agency" is authorized to investigate the report on only "subdivisions " Legislation should be enacted broadening the authority of local planning bodies to consider land divisions other than "subdivisions "

Accordingly it is proposed to amend Section 11509 of the Business and Professions Code to read

11509 "Advisory agency" refers to an official or an official body designated by a local ordinance and charged thereby with the duty of making investigation and reports on the design and improvement of proposed subdivisions *of land.*

3 The language of Section 11525 of the Business and Professions Code, should be made more concise and meaningful The suggested new language follows

11525 *(a)* Control of the design and improvement of subdivisions is vested in the governing bodies of cities and of counties. ~~but, in all matters concerning such design and improvement, any decision by a governing body is subject to review as to its reasonableness by the superior court in and for the county in which the land is situated.~~ Every county and city shall adopt an ordinance regulating and controlling the design and improvement of subdivisions

(b) Any subdivider or person claiming to be aggrieved by the decision of a governing body *concerning a subdivision shall* ~~may~~ within 90 days after the rendering of the decision bring a special proceeding in the superior court *for the county in which the land is located* to determine the reasonableness *or validity* of the decision. The proceeding shall take precedence over all matters upon the calendar of the court, criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings excepted

4 There is a question as to whether local agencies may assess fees to pay for the work of examining tentative maps for compliance with the law and regulations Section 11529 of the Business and Professions Code authorizes ordinances to provide a fee to be collected from the subdivider for examination of a final map The County of San Diego proposed legislation in 1963, Assembly Bill No 1045 (Barnes, Ashcraft, Burgener, Donovan, and Mills) was intended as a way to finance the agency's cost of examining maps other than final subdivision maps The bill was dropped because the Committee on Governmental Efficiency and Economy was expected to study the subject in depth

Legislation should be enacted to authorize local agencies to assess fees for examining tentative maps The following amendments to Sections 11526 and 11529, Business and Professions Code, are proposed to accomplish that purpose.

11526 The design, improvement and survey data of subdivisions and the form and content of tentative and final maps thereof, and the procedure to be followed in securing official approval are governed by the provisions of this chapter and by the additional provisions of local ordinances dealing with subdivisions, the enactment of which is required by this chapter

Local ordinances may provide a proper and reasonable fee to be collected from the subdivider for the examination of tentative and final maps.

11529 The county surveyor or city engineer shall make such detailed examination of *tentative and* final maps and such field check, if any, as may be necesaary to enable him to *ascertain compliance with this chapter and to* make *on final maps* the certificate required by Section 11593 ~~Local ordinances may provide a proper and reasonable fee to be collected from the subdivider for such examination.~~

5. Legislation should be enacted to prevent circumvention of the Subdivision Map Act by dividing property and placing liens on the parcels, then foreclosure or default results in the conveyancing of the parcels. The advisory committee called this process "subdivision by hypothecation." The Real Estate Commission and the League of California Cities prefer to call it "subdivision by financing" We will accept the latter recommendation pending consideration of the question by the Legislative Counsel Bureau

Under the Real Estate Act, subdivisions consisting of parcels less than 160 acres in size and divided for the purpose of sale, lease, or financing require an apllication to, and subdivision report issued by, the Real Estate Commissioner. Therefore any subdivision which has parcels 20 acres or 40 acres in size must have a subdivision report before it can be marketed. The Subdivision Map Act regulates the processing through local planning bodies of land subdivisions and does not affect the reporting requirement imposed by the Real Estate Act There should be limits set in the Subdivision Map Act to the end that the word "subdivision" as contemplated by that act does not include farms and other properties when transferred in 40-acre parcels, and does not include mountain and other properties in parcels of between 20 acres and 40 acres when there is access to the parcels that is approved by the governing body

Legislation should be enacted which would provide for the use of the "parcel map" in lieu of the record-of-survey map as the authorized alternative to "Subdivision" maps. The record-of-survey map was created by the Land Surveyors Act as the instrument to be filed by the surveyor to show the results of a field survey Present law requires that the record-of-survey map be used as an altenative to the final subdivision map in certain circumstances The Citizens' Advisory Committee came to the conclusion that the record-of-survey map cannot adequately serve this dual purpose and therefore recommended that a "parcel map" be created and authorized for use in controlling land divisions.

All of these proposals are contained in the following recommended draft of an amended Section 11535, Business and Professions Code

> 11535 (a) "Subdivision" refers to any real property, improved or unimproved, or portion thereof, shown on the latest adopted county tax roll as a unit or as contiguous units, which is divided for the purpose of sale, ~~or~~ lease, *or financing,* whether immediate or future, by any subdivider into five or more parcels; provided, that this chapter shall not apply to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, commercial building, or trailer park, nor shall this chapter apply to mineral, oil or gas leases
>
> ~~(b) "Subdivision" does not include either of the following:~~
>
> ~~(1) Any parcel or parcels of land in which all of the following conditions are present: (i) the whole parcel before division contains less than five acres; (ii) each parcel created by the division abuts upon a public street or highway; (iii) no street opening or~~

~~widening, drainage facilities, or other improvements have been required by official action of the governing body, and (iv) the lot design meets the approval of the governing body.~~

~~(2) Any parcel or parcels divided into lots or parcels, each of a net area of 20 acres or more, to be sold or leased for commercial agricultural purposes each of which abuts upon an improved public street or highway and the lot design meets the approval of the governing body.~~

~~(3) Any parcel or parcels of land abutting on a public street or highway which comprises part of a tract of land zoned for industrial development, a tentative map of which has been submitted to and approved by the governing body as to street alignments and widths, sewage and drainage provisions.~~

~~(c) In either case provided in subsection (b) of this section, a tentative map shall be submitted to the governing body in the same manner as is provided in this chapter for subdivisions and approved by the governing body as to all requirements of this section and thereafter a record of survey map in accordance with the approved tentative map shall be filed pursuant to the provisions of Chapter 15 (commencing with Section 8700, Division 3 of this code), and thereupon conveyances may be made of lots or parcels shown on such map by lot or block number, initial or such other designation as may be shown on such map.~~

(b) Subdivision does not include any parcel or parcels of land which is divided into four or less parcels.

(c) Subdivision does not include the division of any real property improved or unimproved or a portion thereof shown on the latest adopted county tax roll as a unit or as contiguous units, which is divided for the purpose of sale, lease, or financing, whether immediate or future, if any of the following conditions prevail:

(1) The whole parcel before division contains less than five acres, each parcel created by the division abuts upon a public street or highway and no dedications or improvements are required by the governing body

(2) Any parcel or parcels divided into lots or parcels, each of a gross area of 20 acres or more, and each of which has an approved access to a maintained public street or highway

(3) Any parcel or parcels of land having approved access to a public street or highway which comprises part of a tract of land zoned for industrial development, and which has the approval of the governing body as to street alignments and widths.

(4) Any parcel or parcels of land divided into lots or parcels, each of a gross area of forty (40) acres or more

(d) In any case provided in subsections (c)(1), (c)(2), and (c)(3), and in the case of subsection (b) where a local ordinance regulates the division, a tentative map shall be submitted to the governing body or advisory agency (in the same manner as provided in this chapter for subdivisions) for approval as to area and lot design and as to all requirements of this section. Within

one year after approval of the tentative map, a parcel map showing each new parcel or parcels may be filed with the recorder of the county concerned. This map shall be filed prior to sale or lease of the parcels shown, and conveyances may be made of parcels shown on such map by number or other such designation Upon application an extension of the approval of the tentative map, not to exceed one year, may be granted by the governing body or advisory agency.

The governing body may require dedications or an offer of dedication by separate instrument for street opening or widening or easements If dedications or offers of dedications are required, such dedications shall be completed prior to filing of the parcel map An offer of dedication shall be in such terms as to be binding on the owner, his heirs, assigns or successors in interest, and shall continue until the governing body accepts or rejects such offer.

In the case of subsections (b) and (c)(3), and when local ordinance provides, the governing body may require the improvement of public or private streets, highways, ways, or easements as may be necessary for local traffic, drainage and sanitary needs

(d e) Nothing contained in this chapter shall apply to land dedicated for cemetery purposes under the Health and Safety Code of the State of California.

(e f) Nothing contained in this section shall in any way modify of affect any of the provisions of Section 11000 of this code

Changed Recommendations for No 5

5 The Citizens' Advisory Committee in its proposal for Section 11535 used the term "hypothecation" The Real Estate Commission and the League of California Cities prefer to use the word "financing" The word "financing" was used in this transmittal In 11535 (d) the Citizens' Advisory Committee allowed the subdivider 18 months to complete work after filing a tentative map In this transmittal the 18 months has been reduced to one year in accordance with the present law

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6 The Subdivision Map Act defines the area within which local agencies may regulate subdivisions. With the expanded authority proposed now for local agencies to regulate divisions of land other than subdivisions a statement defining their scope of regulation in the new fields is needed It is proposed that Section 11540 1 of the Business and Professions Code be amended to accomplish this

11540.1. Nothing in this chapter prevents the governing body of any municipality or county from regulating the division of land which is not a subdivision, ~~but the~~ *provided that such regulations are not more restrictive than the requirements of this chapter* The validity of any conveyance, as defined in Section 1215 of the Civil Code, made contrary to the provisions of any ordinance prescribing the area or dimensions of lots or parcels, or prohibiting the reduction in area or the separation in ownership of land, or requiring the filing of a map of any land to be divided, shall not be affected, except that any such ordinance may provide that any

deed of conveyance, sale or contract to sell made contrary to the provisions of such ordinance is voidable to the extent and in the same manner provided in Section 11540.

7. The Citizens' Advisory Committee recommended amending Section 11550, Business and Professions Code, to require the signature on tentative maps of a civil engineer or a land surveyor whenever his services are required by law in the preparation of the map This proposal has been opposed by the City of Fresno, California Council, the American Institute of Architects and California Council of Landscape Architects The advisory committee contends that the proposal is intended as a reaffirmation of existing opinion law. Since there does not appear to be a clear need for this particular amendment the proposal is rejected

Changed Recommendation for No. 7

7 Recommendation No 7 concerns the proposal of the Citizens' Advisory Committee to require the signature of a civil engineer or land surveyor on tentative maps. This was opposed by some groups and is therefore rejected in this transmittal Note however that the transmittal includes such a requirement for final maps in its recommendation No 15. This proposal was contained in all of the submittals of the Citizens' Advisory Committee It is supported strongly by the County Engineers Association and has not been opposed by anyone

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8. Legislation should be enacted to require public agencies to furnish a subdivider with a written statement about his subdivision map before taking final action on the map It is the opinion of the advisory committee that this procedure would make the hearings on map approvals more productive in that it would enable the subdivider to prepare for the hearing There was opposition voiced on this subject at the June 12 hearing. The opposition was directed primarily to the delays which this procedure would cause. The Citizens' Advisory Committee revised the proposed amendment in light of the opposing arguments and submitted a new proposal for amending Section 11552 of the Business and Professions Code which is here recommended

11552 *(a)* If there is no advisory agency, the clerk of the governing body shall submit the tentative map to the governing body at its next regular meeting, which shall act thereon within 40 days thereafter.

If there is an advisory agency, it shall report, *in writing*, on the map or maps of any subdivision submitted to it within 40 days after the tentative map has been filed and the report shall approve, conditionally approve or disapprove the map or maps of the subdivision

The governing body may authorize the advisory agency to report its action direct to the subdivider If the governing body does not so authorize the advisory agency, the advisory agency shall make its report to the governing body, which body shall act

upon the report within 10 days or at its next succeeding regular meeting after receipt of the report.

Any reports or recommendations on the map or maps of any subdivision submitted to the advisory agency or governing body shall be submitted in writing to the subdivider prior to final action on the map or maps by the advisory agency or governing body.

(b) If the subdivider is dissatisfied with any action of the advisory agency with respect to the tentative map, or the kinds, nature and extent of the improvements recommended by the advisory agency to be required, he may, within 15 days after such action, appeal to the governing body, unless an appeal board has been designated in which event such appeal must be to the appeal board, for a public hearing thereon. The governing body or appeal board as the case may be shall hear the appeal, upon notice to the subdivider and the advisory agency, unless the subdivider consents to a continuance, within 15 days or at its next succeeding regular meeting At the time fixed for the hearing the governing body or appeal board shall proceed to hear the testimony of the subdivider or any witnesses in his behalf and the testimony of the representatives of the advisory agency or any witnesses in its behalf It may also hear the testimony of other competent persons respecting the character of the neighborhood in which the subdivision is to be located, the kinds, nature and extent of improvements, the quality or kinds of development to which the area is best adapted and any other phase of the matter with respect to which it may desire to inquire into.

Upon conclusion of the hearing the governing body or appeal board shall within seven days declare its findings based upon the testimony and documents produced before it It may sustain, modify, reject or overrule any recommendations or rulings of the advisory agency and may make such findings as are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter.

If the subdivider or advisory agency is dissatisfied with any action of the appeal board with respect to the tentative map, or the kinds, nature and extent of the improvements required by the appeal board, either may, within 15 days after such action, appeal to the governing body. The governing body shall hear the appeal within 15 days or at its next succeeding regular meeting, unless the subdivider consents to a continuance, and shall give notice of such hearing to the subdivider, the appeal board and the advisory agency The governing body shall hear the argument of the subdivider, the appeal board and the advisory agency or of their representatives based upon the testimony and the documents before the appeal board, and may receive documents from or hear the testimony of any competent person respecting the character of the neighborhood in which the subdivision is to be located, the kinds, nature and extent of improvements, the quality of kinds of development to which the area is best adapted and any other phase of the matter with respect to which it may desire

to inquire into. Upon conclusion of the hearing the governing body shall, within seven days, declare its findings based upon the testimony and documents produced before it or before the appeal board. It may sustain, modify, reject or overrule any recommendations or rulings of the appeal board and may make such findings as are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter

9 Sections 11594, 11618 and 11629, Business and Professions Code, are repetitious. They deal with the filing of maps to correct errors in previously filed maps. Section 11594, Business and Professions Code, and Section 11618, Business and Professions Code, should be repealed. Section 11629, Business and Professions Code, should be amended as follows:

11629. Any map of a subdivision that has been filed for record may be amended to correct an error in any course or distance shown thereon or to show any course or distance that was omitted therefrom by the filing for record of an ~~amended~~ *amending* map of said subdivision *The amending map shall conform to the requirements of Section 11567* The county ~~engineer~~ *surveyor* shall examine such ~~amended~~ *amending* map and if such examination discloses that the only changes on the amended map are changes above provided for, he shall certify this to be a fact over his signature on the ~~amended~~ *amending* map. Thereafter the ~~amended~~ *amending* map shall be entitled to be ~~recorded~~ *filed* in the office of the recorder in which the original subdivision map was ~~recorded~~ *filed* *Upon such filing, the recorder shall note upon the map thereby superseded, the book and page reference to the amending map.*

10. With regard to condominium developments there is a need for more uniformity of terminology so that the developer and his surveyor, the title insurer, the finance house, the governing body and the recorder will have the same understanding as to the intent of the law The following set of proposals appear to have the support of all groups affected:

Amend Section 11535.1, Business and Professions Code, to read:

11535.1. For purposes of Section 11535, "subdivision" includes a condominium project, as defined in Civil Code Section 1350, containing five or more condominiums, *as defined in Civil Code Section 783,* ~~and~~ *or* a community apartment project, as defined in Business and Professions Code Section 11004, containing five or more parcels; but maps of such projects need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a tentative or final map of such a project on account of design or location of buildings on the property shown on the map not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium Fees and

lot design requirements shall be computed and imposed with respect to such maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project Nothing herein shall be deemed to limit the power of the governing body to regulate the design or location of buildings in such a project by or pursuant to local ordinances

Amend Section 783, Civil Code, to read

783 ~~A condominium is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in an residential, industrial or commercial building on such real property, such as an apartment, office or store. A condominium may include in addition a separate interest in other portions of such real property.~~

A condominium is an estate in real property, which real property includes a residential, industrial or commercial building or buildings or other improvements incidental thereto located on such real property, which estate consists of (a) an undivided interest in common in a portion or portions of such real property; and (b) a separate interest or interests in other portions of such real property, which separate interest or interests may be an interest in space or any other interest in such real property; provided, however, that there has been compliance with the provisions of Sections 1351 and 1355 of this code

Such estate may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, or (3) an estate for years

Amend Section 1351, Civil Code, to read

1351. The provisions of this chapter shall apply to property divided or to be divided into condominiums only if there shall be ~~recorded~~ *filed with the county recorder* in the county in which such property lies a plan consisting of (i) a description or survey ~~map~~ *plat* of the surface of the land included within the project, (ii) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its ~~relative~~ location and ~~approximate~~ dimensions, and (iii) a certificate consenting to the ~~recordation~~ *filing* of such plan pursuant to this chapter signed and acknowledged by the record owner of such property and all record holders of security interests therein. *The survey plat, diagrammatic floor plans, and certificate that are filed shall be in compliance with the provisions of Section 11567(c) and Section 11573(a) and (b) of the Business and Professions Code.* Such plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by the record owner of such property and by all record holders of security interests therein *If the diagrammatic floor plan is part of a final subdivision map, then it may be amended by making changes on an exact copy of the original which is then filed If such amendment is for the purpose of correcting a variance between the diagramma-*

the floor plan and the completed units, then no governmental approval is necessary. Until recordation of a revocation, the provisions of this chapter shall continue to apply to such property. The term "record owner" as used in this section includes all of the record owners of such property at the time of recordation, but does not include holders of security interests, mineral interests, easements or right of way *Evidence of such ownership shall be presented at the time of filing with the county recorder*

11 The present law provides no time limit within which action may be commenced in court by a person claiming to be aggrieved by a zoning determination. Legislation should be enacted to make the procedure in zoning matters correspond to the procedure in subdivision matters in this regard.

Amend Section 65850 of the Government Code to read:

65850. The legislative body of a city or a county may, by ordinance, create either a board of zoning adjustment or the office of zoning administrator.

If so designated, and when so operating, acts and determinations of such board of zoning adjustment or such zoning administrator shall be directly reviewable by the legislative body, which may affirm, reverse or modify any such act or determination as it deems just and equitable The procedure for such review shall be as provided by ordinance of the legislative body After the act or determination has been so reviewed, ~~it may be reviewed by competent courts~~ *any person claiming to be aggrieved thereby, shall within 90 days bring a special proceeding in the superior court to review such act or determination*

12 Section 11626 of the Business and Professions Code contains a provision that the county recorder may not accept a final subdivision map until there has been compliance with all provisions of the Subdivision Map Act. This conflicts with other provisions which assign to the county surveyor or the city engineer the responsibility of determining the map's compliance with the law The provision in Section 11626 should therefore be removed

Another provision in Section 11626 allows the recorder 10 days to accept or refuse a final subdivision map This provision should be preserved Accordingly it is proposed that this provision be added in Section 11628 and the entire Section 11626 be repealed

Amend Section 11628 of the Business and Professions Code to read

11628 When any final map is presented to the county recorder and is accepted by him, he shall so certify on the face thereof and shall fasten the same securely in a book of maps of subdivisions or of cities and towns which he shall keep in his office *The recorder may have not more than 10 days to examine the final map before accepting or refusing it for filing* Upon acceptance by the recorder, the final map shall be a public record

13 Subdividers have complained that the subdivision map does not allow enough time after approval of a tentative map before a final map must be submitted. Subdividers now have one year and may be granted

an additional year. Failure to submit a final map within the time allotted terminates all proceedings. It appears to be true that both inclement weather and the large number of approvals required can sometimes cause unavoidable delays beyond the statutory time limit It also happens, sometimes, that the subdivider is required to meet changed requirements before a new tentative map for the same project will be approved, and the new requirements may completely destroy the plan.

On the other hand, the argument is advanced by some public officials that the approval of a tentative map freezes that piece of land to the particular development proposed on the map. Many such development projects are never consummated Coordinated planning of an area is not possible when parts of the area are not developed at the time and in the manner contemplated. Therefore, in a rapidly developing area, some public officials believe unwise to extend the statutory time for submitting final maps.

Legislation should be enacted which would authorize the governing body to establish by ordinance an initial time for submittal of the final map of not less than one year and not more than two years. This may be done by amending Sections 11554 and 11555 of the Business and Professions Code to read.

> 11554. Within ~~one year~~ *a period of one to two years, as prescribed by ordinance*, after approval or conditional approval of the tentative map or maps, the subdivider may cause the subdivision, or any part thereof, to be surveyed and a final map to be prepared in accordance with the tentative map as approved Upon application of the subdivider an extension of not exceeding one year may be granted by the governing body or by an advisory agency that is authorized to report its action directly to the subdivider. In the event the advisory agency denies a subdivider's application for extension, the subdivider may appeal to the governing body.
>
> 11555. Any failure to record a final map within ~~one year~~ the period *prescribed by ordinance* from the approval or conditional approval of the tentative map or any extension thereof granted by the governing body, shall terminate all proceedings Before a final map may thereafter be recorded, a new tentative map shall be submitted.

Changed Recommendation for No. 13

13. The Citizens' Advisory Committee recommended an 18-month period after filing a tentative map before the final map must be submitted There is still considerable opposition to this although the subdividers feel very strongly that 18 months is not long enough Accordingly, it is proposed in this transmittal that the matter be made a subject of local regulation so that the local governing body will be required to establish the period and it must be between one and two years

14 There appears to be some misunderstanding of Section 11611 of the Business and Professions Code regarding the acceptance of improvements in connection with the approval of a final subdivision

map In order to clarify the language of the section the Citizens' Advisory Committee proposed the following amendment:

11611. The governing body shall at its next meeting or within a period of not more than 10 days after the filing approve the map if it conforms to all the requirements of this chapter and of any local ordinance applicable at the time of approval of the tentative map, or any rulings made thereunder

The time limit for the approval of such map may be extended by mutual consent of the subdivider and the governing body. If no action is taken within such time limit or within the time to which it has been extended by such mutual consent, the map, if it conforms to all the requirements above set forth, shall be deemed to be approved, and it shall be the duty of the clerk of the governing body thereupon to certify the approval

The governing body shall at that time also accept, *accept subject to improvement,* or reject any of all offers of dedication and, *unless the streets and easements have been improved and accepted,* shall, as a condition precedent to the acceptance of any streets or easements, provide for the improvement of such streets or easements in accordance with standards established by such governing body by local ordinance applicable at the time of approval of the tentative map by requiring the subdivider (a) ~~to improve said streets and easements, at the subdivider's expense, prior to acceptance thereof~~ ~~(b)~~ to enter into an agreement with the city or county upon mutually agreeable terms to thereafter improve said streets and easements at the subdivider's expense, or (*e b*) to enter into a contract with the city or county upon mutually agreeable terms to thereafter initiate and consummate proceedings under an appropriate special assessment act for the financing and ~~improvement of said streets and easements~~ *installation of all the improvements required by local ordinance*

The standards may be adopted by reference, without posting or publishing them, if they have been printed in book or pamphlet form and three copies thereof have been filed for use and examination by the public in the office of the clerk of the local agency prior to the adoption.

Changed Recommendation for No. 14

14. Only a small change was made to the Citizens' Advisory Committee recommendation on 14. That committee provided Section 11611 that "The governing body shall at that time also accept, *subject to improvement,* or reject." This appears to have been an oversight on the part of the committee in not providing for the outright acceptance of offers of dedication, so the transmittal provides "The governing body shall at that time also accept, *accept subject to improvement,* or reject" offers of dedication.

15 The city engineer or county surveyor who must approve the engineering plans for development of a subdivision needs a provision in law to bar the submittal of incompetent plans and to require that the responsible engineer be named on the plans. Legislation should

therefore be enacted to provide for the engineer's certificate on engineering improvement plans. A new Section 11595 of the Business and Professions Code is proposed to do this

> 11595. Plans or designs, which are civil engineering as defined in the Civil and Professional Engineers Act, for improvements required by the governing body and local ordinance shall be prepared by, or under the direction of, and shall be signed by a registered civil engineer.

Changed Recommendation for No. 15

The wording in the submittal of this proposal by the Citizens' Advisory Committee was somewhat garbled and the provision was questioned by the subcommittee at the hearing June 12 In this transmittal the new section would provide that only final plans which are civil engineering must be prepared and signed by registered civil engineers

16 There were other aspects of the subdivision mapping laws with which the Assembly Interim Committee on Governmental Efficiency and Economy and its Citizens' Advisory Committee have been concerned These include handling of offsite and oversize improvements and the coordination of zoning laws with planning regulations. Further study is being given to these subjects by the Citizens' Advisory Committee since agreement has not yet been reached on corrective legislation in the areas.

Minority Recommendation—Assemblyman Lester A. McMillan

Section 11590—Additional legislation to authorize local agencies to require waivers of access rights

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963–1965

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH

W. BYRON RUMFORD, *Chairman*

SUBCOMMITTEES ON

INSTITUTIONS AND PUBLIC HEALTH SERVICES
PROFESSIONS AND OCCUPATIONS
ENVIRONMENTAL POLLUTANTS
DRUGS AND HAZARDOUS SUBSTANCES

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON PUBLIC HEALTH
CALIFORNIA LEGISLATURE

Sacramento, January 11, 1965

To the Speaker and Members of the Assembly:

Your Interim Committee on Public Health in accordance with your instructions, herewith respectfully submits a report on the subject matter assigned during the 1963–64 interim session

Respectfully submitted,

W. BYRON RUMFORD, *Chairman*

Members

E. RICHARD BARNES
CLAYTON DILLS
F. DOUGLAS FERRELL
BURT M HENSON
MILTON MARKS
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PHILLIP L. SOTO

INTRODUCTION

The Assembly Interim Committee on Public Health, authorized by House Resolution 500, was organized into the subcommittees listed below:

	Dates of hearings	*Location*
Institutions and Public Health Services	November 18, 1963 January 14, 1964 January 24, 1964	San Francisco Santa Barbara Los Angeles
Burt M. Henson, *Chairman* Milton Marks W. Byron Rumford Philip L. Soto Howard Thelin		
Professions and Occupations	December 6, 1963 September 11, 1964	San Francisco Los Angeles
Philip L. Soto, *Chairman* E. Richard Barnes Clayton A. Dills F. Douglas Ferrell Don Mulford George A. Willson		
Drugs and Hazardous Substances	November 12, 1963	Los Angeles
F. Douglas Ferrell, *Chairman* Milton Marks Don Mulford Leo J. Ryan George A. Willson		
Environmental Pollutants	December 2, 1963	Los Angeles
Leo J. Ryan, *Chairman* E. Richard Barnes Clayton A. Dills Burt M. Henson Howard Thelin W. Byron Rumford		

It should be noted that the following subcommittee reports can only contain a small, albeit very significant portion of the testimony contained in the hundreds of pages of hearings accumulated by the subcommittees during the past interim session. In the realization of this obvious limitation upon space, the transcripts of the hearings to which reference has been made in the reports have been deposited in the State Library in Sacramento, as well as with the Legislative Reference Service of the Assembly, and over 20 other libraries throughout California.

REPORT OF THE SUBCOMMITTEE ON INSTITUTIONS AND PUBLIC HEALTH SERVICES

Subcommittee on Institutions and Public Health Services

AB 2031: Hospital Staffing

Recommendations

1. That the Assembly Committee on Public Health strongly endorses the principle of fair hearing procedures for doctors in hospitals in California, and urges that doctors exercise their legitimate rights under these procedures
2. That legislation dealing with hospital hearings not be forthcoming at the present time pending a review of the adoption and operations of the recent hearing procedure amendment by the California Medical Association and the California Hospital Association to the Guiding Principles
3. That the Legislature continue to exercise surveillance and study this sensitive and important area dealing with medical care in California

Findings

1. That there have been cases in California of doctors dismissed from hospital staffs or denied membership without being given hearings.
2. That the Guiding Principles for Physician-Hospital Relationships have recently been amended to include the requirement that a hearing be given to a doctor who requests it. The provision reads

   "APPEALS

   "Medical staff bylaws should provide for an appeal and hearing when such is requested by a staff member or applicant who considers that his appointment was terminated or denied, his privileges curtailed or advancement denied, without sufficient cause, in an arbitrary, discriminatory, capricious or unreasonable manner"
3. That doctors have not for the most part fully exercised their rights when hearing procedures have been available
4. That close and continuing legislative scrutiny is necessary in this complex and sensitive area if Californians are to receive the best possible patient care.

Hermes asked Zeus how he should impart justice and reverence among men: Should he distribute them as the arts are distributed; that is to say, to a favoured few only, one skilled individual having enough of medicine or any other art for many unskilled ones? "Shall this be the manner in which I am to distribute justice and reverence among men, or shall I give them to all?" "To all," said Zeus, "I should like them all to have a share; for cities cannot exist if only a few voters share in the virtues, as in the arts"

Protagorus, 322

At the present time the hospital industry is facing three major unresolved problems—medical care for the aged, hospital planning, and

medical staff privileges The first two are being widely discussed and debated, but the seriousness of the third is just being realized. . . . there are serious indications that unless considerably more statesmanship is used in medical and hospital circles and control of medical staff appointments in the voluntary hospital system will be a governmental rather than a governing board function

JAMES LUDLAM,
"Medical Staff Privileges—A Legal Can of Worms,"
mimeographed address

Analysis

The enactment of hospital staffing privileges acts in New York [1] in 1963, Louisiana [2] in 1964, the similar legislation in Montana,[3] together with the trend of court decisions on public hospitals and at least in New Jersey for nonprofit hospitals, added to the existence of numerous suits in California courts,[4] indicate that the serious nature of the problem of hospital staffing and membership is beginning to be realized with a rush.

Three types of source material are utilized in the following report:

1 The case studies from the individual doctors testifying before the committees, or other particular cases which have come to the attention of the committee.

2. The survey which the Interim Committee on Public Health has made of the hospitals in California in which over 500 questionnaires were sent out and nearly 300 returned. (See the section entitled, "Questionnaire Results," pp. 22-40)

3. That which might be termed the evidence of learned commentary The doctor-hospital relationship is a vitally important aspect of one of the most important occupations in society and there is a body of literature which has accumulated on this specific subject as well as the subject matter to which it is only one part, i.e, professionalism, bureaucracy, organizational theory, and eventually the private government-public government relationship.

The Centrality of the Hospital

The problems of the hospital are not those of a declining institution, but are those of one of the key institutions of modern life. The President's Commission on the Health Needs of the Nation stated in 1952

> Hospitals are at the heart of our modern medical system . . . More and more (it) is becoming responsible for a continuing flow of health services to the community, supplying preventative services in health centers at one end of the line and rehabilitative and home care at the other end (39, p. 22)

The hospital has become such a significant institution that one of the recurring themes has been the degree to which it is a public utility (16), or is affected with the public interest (33, 36). The public-private

[1] Public Health Law, Article 2, Section 206a
[2] Professions and Occupations Code, RS 1301
[3] Mont Rev Code 69-2917
[4] Letter from counsel of the California Hospital Association to committee consultant lists 10 cases in various stages at the beginning of 1965

differentiation is becoming increasingly blurred. Whereas the question of the degree of "publicness" of the voluntary nonprofit hospitals has been analyzed in different ways by the courts and by the commentators, the Legislature is not in a similar position to the courts in having the necessity of finding that the hospital is in effect a public utility before it finds that the presence of hearing procedures and standards are a valuable addition to public policy As the Legislature of New York stated in passing legislation in 1963:

> The legislature hereby finds and declares that discrimination in hospital staff appointments and in the granting of hospital professional privileges because of a physician's participation in any medical group practice or authorized nonprofit health insurance plan has created an emergency condition which is a menace to the health and safety of citizens of this state who require hospitalization and medical treatment. Therefore, in order to protect and promote the health and safety of the citizens of this state, the provisions hereinafter prescribed are enacted and both their necessity in the public interest and their urgency with respect to matters of public concern are hereby declared as a matter of legislative determination.

The central emphasis of this study is the relationship between hospitals and doctors, and further the proper role of state government. The courts have commented on the meaning of the hospital to the physician in his work

> It is common knowledge that a physician or surgeon who is not permitted to practice his profession in a hospital is as a practical matter denied the right to fully practice his profession.[5]

Medical Standards

One of the most meaningful aspects of the hospital-physician relationship is the control of medical standards. The role of the hospital in medical standards and the meaning of the State Medical Licensing Act are intimately related. The limitations of the present State Medical Practice Act have been studied by the Senate Committee on Public Health and Safety (11) and recommendations for improvement, concurred with by the medical and hospital groups, have been presented. Any changes in this act cannot help but affect the role of hospitals, but there is little doubt but that the hospital will continue to be the first line of review[6] At the present time, there is an element of fact in the assertion that "hospitals have a responsibility for the quality of care not merely in the hospital but generally in the state, in order to make up for the deficiencies in the state medical care act." (20, p 21)

This governmental vacuum has also been filled, in the sense of the awarding of certification, by the specialty boards and in the surveillance of actual day-to-day work by the hospital A recent chairman's

[5] *Wyatt* v *Tahoe Forest Hospital District*, 174 C A , 2nd 714

[6] It might be noted that the Governor's Committee on Medical Aid and Health recommended the establishment of regional medical disciplining committees and their "review of denial or revocation of membership on hospital medical staffs, and medical service agencies to confirm or deny the action." (8, p 70)

address before the Section on Internal Medicine of the American Medical Association summarizes the negative aspects and positive qualities of the board system:

> On the minus side is a too common belief that the boards are self-appointed licensing agencies with power to say who can and who cannot practice his specialty. This attitude is reflected in requirements set up by various governmental agencies and by some private ones which reward diplomates in a way wholly frowned upon by the boards themselves The result is unwarranted recognition for those who pass and undeserved heartache for many who fail. The boards themselves have repeatedly condemned this practice of granting increased rank and income to its diplomates. . .
>
> The merits of the system, however, are obvious in terms of the protection which certified consultants give to the public No one, of course, knows what would happen if the boards were to dissolve tomorrow, but it is hard to imagine what other stimulus would support this vast program—unless the graduate schools take over. (17, p. 927) See also 9, pp 19–23.

The centrality of the hospital in standards is in great part due to what the American Medical Association terms "a highly structured situation," (2, p. 44) or as the representative of the California Hospital Association stated at the November 18, 1963, committee hearing:

> Now unfortunately in the practice of medicine there is only one place that a man cannot commit mayhem and get away with it, and that is in the hospital. If he chooses in his office, the only thing that stops him is the threat of a suit of malpractice and intent, there is nothing else. In a hospital it is the threat of malpractice and the threat of losing his privileges, so therefore he must practice well (8, p 106)

The doctor is incomplete without the comprehensive facilities of a hospital.

> In this day of advanced medical knowledge and advanced diagnostic techniques much of what a physician or surgeon must do can only be performed in a hospital. In many instances only a hospital has the facilities necessary for proper diagnosis or treatment.[7]

The Present Legal Situation

The latest review article in American Law Reports on hospitals and physicians (24 ALR, 2nd 850) now over 14 years old notes that.

> In the slightly more than two decades which have elapsed since the publication of the earlier annotation, there have been more reported cases dealing with the question stated in the title than in the entire period prior thereto, due no doubt to the marked increase in recent years in the use of hospitals, which has given rise to new problems in connection with their management generally, and particularly as to the constitution, organization, and functioning of their medical staffs While a few general rules as to the

[7] *Wyatt, op cit*, p 714

> relative rights of hospitals and practitioners in the present connection have been evolved by the decisions, there is also a difference of judicial opinion in regard to some matters, and the conclusions reached have in some instances been influenced by particular factors, as hereinafter noted

There have been several recent reviews of the current status of legal opinion (20, 21, 22) and it is not necessary here to analyze in any great depth the rapidly evolving court decisions in this area Generalizations could be drawn but the conclusions of the study for the American Hospital Association are very relevant

> . . . generalizations are, however, illusory as assurances against legal attack on the actions of hospital authorities, both private and public, in restricting admissions to hospital practice A mounting tide of litigation challenges the action of hospital boards on a variety of grounds, both constitutional and statutory. It has been urged in behalf of boards so challenged that the defense of such actions may constitute a serious drain upon hospital finances and personal resources (20, p. 1)

The law book at this time is not an infallible guide to what *ought* to be done. As the legal counsel for the California Medical Association has stated:

> Now, actually, I know of no rule of law that guarantees right of counsel at an administrative matter such as a preliminary hearing by a section or a board committee I do think that one has to be practical and play it by ear and make one's decision on the basis of the particular case and the particular circumstances, because usually you are dealing with a question again basically of a person's livelihood. The area is sensitive and you frequently have problems that *are not answerable simply by looking at a law book and saying that this is what the rule is in the book.* (emphasis added) (37, p. 32)

Fair Practices: Hearings and Standards

There is a meaningful difference between what the courts have indicated is necessary and what informed opinion feels should be rendered. The opinion voiced by the representative of the medical association who testified before the committee was that hearings should be held (8, p 52) The representative of the California Hospital Association, Fred W. Moore, stated in reference to the earlier testimony by those who had not received hearings

> Now the only requirement that I have heard here today was that doctors be afforded a hearing I agree; they should have a hearing. I have a hearing tomorrow morning at 8 o'clock about a man on our staff He has the right to appear before the board of trustees, if he so chooses, at our hospital I think all hospitals should have this (8, p 106, 107)

The recommendations of the study undertaken at the request of the American Hospital Association also called for a hearing in almost all cases (20, pp 24–25)

The point must be made, however, that the consensus of opinion among those in leadership positions in hospitals has apparently existed for several years, while almost every one of the cases brought before the Assembly Public Health Committee has occurred in recent years Thus at the California Hospital Association Legal-Medical Institute held in the fall of 1960, Mr Samuel J. Tibbitts, Administrator of California Hospital, stated in answer to a question on the desirability of a hearing or hearings and characteristics

> I feel in all fairness that there should be a hearing. The hearing committee should consist of representatives from that section in which the doctor has his membership, or department, whether it be surgery or medicine And with general practitioners, it is generally wise to have at least one general practitioner on the hearing committee particularly when the subject of surgery might be involved.
>
> This hearing, and the results of the hearing, should be recorded, and the results and recommendations of the hearing committee should be forwarded on to the executive committee for their action, and the results, of course, of the actions of the executive committee have to go to the governing board
>
> If there is still a question regarding it, it is probably better that the staff and hospital handle it through their joint conference committee (37, p 32)

The Positive Contributions of Adequate Hearing Procedures and Standards

As a prologue to the analysis which follows, it should be made clear that one of the main perspectives in the discussion of hospital staffing membership and privileges is that sound adequate procedures and standards can aid immeasurably in maintaining quality in the hospital This is true for several reasons As the legal counsel for the California Hospital Association has written

> Having been through a great many of these situations, I have found that if the doctor is not given a hearing that no matter how bad he may be that he can rally substantial, if not overwhelming, support from other members of the staff as well as the public over the issue of the "un-American denial of a hearing " The merits of the case are soon lost when this issue raises its ugly head (28, p 7)

The hearing procedure can both prevent situations which would otherwise erupt and its very presence can lead to positive results in the hospital setting:

> Of critical importance is the fact that experience has proven that in by far the greatest number of cases the use of the hearing technique resolves the matter entirely This may result for two basic reasons· In the first place the very preparation for the hearing may develop the fact that the problem is not as serious as it first appeared; and in the second place, it is surprising how often a doctor who is required to explain a series of charts or other conduct suddenly comes to the first realization of the error of his ways.

> An important byproduct of a hearing of this character is often the generally tightening up of medical practice throughout the hospital The word soon gets out and everyone is just a little bit more careful. If properly handled, it also boosts the morale and esprit de corps of the entire medical staff. They are proud to be a part of an organization that is in a fair and effective way acting for the best interest of the patient. (28, p. 8)

There is, however, a further rationale for the existence of fair standards and procedures As the situation now stands and will probably continue to develop if there is not the adoption of fair standards and procedures, there is a rather massive degree of courage involved as a prerequisite to causing removal or termination action which might lead to the initiator and the hospital being the object of large suit and the expenditure of a huge amount of time and energy. At the Third Medical-Legal Symposium held in Los Angeles in 1964, a number of case studies in the removal of doctors from staffs were discussed, with at least part of the emphasis on lessons to be drawn on personal sacrifice that those "blowing the whistle" had to bear In another staffing case the parallel was drawn between the doctor initiating charges and the individual, in the absence of any police officers, who would go to the aid of an individual who was being attacked by a hoodlum This is not to say that individual courage is not needed in society It is to say that if particular environment for handling incompetency within the hospital requires an extraordinary degree of courage, time, and energy on the part of one or more doctors, then the chances of good patient care are much lower than they should be Regardless of the merits of the case, the Marin Hospital District's inability to produce doctors who would testify in the recent and apparently continuing action at that hospital indicates that there is a particular "cost" beyond which it is unrealistic to expect an individual to expose himself. The functional contribution of known procedures and standards is that while at the same time that arbitrariness is diminished, the hospital becomes better equipped to cope with variations from desirable behavior.[8]

Case Studies in the Lack of Procedure

At the San Francisco hearing the committee received testimony on the lack of procedures encountered by two doctors Dr Stanford Asch-

[8] Among contemporary novelists, C P Snow has most thoroughly caught the issues, if not perhaps the passions, involved in the attempts to judge scientific competence in an atmosphere permeated with personality His novel, *The Affair* (New York, 1960) reads in parts as if taken verbatim from a composite of the hospital staffing cases The final paragraphs of the book are an attack on the theory that 'forms of procedure" play a relatively unimportant role in arriving at fair decisions

> Crawford was saying at large
> "Well, I'm glad this business is settled without breaking too many bones" He called to me as though he had never had a doubt in his life "I think I remember saying to you in this room last week, Elliot, perhaps we worry too much about forms of procedure I think I remember saying that in my experience sensible men usually reach sensible conclusions."
> He said it with invincible content, with the reverence of one producing a new truth

It might also be noted that the caustic comment immediately following Crawford's naive statement, is made by a lawyer

erman who had testified at the committee hearings on AB 2031 during the legislative session in Sacramento stated

What I want to demonstrate here this afternoon is that none of the hospitals have any provisions in their bylaws nor is it their practice to provide for any type of proceeding by which a doctor may receive fair and objective consideration It is the uniform practice of some of these hospitals to exercise their powers arbitrarily, and if someone wants to get rid of a doctor they simply wait until the end of the year and they just do not put him on the reappointed list. There is no explanation given in any committee meetings, and much of the information which I have to give to you this afternoon has been obtained as a result of the litigation and the depositions of some of the defendants. I would like to tell you that I have never been notified of any of the reasons for my dismissals from the hospitals and it is very peculiar that most of the dismissals occurred within a very short time of each other, probably within a period of two to three months, many of them within a period of days or weeks

After receiving the dismissals from the hospitals, that is the nonreappointment, I made inquiry as to whether or not I was entitled to receive a hearing, and I wish to read to this committee some of the responses from the administrators, the chief executive officers, and the president of the lay board of directors of these various hospitals. I read first from a letter from Franklin Hospital:

"Dear Dr. Ascherman:

"In reply to your question, I regret to inform you that the rules or bylaws of the hospital do not contain any provision which would entitle you to a hearing before the credentials committee"

From Hahnemann Hospital, and the administrator of that hospital was sitting in the room here this morning and perhaps if he is sitting here this afternoon you may want to ask him some questions, but I would like to read you his reply to a similar inquiry, and this again is a matter of only a few months apart:

"Dear Dr. Ascherman·

"In accordance with the direction of the executive committee, please be advised that it is the position of the executive committee that no purpose would be served in continuing the investigation for holding any hearings concerning your reappointment to the medical staff of this hospital"

. . . Here is another letter from Hahnemann in response to further inquiry:

"Dear Dr Ascherman:

"Reference is made to the inquiry as to whether or not you are entitled to a hearing before the credentials committee in accordance with medical staff bylaws provisions. The

medical staff bylaws rules and regulations of Hahnemann Hospital, a copy of which is provided, does not provide for a hearing of applicants before the credentials committee on matters concerning appointment or reappointment."

At French Hospital where I had obtained temporary privileges, and again most of this information is from subpoenaed records, there is no mention made in their minutes of any executive staff meeting or credentials committee meeting It is simply a list of those that are appointed, and those that are not reappointed. There is no discussion. The applications of such and such doctors, and Dr. Ascherman were not approved receiving insufficient votes to be elected to the courtesy staff. (8, pp. 69–70)

The Santa Barbara case [9] study illustrates that the simple existence of a hearing procedure is not a panacea The question of standards to be utilized and by whom the judgment is to be made cannot help but play an important role

There is a substantial agreement on the facts that there were hearings available in the Santa Barbara hospitals although there was some lack of clarity on their characteristics, with the details not always known with great accuracy.

The following exchange is with the chairman of the medical staff at St Francis Hospital in Santa Barbara·

Assemblyman Marks: Doctor, I wonder if you could tell me whether or not your hospital has any provisions in its rules and regulations granting a physician who is either denied admittance to your staff or was turned down or required to leave the staff, the right to a hearing?

Dr. Sherman: Yes, it is specifically stated in the bylaws

Assemblyman Marks: Is it a public hearing, or what kind of a hearing?

Dr. Sherman: The only thing that I can find right now would apply to any member of the staff whose qualifications make him eligible for membership in any special division of the hospital and who is refused membership in this division He shall have the right of appeal, first to the executive board and finally to the board of directors whose decision shall be final.

Assemblyman Marks: Suppose a doctor is on the staff and then action is taken to remove him from the staff? What right to a hearing does he have?

[9] The Santa Barbara case (9, 35) is also a study in general practitioner-specialist relations within the context of hospital planning and medical economics The main concern of the committee in this case is with staffing procedures and standards The survey questionnaire did contain an item aimed at determining discriminations against the physician solely on the basis of his lack of board certification (Section II, questions 5–7) The response indicated that almost all hospitals are following the recommendation of the medical and hospital societies that the individual be judged on the basis of individual competence rather than the single criteria of board certification Should there be a deviation from this policy, it would, of course, be a test of the ability of voluntary standards to function as effectively as governmental rules and regulations

For a discussion of the early conflicts in England in the 19th century among general practitioners, specialists, and hospitals see "Hospitals and General Practitioners," Chapter 7 in Brian Abel-Smith's, *The Hospitals 1800–1948* (Cambridge, Mass., 1964), pp 101–118 Other perspectives applicable to the GP-specialist dilemma (18, 36, 42) indicate that the issues involved are both deep and enduring

Dr. Sherman: The reason I am quoting from our bylaws, this specifically has to do with written censure I would presume that the same thing applies to removal from the staff In any case in which a specialty division contemplates written censure of the quality of an individual's work, that individual shall have the opportunity to defend his record at a meeting of the division before the written censure is voted upon.

Assemblyman Marks: Do you feel that the provisions for a hearing are sufficient, or would you be in favor of granting additional rights to members of your staff?

Dr. Sherman: I believe that in several places in our bylaws provisions are made for appeal from various decisions. Specifically, the one that I read stated that an appeal can be made directly to their division, to the executive staff or to the administrator. (9, p 36–37)

And with regard to appeals:

Assemblyman Thelin: Mr Iverson, in the discussion we have just had relative to what you might call procedural due process, in hearings that are called for in the hospital bylaws, it has been testified that this procedure is fair The doctor who faces removal or suspension of his privileges is faced by his accusers, you might say, and given a statement as to what is alleged to be wrong, and I suppose if he is removed or suspended, told why I get the impression that this procedure is followed, but it is not spelled out in any bylaws or regulations that the hospital may have Do you know if that is so or not?

Mr. Iverson: (Counsel for the Santa Barbara County Medical Society) I think the procedures for appeal are not very well spelled out in the existing bylaws Maybe this is an area where the——

Assemblyman Thelin: Well, as a lawyer, would you be inclined to believe that it would perhaps be advisable to be a little more specific in spelling out a kind of a procedural due process?

Mr. Iverson: Not being counsel for either of the hospitals, I don't know, but I think probably you are right 'I think it might be well to spell them out more carefully But there is no evidence that that has been a problem in the last several years because there have been no appeals (9, pp 71–72)

From the results of the questionnaire showing that only a small percentage of doctors asked for hearings after being refused their requests, the following attitude would appear to be prevalent

Assemblyman Marks: Doctor, I believe you said that you were denied certain privileges at Cottage Hospital, am I correct?

Dr. Ashton: True

Assemblyman Marks: Now, did you have or seek a hearing on denial of these privileges?

Dr. Ashton: I requested these privileges every year for 10 years.

Assemblyman Marks: In what way did you have a hearing?

Dr. Ashton: Every year there is another form that comes out in which each man on the staff has to again request his staff privileges.

Assemblyman Marks: But what I mean is, did you ask for a hearing?

Dr. Ashton: I didn't ask for any hearing This is useless. You don't ask the poundmaster to let the dog go away It was impractical to do such a thing You make out your form and ask for full surgical privileges, but you know you are not going to get them, so what is the use of going any further with it? (9, p 104)

The Legislative Role

The issues involved in fair hospital staffing legislation touch not only the whole subject of patient care, but go deeply into the meaning of professionalism and the occupational environment. The issue is not the responsibility of government to contribute to the best patient care for Californians. This is an acknowledged responsibility. The central issue here is not whether there should be fair hospital standards and procedures. There has been no testimony that arbitrariness should be the rule. The issue is rather whether or not fair hospital staffing legislation is a necessary contribution of government towards ensuring that the massive public investment in hospitals is properly utilized Since 1947 over $181,000,000 has been granted by the federal government and the State of California to aid in the building of 308 community health facilities.

The principal evidence involved, as it is so often in governmental-professional relations, is the adequacy of private government to accomplish voluntarily what legislation can do both universally and immediately. There is every inclination on the part of the committee to prefer that hospitals meet the standards of fair practices without the passage of legislation involving a commitment of governmental resources to regulate and enforce this area in detail At the present time, the committee survey (see pages 22–40) indicates that there is substantial availability of a hearing procedure The test, however, of voluntary compliance is that it can be as effective in both width and depth as is governmental action.

The Council of the California Medical Association in August, 1964 adopted the following amendment to the Guiding Principles for Physician-Hospital Relationships:

> Medical staff bylaws should provide for an appeal and hearing when such is requested by a staff member or applicant who considers that his appointment was terminated or denied, his privileges curtailed or advancement denied, without sufficient cause, in an arbitrary, discriminatory, capricious or unreasonable manner

This is an important recognition of the problem of medical staffing and can serve as a measurement device for those hospitals which at the time of the committee survey were deficient with regard to offering hearings The failure to have a hearing procedure is thus not simply a lack of possessing adequate procedures but also of not being in conformity with the rules of the voluntary governmental organization.

Beyond the availability of the hearing itself are the particular characteristics of the procedure The committee survey showed a wide variation here (see Table 3) At this time the California Hospital Association is working on a set of suggested characteristics The appearance or absence of some of the basic attributes of the hearing process can, of course, determine whether or not the hearing procedure is meaningful.

In conclusion, it is abundantly clear that hospital staffing and privileges constitute one of the most important facets of modern medical care It is also clear that this is a complex and sensitive area which should continue to be the subject of close and continuing legislative scrutiny to ensure that Californians are receiving the best possible patient care.

QUESTIONNAIRE RESULTS

To gain a broader view of the hospital staffing situation, the committee initiated an inquiry into the nature of hearing procedures within general hospitals in the state. A questionnaire was constructed by the committee staff. There were three main sections to the questionnaire: (1) hospital characteristics; (2) medical staff characteristics, and (3) medical staffing administrative procedures In the first part, background information on the hospital was requested—whether it was large or small, what its occupancy was in 1962–63, the number of hospital employees, and whether the hospital was approved for training of residents and/or interns. The second portion asked for information on the number of physicians on the staff, the organization of the medical staff and whether doctors have to be board-certified to have certain privileges in the hospital The final section of the questionnaire dealt with the main focus of the bill under consideration—AB 2031 The hospital was asked to detail whether it granted hearings for doctors, what body within the hospital handled the hearing procedures, the actual numbers of doctors who had been involved in the three-year period 1961–63, the reasons for the actions taken and the characteristics of the hearing procedure that the hospital had adopted (if the hospital had adopted one).

Moreover, it was recognized that there were several distinct areas in which control could be exercised by the hospital over the actions of doctors. Not only could doctors be dropped from the staff, but they could be (1) denied admission to the staff, (2) denied additional privileges, (3) have their staff privileges reduced, (4) suspended for failure to comply with certain hospital policies—the main one being, failure to complete medical records, (5) not have their membership renewed at the end of the year (as distinct from being dropped in the middle of the year). The questionnaire was drawn up so as not to confuse these widely differing reasons for action on the part of the hospital.

The questionnaire was sent to all general hospitals in the State of California (excluded were specialty hospitals such as TB or mental hospitals, nursing homes and state and federal hospitals) Returns were received from nearly 60 percent of the hospitals in California It was decided, however, to eliminate from the tabulations the county hospitals. Thus, the total number on which this report is based is 227,

slightly more than 50 percent of the noncounty general hospitals in the state. The following shows the rate of response among the three types of hospitals of major concern in this report—district hospitals, nonprofit hospitals and proprietary hospitals

Table No. 1

QUESTIONNAIRE RESPONSE

Total	District	Small nonprofit	Medium nonprofit	Large nonprofit	Small proprietary	Medium-large proprietary
227	33	20	37	61	41	35
Small (under 50 beds) Medium (50–149) Large (150 plus)						

The report is divided into two parts The first deals with whether hearings are granted (upon request of the doctor involved) and with the characteristics of the hearing procedure The second section deals with the actual cases on which the hospital took action in the years 1961–1963.

I. HEARINGS AND PROCEDURES

Hearings are not offered to doctors by from between 10 to 18 percent of the hospitals (depending upon the matter under consideration). Similarly about 25 percent of the hospitals offer hearings, upon request, at all three levels—medical staff, governing board and joint committee Approximately 20 percent offer hearings at only the medical staff committee level and another 15 to 20 percent at both the medical staff and governing board levels About 20 percent have provisions for hearings at other points in the administrative hierarchy (e g only at the governing board level)

From Table 2 it may be noted that hearings are most often not held for those who failed to complete medical records and were thus

Table No. 2

HEARINGS REQUESTED BY DOCTORS FOR VARIOUS ACTIONS: HOSPITAL'S PROVISIONS

	Original applications (percent)	Appointment not renewed (percent)	Failure to complete medical records (percent)	Termination from staff (percent)	Privileges reduced (percent)	Additional privileges denied (percent)
No hearing granted to doctor	11	10	18	13	13	16
Hearing granted by this hospital unit						
(a) Medical staff committee	19	16	23	18	23	24
(b) Medical staff and governing board	23	21	15	19	17	18
(c) Medical staff, governing board and joint committee	26	30	24	30	25	24
(d) Other	19	22	18	19	22	18
(e) No answer	1	1	1	1	1	1

suspended (18 percent) and for those doctors who were denied additional staff privileges (16 percent). Hearings were, as might be expected, held at all three levels of the hospital's administrative hierarchy for the more serious offenses—when appointments were not renewed or when physicians were terminated from the staff (both in 30 percent of the hospitals).

Types of Hospitals

Several interesting variations appear among the types of hospitals, with respect to the hearing procedure First, it must be remarked that in the following tabulations, the hospitals have been divided into seven categories:

1. District hospital
2. Small (under 50 beds) nonprofit hospital
3. Medium (50–149 beds) nonprofit hospital
4. Large (150 beds and over) religious group-run nonprofit hospital
5. Large (150 beds and over) other nonprofit hospital
6. Small (under 50 beds) proprietary hospital
7. Medium and large (50 beds and over) proprietary hospital

The other large nonprofit hospitals are more likely than any other category not to grant a hearing for two types of physicians with grievances—those who were denied initial admission to the hospital staff and those who were suspended for failure to complete medical records. The religious group hospitals were more likely to have provisions for hearings at only the medical staff committee level than any other type of hospital in four of the six cases (for doctors whose appointments were not renewed, doctors terminated from the staff, doctors whose staff privileges had been reduced and doctors who were denied additional privileges). Medium-sized nonprofit hospitals were most likely to hold hearings at all three in hospitals—in how large a number it is impossible to determine exactly—are largely informal. The term conference might better describe the meetings which staff committees have with individual doctors than would the more formalistic term, hearing

In Table 3, the characteristics of the hearing are shown for each of the seven types of hospitals It is important to note one factor in the construction of this table: The base (N) on which each percentage was calculated was the *number of hospitals that mentioned, in the previous question, that they granted a hearing at that level.*

The first general observation to be made is that in almost all cases the characteristics which the largest percentage of the hospitals claim to have are the following· minutes kept, presentation of evidence by the defendant and opportunity to file written answer to charges In most of the columns of the table (3) these three characteristics are bunched within 10 percentage points of each other. In fourth place, is the initial characteristic on the list—written notice of charges. The fifth characteristic mentioned, though by a considerably smaller percentage of the hospitals than the other four was, the cross examination

Table No. 3

CHARACTERISTICS OF HEARINGS

	District			Small nonprofit			Medium nonprofit			Large nonprofit		
	M* (Percent)	G* (Percent)	J* (Percent)	M* (Percent)	G* (Percent)	J* (Percent)	M* (Percent)	G* (Percent)	J* (Percent)	M* (Percent)	G* (Percent)	J* (Percent)
Written notice	23	44	50	29	36	29	44	35	27	58	50	50
Hearing officer	8	39	33	12	14	29	9	8	15	21	25	25
Attorneys	8	48	25	12	29	20	9	19	19	25	25	33
Cross examination	12	52	25	18	36	29	18	27	24	46	31	58
Transcript	4	44	33	24	43	40	4	8	8	21	25	33
Minutes	27	44	33	41	50	40	41	42	42	71	69	67
Defendant evidence	27	56	42	41	50	50	41	46	38	75	62	67
Written answers	27	48	33	41	50	50	47	50	50	79	81	67
Total number	(26)	(23)	(12)	(17)	(14)	(10)	(34)	(26)	(26)	(24)	(16)	(12)

	Small proprietary			Medium–large proprietary			Large nonprofit religious		
	M* (percent)	G* (percent)	J* (percent)	M* (percent)	G* (percent)	J* (percent)	M* (percent)	G* (percent)	J* (percent)
Written notice	59	52	40	66	38	42	25	20	44
Hearing officer	15	12	20	17	10	16	9	7	11
Attorneys	3	4	0	14	10	5	3	7	0
Cross-examination	29	28	20	27	14	26	16	27	28
Transcript	21	20	15	17	14	16	12	27	11
Minutes	53	52	35	66	52	63	34	33	50
Defendant evidence	44	44	35	66	48	58	38	47	56
Written answers	50	52	35	69	52	58	41	47	56
Total number	(34)	(25)	(20)	(29)	(21)	(19)	(32)	(15)	(18)

M* Medical Staff
G* Governing board
J* Joint committee

of witnesses. The other three procedures—referee used, parties represented by attorneys, and transcript made—were rarely cited by more than one-fourth of the hospitals.

This rank order of characteristics held true for hospitals at all three levels of hearings—medical staff, governing board and joint committee.

Among the types of hospitals, there are four patterns that of the district hospitals, that of the nonprofit hospitals with the exception of the large nonprofit hospitals; the other large nonprofit hospitals and the proprietaries. Among the district hospitals few of the 26 which mention holding hearings at the medical staff level have procedures However, at the governing board committee level, between 40 and 50 percent of the hospitals mention all the procedures as characteristic of their hearings. This is quite different from the other three types of hospitals, which have nowhere near the same percentage answering affirmatively to the least popular three characteristics. Among the other large nonprofit hospitals, there is considerably greater strength for the most popular three characteristics, however.

The nonprofit hospitals comprising the second group (small, medium and religious group nonprofit hospitals) have at all three levels—medical staff committee, governing board and joint conference committee—the same rank order of characteristics as mentioned previously. There is one interesting anomaly, however The religious group hospitals have the smallest percentage of any hospital category giving written notice of charges at *both* the medical staff and the governing board levels Indeed, in the formalization of procedure as represented in this tabulation, these hospitals are much closer to the smaller nonprofits rather than the other large nonprofit category

The other nonprofit hospitals have, by and large, the highest percentage of hospitals for each one of the five leading characteristics. Between two-thirds and three-fourths of these hospitals mention the last three of them—minutes kept, presentation of evidence and opportunity to file answers to charges Slightly more than 50 percent mention giving written notice of charges; this, interestingly is about the same as in the proprietary hospital category. Also, it might be pointed out that nearly 60 percent of the hospitals having procedures at the joint committee level allow cross-examination of witnesses

The proprietary hospitals stand intermediate between the other, large nonprofit hospitals and the small, medium and religious group nonprofit hospitals There is somewhat of a tendency within the proprietary category for the larger hospitals to have a greater percentage mentioning the various procedures However, this is only true at the medical staff and the joint committee level; at the governing board committee level, the percentages are almost identical

II. ACTIONS 1961–1963

In this section, an examination will be made of the actions taken by hospitals against doctors, whether hearings were asked for or received and the reasons given by the hospital for its action. Here, as before, there are considerable differences, not only in the severity of the sanctions involved, but also in the ways in which hospitals treat doctors who, for example are applying for additional privileges or are being terminated from the staff. Thus, the types of action will be kept separate. First, suspensions for failure to complete medical records will be discussed.

(1) Suspension

Only 40 percent of the hospitals in the survey mentioned that they had suspended a doctor in the past three years for failure to complete medical records. The percentage was highest in the large nonprofit hospitals (other than those controlled by religious groups) and in the medium and large proprietary hospitals Of the religious nonprofit hospitals, slightly less than 40 percent suspend staff members for medical records; they are again closer to the medium sized nonprofit, and, indeed nearer to the small proprietary hospitals than to the other large nonprofit institutions.

Table No. 4

SUSPENSION FOR FAILURE TO COMPLETE MEDICAL RECORDS BY VARIOUS TYPES OF HOSPITALS

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit (percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
Yes	40	27	15	38	39	65	27	68
No	52	64	85	51	49	28	63	26
No answer	8	9	--	11	12	7	10	6
Total number	(227)	(33)	(20)	(37)	(33)	(29)	(41)	(35)

(2) Original Application

The next type of action concerns original applications for staff membership, and whether refusal of a doctor's application led to a hearing. Initially it must be remarked that there were two slightly different answers coded in response to this question Some hospitals responded with the number of applications for active staff membership, while other, usually larger, hospitals reported the number of courtesy staff applicants for active staff membership Though the latter refers to doctors who have been on the staff for a year, and have undergone an informal screening, and the former reply concerns new applicants—and thus the two figures have somewhat different referents—it was decided to tabulate all the responses rather than to leave a substantial proportion uncoded.

Several interesting results can be seen from this tally (Table 5) Six percent of the hospitals in the survey actually gave hearings to doctors whose staff membership was rejected Nearly half of the total number of hospitals reported that no original application was rejected, while 30 percent, while not granting hearings, added that no hearing had been requested.

Table No. 5

DISPOSITION OF ORIGINAL APPLICATIONS FOR STAFF MEMBERSHIP

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit (percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
None rejected	49	91	80	38	18	28	61	40
Hospital did not grant hearings (none requested)	30	3	10	40	61	50	12	34
All hearings granted	6	0	5	11	6	8	2	11
No answer	14	6	5	11	15	14	24	20
Total number	(227)	(33)	(20)	(37)	(33)	(28)	(41)	(35)

Among the types of hospitals, it should be noted that the large nonprofit hospitals had far less than 50 percent reporting that no applications were rejected The greatest percentage in this regard was

among the district hospitals and the small nonprofit hospitals, in which 91 and 80 percent, respectively, said that they had not rejected any applications for staff membership in the past three years.

The total number of cases involved was 746. Of these doctors rejected for staff membership, only 23 (somewhat over 3 percent of the total) requested hearings Twenty-eight hearings were held—23 that were requested and 5 that were not requested by the doctors involved. The three reasons most commonly given by hospitals for rejecting applicants for staff membership were (1) professional competence, (2) that the doctor was out of the area which the hospital served, and, (3) that the credentials presented by the physician could not be verified Three hospitals rejected a total of seven doctors for participation in group medical practice. Ten hospitals which advance courtesy staff members to active status mentioned that they rejected applicants because of interpersonal reasons—the doctor could not get along with other doctors or hospital personnel

Table No. 6

HEARINGS FOR ORIGINAL APPLICANTS—TYPES OF HOSPITALS

	Total	District	Small nonprofit	Medium nonprofit	Large nonprofit religious	Large nonprofit other	Small proprietary	Medium-large proprietary
Number of cases	746	2	10	114	430	73	17	100
Number asked for hearings	23	0	1	10	4	2	0	6
Percent asked for hearings	3	0	10	9	1	3	0	6
Received hearings	28	0	1	10	4	2	1	10
Number of hospitals	82	1	3	19	22	16	6	16

(3) Additional Staff Privileges

Turning to requests for additional staff privileges, it may be noted that while 60 percent of the hospitals in the state said that they had rejected no such applications, the percentage varied widely among the types of hospitals. While 80 percent of the district and small nonprofit hospitals did not reject applications, this was only true for 40 to 45 percent of the large nonprofit hospitals. Another interesting fact shown

Table No. 7

REQUESTS FOR ADDITIONAL PRIVILEGES—TYPES OF HOSPITALS

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit (percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
None rejected	61	79	80	68	46	39	68	49
Hospitals not granting hearings (none requested)	15	6	5	11	39	25	0	17
All hearings granted	12	3	10	10	6	25	8	22
No answer	13	12	5	11	9	11	24	11
Total number	(227)	(33)	(20)	(37)	(33)	(28)	(41)	(35)

in Table 7 is that one-fourth of the other nonprofit hospitals granted hearings for staff members seeking additional privileges; this was double the average for all hospitals, and, surprisingly, more than four times the proportion of religious group-run hospitals.

The total number of cases involved was 154. Of these 27 percent asked for and received a hearing In the nonprofit hospitals run by religious groups, the smallest proportion (16 percent) of doctors asked for a hearing By far the largest proportion asking for hearings were in the proprietary hospitals. It is true that these hospitals had far fewer cases of physicians being rejected for additional privileges. However, of the physicians who *were* rejected, 100 and 56 percent respectively in the small- and medium-sized proprietary hospitals asked for and received a hearing. The only reason given (by more than a few hospitals) for the rejection of doctor's applications for additional privileges was that of professional competence.

Table No. 8

HEARINGS FOR ADDITIONAL PRIVILEGES—TYPES OF HOSPITALS

	Total	District	Small nonprofit	Medium nonprofit	Large nonprofit religious	Large nonprofit other	Small proprietary	Medium-large proprietary
Number of cases	154	3	4	20	61	43	4	20
Number asked for hearings	42	0	1	6	10	10	4	10
Percent asked for hearings	27	0	25	30	16	24	100	50
Received hearings	44	1	2	6	8	10	4	12
Number of hospitals	58	3	3	8	15	14	3	12

(4) Reduction of Privileges

Nearly 60 percent of the hospitals answered that they had reduced no physician's staff privileges in the past three years. Again, there was a wide variation among the types of hospitals Large nonprofit hospitals not under religious group auspices were far more likely to have reduced doctors' privileges than any other type of hospital. Also, among this group of hospitals was the greatest percentage granting

Table No. 9

PRIVILEGES REDUCED—TYPES OF HOSPITALS

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit (percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
None reduced	59	73	15	59	49	25	82	46
Hospitals not granting hearings (none requested)	14	12	5	14	18	18	8	23
Hospitals granting hearings to all	22	9	20	22	30	46	8	26
No answer	5	6	0	5	3	11	2	6
Total number	(227)	(33)	(20)	(37)	(33)	(28)	(41)	(35)

hearings to all physicians who requested them Small hospitals, both nonprofit and proprietary were more likely than the other types not to have reduced privileges of doctors on their staffs.

Of the 334 doctors whose privileges were reduced, 22 percent asked for and received hearings. In addition to these 73 doctors, 15 others received hearings, making a total percentage of 26 which had hearings The other nonprofit (large) and medium nonprofit hospitals granted hearings to a larger proportion of doctors than did any of the other types of hospitals which had over 10 doctors reduced (religious group, small and medium proprietary) Again heading the list of reasons for reduction of privileges was professional competence The other reasons, which almost exhausted the total number given, had to do with noncompliance with hospital policies, specifically with failure to attend staff meetings, lack of use of the hospital's facilities and nonpayment of dues.

Table No. 10

HEARINGS FOR PRIVILEGES REDUCED—TYPES OF HOSPITALS

	Total	District	Small nonprofit	Medium nonprofit	Large nonprofit religious	Large nonprofit other	Small proprietary	Medium-large proprietary
Number of cases	334	12	8	51	100	74	19	70
Number asked for hearings	73	4	5	23	13	17	2	9
Percent asked for hearings	22	33	62	45	13	44	10	13
Received hearings	88	5	6	25	13	26	3	10
Total hospitals	82	7	5	13	16	18	6	17

(5) Appointments Not Renewed

Of the hospitals in California, slightly over 60 percent reported that they had not dropped any staff member at year's end (other than for reasons such as moving away, death or retirement). The large nonprofit category, both those under religious auspices and the others, had a far greater percentage of hospitals in which doctors had not been renewed (only about 40 percent in each of these categories as well

Table No. 11

APPOINTMENTS NOT RENEWED—TYPES OF HOSPITALS

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
None not renewed	63	85	85	65	36	43	93	43
Hospitals not granting hearings (none requested)	24	9	5	24	42	39	5	40
All hearings granted	8	0	5	8	15	18	0	9
No answer	4	6	5	3	6	0	2	8
Total number	(227)	(33)	(20)	(37)	(33)	(28)	(41)	(35)

as only 40 percent in the medium-sized proprietary hospitals, said that they reappointed all physicians seeking reappointment to their staffs) In addition, hearings were granted to all requesting them in both types of large nonprofit hospitals in a greater proportion of the cases than was true in the other types of hospitals

Of the 1,422 doctors who did not have their appointments renewed, about 3 percent asked for hearings The main reasons given for non-reappointment were failure to attend staff meetings, lack of use of hospital facilities and nonpayment of dues, medical records and professional competence The lack of use of hospital facilities was, by far the reason for the largest number of appointments not renewed.

Table No. 12

HEARINGS FOR APPOINTMENTS NOT RENEWED—TYPES OF HOSPITALS

	Total	District	Small nonprofit	Medium nonprofit	Large nonprofit religious	Large nonprofit other	Small proprietary	Medium-large proprietary
Number of cases	1,422	7	22	267	401	420	89	216
Number asked for hearings	42	0	0	19	11	6	0	6
Percent asked for hearings	3	0	0	7	3	1	0	3
Received hearings	50	0	2	19	13	9	0	6
Total hospitals	72	3	2	12	19	16	2	18

(6) Terminated From Staff

A larger proportion of the hospitals did not terminate any physicians' appointment than was true of any other type of action Whereas 68 percent of the hospitals did not dismiss any doctor from the staff in the past three years, 63 percent had not dropped anyone from the staff at year's end, 59 percent had reduced no doctor's privileges, 61 percent had rejected no applications for additional privileges, 49 percent had rejected no original applications for staff membership and 52 percent had not suspended any physicians for failure to complete medical records The other nonprofit category had the greatest proportion of hospitals which did terminate a doctor or doctors in the period

Table No. 13

TERMINATED FROM STAFF—TYPES OF HOSPITALS

	Total (percent)	District (percent)	Small nonprofit (percent)	Medium nonprofit (percent)	Large nonprofit religious (percent)	Large nonprofit other (percent)	Small proprietary (percent)	Medium-large proprietary (percent)
None terminated	68	82	80	68	73	43	78	51
Hospital does not grant hearing (none requested)	15	9	5	16	15	21	8	28
All hearings granted	13	6	10	11	9	32	13	11
No answer	4	3	5	5	3	4	2	8
Total number	(227)	(35)	(20)	(37)	(33)	(28)	(41)	(35)

under consideration. Fifty-three percent of the hospitals included in this category mentioned that they had dropped at least one physician from the staff. Again, there is a marked difference between the large nonprofit hospitals under religious auspices and the other nonprofit hospitals The proportion in the latter category of hospitals which had terminated a staff member was only 24 This was comparable to the proportion in the small, medium nonprofit hospitals and also that in the small proprietary hospitals It must be noted, also from Table 13, that the other large nonprofit hospitals had a much higher percentage of hearings granted to all staff members requesting them than did any other medium or large hospital.

Of the 204 doctors terminated from hospital staffs, 12 percent asked for hearings, in addition, another 12 doctors were reported by the hospitals to have been given hearings though they did not request them This raised the percent of doctors given hearings to 18. There was a considerable discrepancy among the types of hospitals with respect to doctors' asking for hearings In the other large nonprofit category, 37 percent of the doctors who had been dropped from the staff asked for and received hearings In the small nonprofit hospitals, the religious group nonprofit hospitals and the small proprietaries 20 to 29 percent asked for hearings. The other types of hospitals were under 10 percent Reasons given for termination varied Professional competence, lack of use of hospital facilities and nonpayment of dues were the main ones given Failure to complete medical records was given by slightly less than half as many hospitals as the above reasons for terminating a physician Alcoholism, failure to attend staff meetings and interpersonal relations were given in the cases of from 5 to 10 physicians as the motivation behind the hospitals dropping from the staff.

Table No. 14

HEARINGS—TERMINATED FROM STAFF—TYPES OF HOSPITALS

	Total	District	Small nonprofit	Medium nonprofit	Large nonprofit religious	Large nonprofit other	Small proprietary	Medium-large proprietary
Number of cases	204	14	7	81	14	27	26	45
Number asked for hearing	25	1	2	4	4	10	2	3
Percent asked for hearing	12	7	29	5	29	37	8	7
Received hearing	37	3	4	5	4	12	5	5
Total hospitals	63	5	3	10	8	15	8	14

SURVEY QUESTIONNAIRE

HOSPITAL CHARACTERISTICS

1 Type of hospital
Governmental—nonfederal
_____State
_____County
_____City
_____City-county
_____Hospital district
Voluntary nonprofit
_____Church related or operated
_____Other nonprofit
Proprietary
_____Individual
_____Partnership
_____Corporation for profit
Governmental-federal
Other, please specify_____

2 Year in which the hospital opened
_____Before 1910
_____1910–1919
_____1920–1929
_____1930–1939
_____1940–1945
_____1946–1950
_____1951–1955
_____1956–1960
_____1961 and later

3 Number of beds reported (to Bureau of Hospitals) in the following years
_____1949
_____1956
_____1964

4 Number of the following types of beds, 1964
_____Medical-surgical beds
_____Obstetrical beds
_____Psychiatric beds
_____Long term care beds (30 days or longer)

5 Percentage occupancy for the years 1962 and 1963
(total beds)
_____Percentage occupancy 1962
_____Percentage occupancy 1963

6 At the last hospital inspection of the Bureau of Hospitals of the State Department of Public Health, how many full-time employees did this hospital report _____

At the last hospital inspection, how many part-time paid employees did this hospital report _____

7 Is this hospital approved by the American Medical Association for the training of interns?

Yes_____ No_____

If the answer is Yes, how many interns did the hospital have in 1963?_____

8 Is this hospital approved by the American Medical Association for the training of any residents?

Yes_____ No_____

If the answer is Yes, how many residents did the hospital have in 1963?_____

MEDICAL STAFF CHARACTERISTICS

1 Number of physicians on the 1963 attending staff
_____Active
_____Associate
_____Courtesy
_____Honorary
_____Consulting
_____Other

2 Do each of the following types of staff members have voting rights?

	Yes	No
Active	____	____
Associate	____	____
Courtesy	____	____
Honorary	____	____
Consulting	____	____
Other	____	____

SURVEY QUESTIONNAIRE—Continued

3 Is the medical staff organized along departmental lines? Yes____ No____

If Yes, please indicate the number of physicians with active status holding privileges in each of the following departments

____General Practice
____Medicine
____Surgery
____Obstetrics and Gynecology
____Pediatrics
____Psychiatry
____Radiology
____Pathology

4 Has any doctor been denied staff membership since 1962 because of absence of membership in the county medical society?
Yes____ No____ Number denied____

5 In your hospital, does a physician have to be board-certified to have privileges to do the following procedures or treatment?

	Yes	No
Simple medical treatment (such as uncomplicated pneumonia)	____	____
Complex medical treatment (such as diabetic coma or myocardial infarction)	____	____
Normal obstetrics (such as uncomplicated delivery)	____	____
Complicated obstetrics (such as Caesarean section)	____	____
Minor surgery (such as tonsillectomy)	____	____
Major surgery (such as gastric resection)	____	____

6 Does this hospital divide staff privileges into major, minor and/or intermediate Yes____ No____

7 Minor surgical privileges (as defined by the hospital)

a Number of physicians as of December 31, 1963 (or most recent date) holding minor surgical privileges

General practitioner ____
Surgeon Board-certified ____
Surgeon Not board-certified ____

b 1961–63 applications for minor surgical privileges and actions taken

	New applications	Number granted	Number denied
General practitioner	____	____	____
Surgeon Board-certified	____	____	____
Surgeon Not board-certified	____	____	____

SURVEY QUESTIONNAIRE—Continued

MEDICAL STAFFING- ADMINISTRATIVE PROCEDURES

1 Is this hospital accredited by the Joint Commission on Accreditation of Hospitals? Yes____ No____

2 Does the hospital grant a hearing or conference for	Hearing or conference granted by (if requested)							
	Medical staff committee		Governing board committee		Joint committee of medical staff and governing board		No hearing or conference	
	Yes	No	Yes	No	Yes	No	Yes	No
a Applicant for membership in hospital staff								
b Appointment not renewed at end of year (exclude failure to complete medical record)								
c Suspension for failure to complete medical records								
d Staff membership terminated during year								
e Staff privileges reduced								
f Requests for additional staff privileges denied								

3 Are the above hearing or conference procedures set forth in the regulations or bylaws of your
a Governing board Yes____ No____
b Medical staff Yes____ No____
c In what year were the hearing or conference provisions adopted in the bylaws or regulations?____

SURVEY QUESTIONNAIRE—Continued

4 a *Original applications* for active staff membership

Year	Number of applications	Number finally accepted	Number hearings or conferences requested	Number hearings/ conferences medical staff committee	Number hearings/ conferences governing board committee	Number hearings/ conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961							
1962							
1963							

b Average length of time between physician's original application and notification of his acceptance or rejection Months_____

c Are temporary privileges pending final action on original applications provided Yes_____ No_____

5 a Physician applications for *additional privileges* on active staff

Year	Number of applications	Number finally accepted	Number hearings or conferences requested	Number hearings/ conferences medical staff committee	Number hearings/ conferences governing board committee	Number hearings/ conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961							
1962							
1963							

b Average length of time between physician's application for additional privileges and notification of his acceptance or rejection Months_____

6 Physician's *privileges suspended* because of failure to complete medical records

Year	Number suspended	Number hearings or conferences requested	Number hearings or conferences medical staff committee	Number hearings or conferences governing board committee	Number hearings or conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961						
1962						
1963						

7 Physician's *privileges reduced* (not at physician's request)

Year	Number reduced	Number hearings or conferences requested	Number hearings or conferences medical staff committee	Number hearings or conferences governing board committee	Number hearings or conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961						
1962						
1963						

SURVEY QUESTIONNAIRE—Continued

8 Physician's *appointment not renewed* at end of year (not at physician's request)

Year	Number not renewed	Number hearings or conferences requested	Number hearings or conferences medical staff committee	Number hearings or conferences governing board committee	Number hearings or conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961						
1962						
1963						

9 Physician's *staff membership terminated* during the year (not at physician's request)

Year	Number terminated	Number hearings or conferences requested	Number hearings or conferences medical staff committee	Number hearings or conferences governing board committee	Number hearings or conferences joint committee of medical staff and governing board	Number of cases in which trustees overruled medical staff
1961						
1962						
1963						

10 For each type of final action shown across the top of the table on this page, show the number of cases involved in the years 1961–1963 (Show more than one cause if it applies to a given case)

Cause of action	Type of final action				
	Application for membership on staff denied	Appointment not renewed	Privileges reduced	Additional privileges denied	Physician terminated from staff
Professional competence					
Alcoholism or narcotics					
Participation in group medical practice (with prepayment)					
Interpersonal relations doctor could not get along with					
(a) Other doctors					
(b) Nurses or administrator					
(c) Other					
Noncompliance with hospital policies					
(a) Failure to attend meetings					
(b) Lack of use of hospital facilities					
(c) Medical records					
Fee splitting					
Sexual offenses					
Abortions					
Doctors statements to the community reflected unfavorably upon hospital					
Felony conviction					
Advertising					
Senility					
License revoked by Board of Medical Examiners					
Number of physicians					

11 If this hospital has adopted or used a conference or hearing procedure, would you please briefly outline it

SURVEY QUESTIONNAIRE—Continued

12 Characteristics of conference or hearing The purpose of this question, as with the other, is to gain an inventory of existing practices Please do not interpret the presence or absence of any particular characteristic as constituting "correct or incorrect" practice

	Lower level medical staff committee (credentials or specialty service medical committee)		Upper level medical staff committee (executive medical committee)		Governing board committee		Joint conference committee of medical staff and governing board	
	Yes	No	Yes	No	Yes	No	Yes	No
a Written notice of charges								
b. Referees or hearing officers used								
c Interested parties represented by attorneys								
d Cross examination of witness (by defending physician)								
e Transcript made								
f. Minutes kept								
g Presentation of evidence by the defendant								
h. Opportunity to file written answer to charges								
i Other (please specify)								

13. Does the hospital have a limitation on the number of doctors admitted to active status in general practice or in any specialty (other than radiology, anesthesiology or pathology) Yes_____ No_____

Please list each area and the number it has been limited to _____

Name of person(s) completing form_____

Title(s)_____

Date of completion_____

AB 2130: Epilepsy Program

Recommendation

The committee supports legislation and an appropriation to provide for a program of services for children with epilepsy.

Findings

1. The pilot programs for epilepsy conducted under Chapter 2033, Statutes of 1959, have been successful
2. The early diagnosis and treatment of this condition can prevent the loss of ability to work and can contribute to the individual leading a normal life

Analysis

The Subcommittee on Institutions and Public Health Services recommended to the 1964 session of the Legislature that epilepsy be included in the Crippled Children Services program. An item was included in the budget but was deleted during final legislative consideration of the budget.

Epilepsy is another of the negative conditions of human beings in which rapid strides have been made in treatment (27, 29) The issue before the committee is an evaluation of the pilot program done at the Legislature's request (12). An evaluation of the policy of state government towards this condition is also involved.

The Legislature authorized a study of children with epilepsy in California by the passage of SB 739 during the 1959 session. The legislation directed the study to cover.

> . the asssembling of information relating to the number of epileptic children in California not receiving adequate treatment, the cost of diagnosing the disease and providing initial treatment to establish control of it, and the problem of educating children with controlled and uncontrolled epileptic seizures The study may also cover problems associated with the education of parents of epileptic children, methods of bringing services to such children in rural areas, and the need for assistance to teachers in handling classes that include children with epilepsy (12, p. 6)

From the results of the study, the Department of Public Health recommended:

1 That epilepsy be included in the Crippled Children Services program as an eligible handicapping condition

It is estimated that the costs of providing the same services statewide as provided in the project counties during the first year of a state program will be $118,400. (This is based upon an estimated $350,000 for 2,800 diagnostic examinations at an average cost of $125 per child, and $102,600 for the treatment of 1,900 children (average cost $56 per child per year) Of the treatment costs $68,400 will be state funds and $34,200 county funds)

2. That CCS programs include social work staff, to provide social diagnostic services to children with suspected or known epilepsy. A priority should be placed on family centered social assessment in the diagnostic procedures, collaboration in the development of treatment recommendations, interpretations of findings, and coordination of planning.

3. That social casework and psychiatric services be available to

children with epilepsy and their families. The Child Welfare Services of the welfare departments and the Short-Doyle Community Health Services programs seem to be the available and appropriate community resources to support this recommendation.

4 That vocational planning, counseling and training services be made available to the child with epilepsy at the earliest possible age while he is still attending school.

The pilot program has met the requirements which were set in the authorizing legislation, and its recommendations are, in effect, to bring California within the large number of states which now accept children with epilepsy for service. At the present time 33 states include epilepsy in their children services program (27, p 7). In evaluating the operation of the Maryland epilepsy program, a recent article concluded that :

> It has been responsible not only for improvement of medical care for all epileptic children in the state, but also for a better understanding of epilepsy by the public, thereby helping to eliminate some of the many unwarranted stigmas associated with epilepsy (27, p. 11).

No witnesses appeared against this legislation at the hearing of the Subcommittee on Institutions and Public Health Services in Los Angeles (7). A large number of dedicated and informed witnesses stressed the value of the passage of legislation such as AB 2130 The committee has encountered no arguments against the inclusion of epilepsy within the state's Crippled Children Services program

In connection with the cost/benefit factor necessarily involved in any decision to spend state funds on a new service, there are significant returns in terms of individuals improved and potential contribution to society. The report on the findings of the project in the official journal of the California Medical Association, noted that:

> Most of the children with epilepsy were having uncontrolled seizures at the time of referral, one in five having one or more seizures daily. Three out of five children became free of seizures within the limited observation periods Another one-fifth has a reduction of 50 percent or more in the number of their seizures, while the remainder either could not be improved or required further study and treatment to improve their status
>
> Two-thirds of the families had moderate or severe problems of family functioning One in five of the families studies were in need of casework or psychiatric services to assist them to cope with problems which disturbed their social functioning Unless these families receive such services, these children will very likely not be able to benefit from medical treatment provided.
>
> The major service provided by the project was to organize a multidiscipline team which could complete an evaluation of the child and his family, and bring together those persons interested in the child to plan and coordinate his care. In so doing the project was able to determine gaps in community services as well as point out those services needed for the successful treatment of the children.

The project was able to facilitate the care of the child because it had the funds necessary to pay for the complete evaluation of the child and his family, and to pay for the attendance and participation of the child's physician at the case conference. The case conference was one of the most important and essential features of the diagnostic services, and the interpretative conference with the parents and the child was equally valuable (23)

As to the particular administrative provisions of AB 2130 it should be noted that previously children suffering from phenylketonuria and cystic fibrosis have been added to the program simply by the addition of those terms to Section 250 of the Health and Safety Code. As worded, AB 2130 states that·

SEC 2 Section 252 6 is added to said code, to read·

252 6 The Department of Public Health shall establish throughout the state a program of services of children suffering from epilepsy, which program shall have the following essential features

(a) Social staff work involving diagnostic examinations for children with suspected or known epilepsy, with emphasis and priority placed upon family centered social assessment in the diagnostic procedures

(b) Collaboration and cooperation with public and private persons and agencies in the treatment of children, the development of treatment recommendations, the interpretation and coordination of accumulated data and information which will serve to aid the children and their families in overcoming the burdens arising from the disease, and the development of coordinated plans.

(c) Providing vocational planning, counseling and training services to the child at the earliest possible age and while the child is still attending school

(d) Social casework and psychiatric services to be made available to children and their families

SEC. 3 Section 252 7 is added to said code, to read:

252 7 In conducting the program of services for children suffering from epilepsy, the State Department of Public Health shall utilize to the extent possible the services of county agencies providing child welfare services, and it shall be the duty of such agencies to cooperate with the department in the administration of the program Social casework and psychiatric services for children and their families shall be provided under direction of the department through the community mental health services established pursuant to Chapter 1 (commencing with Section 9000) of Division 8 of the Welfare and Institutions Code

The Department of Public Health has informed the committee that it suggests that these additional provisions of AB 2130 are "cumbersome and would be difficult to administer" [1]

If the other conditions which are included in the Crippled Children Services program are being effectively conducted there would seem to

[1] Letter to committee dated January 7, 1965.

be little need for the particular language in AB 2130 which would in effect give a somewhat different status to epilepsy than to the other conditions. The necessity of the additional language should be examined by the Legislature in the 1965 session.

In conclusion, the Assembly Committee on Public Health strongly supports legislation and an appropriation to provide for a program of services for children with epilepsy

HR 173: Barriers to Tuberculosis Care

Recommendation

For the general good as well as the good of the patient, the committee supports the goal of eradicating tuberculosis in California, and the elimination of any practices at the state or county level which hamper the treatment of tuberculosis patients by contributing to the interruption of their care.

Findings

1. The State of California contributes assistance for counties for inpatient tuberculosis care but not for outpatient care. The state forbids liens on homes for inpatient care but not for outpatient care.

2. The location of treatment of tuberculosis has shifted markedly from hospital inpatient care to outpatient care

3. The new tuberculosis case rate in California, for the first time in over a decade, has failed to be reduced during the past three years.

4. While there are many indications that the past few years have seen a removing of barriers to TB treatment, the evidence presented to the subcommittee indicates that areas in need of improvement in the tuberculosis treatment program still exist.

Analysis

This is another area in which the characteristics of drug technology have created a situation in which there is a need to reexamine basic state policy This is true because of the advances which have been made up to the present time, but also due to the pattern of drug-resistant cases which have become more prevalent.

Tuberculosis Treatment in California

The history of tuberculosis treatment has been chronicled elsewhere (14, 25). The pattern has been a state subsidy in support of county tuberculosis institutions rather than "the almost universal pattern followed by other states which built and maintained state institutions." (14)

The recent report by the California Interagency Council on Tuberculosis and the California Department of Public Health describes the impact of the antituberculosis drugs and the shift in the location of therapy in the following manner

> The advent of the antituberculosis drugs about 1950 revolutionized disease treatment. Prior to this, resources for treatment of

the disease were concentrated in sanatoria, where therapy consisted mainly of months or years of bed rest Private physicians and some health departments offered services where patients could receive pneumothorax or other lung-collapse therapy Public health nurses provided service to patients on bed rest at home. Case-finding then was chiefly through mass chest x-ray surveys Diagnostic facilities for persons with suspicious chest films or those whose symptoms made them seek medical care were available but rarely adequate

Today, most of the tuberculosis patient's treatment is received outside of the hospital[2] Although a period of hospitalization is still recommended for almost all patients, the average necessary length of stay in a hospital has been greatly shortened; chemotherapy ordinarily brings about quite prompt improvement and shortens the period of communicability At any given time, fewer than half of the known active cases under treatment are in the hospital, and probably many who are hospitalized could be at home if their communities had facilities to continue proper care outside the hospital Outpatient care should be continued for years after the patient leaves the hospital However, families of patients no longer require repeated home visits over long periods of time, as had been customary What they do need is examination and prophylactic treatment, both of which they can receive efficiently from an outpatient clinic or a private physician especially skilled in tuberculosis care

The reduction in the amount of active disease in the general population, and the increased knowledge that helps both to identify those persons at risk and to provide means for reducing that risk, have vastly altered the direction of community tuberculosis control Generally speaking, identification and repeated examinations of persons at special risk should replace mass screening techniques that are no longer highly productive These changed needs place an extra load on communities (14, p. 6)

Tuberculosis Case and Death Rates

The prevailing trend in tuberculosis case occurrence and death rates has been until recently a downward pattern From 1940 to 1950 the rate of cases in California fell from 112 2 to 84 8 per 100,000. The death rate fell from 56 3 to 21 7 per 100,000 From 1951 to 1960 the case rate fell from 75 1 to 32 6 and the death rate from 19 4 to 5 1 per 100,000 However, the rates have remained very much the same for 1961, 1962, and 1963

Three points can be made with regard to the current case and death rate First, there has been a disturbing degree of resistance to the anit-tuberculosis drugs in reactivation cases

Because of infrequent contact with clinic or public health nursing staff, patients lose motivation to continue taking drugs reg-

[2] Dr Bertram H Eckmann of Riverside County, at the Los Angeles hearing of the subcommittee noted that

In 1958, our health department possibly had 20 patients under outpatient chemotherapy In 1964 we have between three and four hundred It it far cheaper to keep a patient well outside of the hospital than to have to pay $20 a day in hospital cost if he relapses and becomes sick.

ularly This leads frequently to relapse or reactivation and to the development of drug-resistant strains of tubercle bacilli. Reactivations in 1963 constituted about 20 percent of all active tuberculosis cases reported to the State Department of Public Health Laboratory data indicate that 63 percent of a group of cases previously treated show resistance to one or more of the three primary antituberculosis drugs (14, p 13)

Secondly, there is a large proportion of cases (about 75 percent) which are discovered in a moderate or advanced state while approximately 8 percent are first discovered at the death of the individual (14. p. 14)

Finally, the conclusion to be drawn from the marginal return characteristics of drug technology as the case and death figures remain about the same is that the antituberculosis drugs have gone about as far as they can go given the deficiencies of the current programs in tuberculosis control

> Present deficiencies in local tuberculosis control programs are mostly due to lack of sufficient staff and funds, and the changing treatment and distribution of the disease Some deficiencies, however, are due to program administration The inadequacies found in various local health department tuberculosis record systems make it apparent that good administrative control cannot now be exerted over program activities
>
> Tuberculosis record systems should provide information for (1) the continuous supervision of cases and he followup of contacts and suspects until satisfactory disposition is made; (2) definition of the disease problem in the community through statistical analysis; (3) evaluation of program effectiveness in serving the community needs, and (4) program redirection, where necessary.
>
> A recent survey of six California local health department tuberculosis control programs indicate that record systems are infrequently used for actual case supervision The records are being used too often as information repositories rather than indicators of needed action Contact and suspect records are seldom maintained to indicate final disposition
>
> In most California local health departments, tuberculosis data are not analyzed to define the nature and extent of the disease in the community. Even simple indices to determine the effectiveness of casefinding and followup activities are not compiled. Records are often incomplete or out of date, and therefore are unusable for quantitative or qualitative evaluation of program performance Most local health departments have failed to adapt their records to produce the performance indices recommended by the Public Health Service.
>
> Program evaluation is not being considered fundamental to the full operation of a tuberculosis control program, so programs are not often redirected to make optimum use of available staff and facilities or to meet changing needs of patients and communities. (14, p 16)

Barriers to Tuberculosis Care in California

From the above discussion it can be seen that the lien laws are one part of an overall picture Subsequent to the introduction of HR 173, the lien laws with regard to inpatient care were changed AB 175 of the 1963 session contained the provision that.

> No lien shall be taken pursuant to Section 2601 against the home of a person for care provided him in a county hospital if he was confined to the county hospital as the result of a diagnosis of tuberculosis [3]

At the two hearings at which the Subcommittee on Institutions and Public Health Services[5] heard HR 173, evidence was gathered from many witnesses on the barriers to tuberculosis care One recurring theme was that even where an enlightened procedure was followed, the individual patient still perceived negative factors, especially monetary debt, associated with treatment Thus Dr Bertram Eckmann, Tuberculosis Control Officer for the Department of Health of Riverside County, testified that.

> No patient is ever refused hospital care who needs it under any circumstances All communicable or clinically active tuberculosis is accepted for immediate hospital treatment Financial eligibility is determined for each patient as to whether he can or cannot contribute to the cost of his medical care with appropriate arrangements All patients, upon discharge, receive a statement of the cost of their medical care and a disposition as to payment plan or deferment thereof This is periodically reviewed but hardship is never inflicted However, despite these arrangements, apprehension on the part of patients and their families concerning the cost of medical care and resultant indebtedness still remains a deterrent in convincing some individuals to enter the hospital and will continue to do so as long as such care is charged for

He offered two case studies on the meaning of county residency

> Mrs B moved to Riverside County with her husband who had heart disease, and purchased a home here to be near her daughter About six months after arriving tuberculosis was discovered and Mrs B was hospitalized She was subsequently transferred to the county hospital of her county of legal residence, 400 miles away, separated from her daughter and husband for approximately six months Her family was able to visit her only occasionally. After discharge from the hospital she returned to Riverside County Her husband died shortly thereafter She was not denied treatment and had a successful result, but at great emotional hardship
>
> Case I—V.C , 70-year-old white male, with far advanced pulmonary tuberculosis, heart disease, and other disabilities, was successfully treated and discharged from the county hospital No longer able to live by himself, he moved in with a niece in an adjacent county. Until legal residence was established in this county, a year subsequent to his hospital discharge, he was not accepted for followup care or chemotherapy for tuberculosis A lapse

[3] Welfare and Institutions Code, Section 2601 5.

in his treatment occurred while this matter was settled and we resumed his followup care Fortunately no adverse effects resulted However, the situation of the patient living in one county and outside of the health district of another county from which he receives treatment is anomalous and not in the best interest of providing coordinated care

As part of its study of HR 173, the Public Health Committee enlisted the aid of the Tuberculosis and Health Associations of California to survey the county regulations on inpatient care and outpatient care The data from the counties indicate a large degree of variability from county to county On the point of lien laws, the survey showed that of the counties responding for outpatient care, 4 counties took liens on homes for outpatient care while 39 did not The lien law per se then would not appear to be a major barrier to patient care [4]

With regard to financial reimbursement for outpatient care, there appears to be a wide variation from county to county In some counties there appears to be no charge for outpatient care In others, charges are based on an ability to pay.

The survey did indicate that any residency requirement for county care was modified in practice Thus for outpatient care while many counties had a residency requirement, 41 reported that a person with no legal residence was treated while 2 reported they did not There would, however, appear to be some difficulty to patients who were legal residents of one county but had moved to another county Thus the following comments were received in the questionnaire on the impact of lack of residency·

"Women had to wait a year after moving to fulfill residency requirement before beginning treatment "

"In the past, residency requirements caused problem with hospitalization of patient "

"Women who had lived in two counties transferred back and forth between them until finally hospitalized."

"One reactivated case was known to have delayed seeking treatment because of fact he didn't think he was eligible "

Only nine of the counties surveyed indicated that reciprocal reimbursement agreements are in existence with other counties. As Dr. Eckmann stated in his testimony before the committee:

Because of the highly mobile population of California, referrals for outpatient chemotherapy necessary to prevent relapse and recurrence of tuberculosis are frequently made Because of the wide variation of practices throughout county health jurisdictions and clinics we are never certain as to whether chemotherapy is actually continued in many cases, to the disadvantage of the patient and the public.

[4] In evaluating what is a barrier, one of the difficulties is that while objectively there may be no lien law it is difficult without some form of patient-interview survey to really be sure that the patient perceives the financial aspect of county care as not eventually involving his house or possessions The difficulties of obtaining data on the effects of liens and also other barriers to care are formidable One attempt to survey those who had liens put on their property for county hospital care found that in the sample of 26 families interviewed, 18 "expressed varying degrees of resentment and bitterness toward the liens" (13)

The results of this survey do not project an image of easily accessible care for all TB patients throughout California

Conclusion

The report of the California Interagency Council on Tuberculosis and the State Department of Public Health (14) calls for a new and expanded program to eradicate tuberculosis in California The annual cost of an augmented program for the first year is estimated at $2,767,-315 The meaning of the study on HR 173 is that there are barriers which should be eliminated as a necessary component of any expanded program

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REPORT OF THE SUBCOMMITTEE ON PROFESSIONS AND OCCUPATIONS

Subcommittee on Professions and Occupations

PHILLIP SOTO, *Chairman*

In the area of proposals for establishing or modifying professional or occupational licensing requirements, the burden of proof is on those seeking legislative change. The evidence must be both quantitative and qualitative, and must be evaluated in terms of the protection of the public health As the 1957 report of the Senate Interim Committee on Licensing Business and Professions stated

> . unless there is a marked and evidenced requirement to protect the public health, safety, welfare or morals, it is not the function of the state to license and thus to regulate and control

The same factors are involved in proposed changes to licensing statutes An increase in the requirements for prequalification, introduction of new bases for revocation of suspension of licenses, or expansion of the scope of practice are proposals which must always be examined in relationship to the objective to be reached as it pertains to the public interest

AB 1713: Corrective Shoes

Recommendation

Due to the lack of sufficient documentation of abuses under the present statutes dealing with corrective shoes or appliances, the committee recommends that the proposed statute change not be enacted at this time

Analysis

As introduced, AB 1713 would have altered the present exception to Section 2141 of the Business and Professions Code which is present in Section 2148 Section 2141 of the Business and Professions Code reads

> Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor

Section 2148 reads

> Corrective Shoes and Foot Appliances Nothing in this chapter prohibits the manufacture, the recommendation or the sale of either corrective shoes or appliances for the human feet

The issue involved here is the amount of evidence accumulated to prove that as it now exists Section 2148 has contributed to occurrences which adversely affect the public health. The section as it now reads has been in existence since 1937

The committee heard extensive testimony at its December 6, 1963, meeting in San Francisco The representative for the California Podiatry Association informed the committee that they felt that Section 2149 of the bill should be deleted and that the word "shoes" should be removed wherever it appeared in the bill. (1, pp 2, 3)

The role of the committee as it is in each proposal which affects the licensing structure is to evaluate the negative effects to the public health that the present wording of the codes is producing Dr Robert Shor, a practicing podiatrist and chairman of the Legislative Committee of the California Podiatry Association, presented the case for the bill (1, pp 5–77)

> Even though diagnosis of the human foot is restricted to licensed practitioners by Sections 2139 and 2141 of the Business and Professions Code, the unlicensed person is permitted by Section 2148 to manufacture, recommend and sell foot appliances. The code sections are consistent if one naively accepts the quoted play on words As a practical everyday matter, however, the sections have proved to be greatly inconsistent How can a salesman recommend a foot appliance without there having been a diagnosis of the physical condition being treated by mechanical means? (1, pp 6, 7)

The main contention was that "a potentially dangerous problem" could be aggravated by an individual utilizing the services of somebody other than a licensee in the healing arts

> The problem revolves around the rash of foot analysts "which have flooded the large cities of California" and are extending to other small cities This raises a very serious problem involving the public at large, the people who take their sick feet to shoe stores These individuals are not licensed to practice medicine, podiatry or the other healing arts, but manage to dispense a bootful of physiological advice anyway Now we are not referring here to the ordinary shoe salesman, but to the so-called "foot analyst" Now this "foot analyst" is the man in the white coat with this medical aura about him who infers that he is some sort of foot specialist The layman who presently becomes involved is totally unaware of the misleading implications A potentially dangerous problem may already exist when the analyst prescribes the fit of an appliance or inlay, but the problem is magnified by inadequate or dangerous treatment As more of these particular ill-fitting supports are fabricated, the total hazard will increase and the number of deleterious results will rise. The individuals concerned are those who suffer from diabetes meletus, the whole ramification of the arthritics, those with peripheral vascular disease as well as those patients who have certain neurological disturbances which interfere with the normal perception of pain, heat and cold Now when these individuals enter a commercial establishment to purchase shoes the so-called "foot analyst" proceeds to prescribe supports for their foot condition Untrained and unsupervised individuals are unable to recognize the symptoms and effects of the vascular disease since they are ignorant of their very existence They are unfortunately unaware of the

constant danger in which these individuals find themselves They are unaware of the precautions necessary to avoid injury They are further in no position to prevent complications and after-effects. The number of cases of gangrene and amputation produced in such cases has not been computed The number will increase in proportion to the number of supports and inlays made without control (1, pp 5, 6)

One of the central questions raised by one proponent of the bill was the extent to which individuals with a foot condition which should be treated by a licensee in the healing arts did not do so because of the existence of Section 2148 The following exchange illustrates the lack of specific information available on this point

Assemblyman Barnes: Podiatry is a very important profession and, in my opinion, a person who has a real problem will get to a podiatrist I am not convinced by the testimony which you have just given that these people need a podiatrist, but I am not convinced that they would not have gotten to you anyway

Dr. Nelson: Well, they probably would, but I am thinking in terms of the time of arrival which eliminates the great possibility of future, more intensely deliberating

Assemblyman Barnes: Does your profession have any record of the number or the percentage of tragic cases that are no longer treatable that would have been treatable if they had gotten to you instead of to this man in the white coat?

Dr. Shor: I do not think we have computed this, but just to answer your question a little further Assemblyman Barnes . .

Assemblyman Barnes: If I ever got one of these foot problems and I tried one of these devices and I still had a real painful foot, I would go to my doctor and he would direct me to a podiatrist

Dr. Shor: The problem is this The individual walks into the shoe store that is inferring that this type of appliance or inlay is going to help a particular condition Now the person who buys this device, seeing the individual in the white coat and by inference feeling that he is a foot specialist, goes back to the shoe store if he has a problem because that is where he bought the appliance The saleman, in turn, adjusts the device What we are trying to bring out here is that in certain conditions this constant delay, this masking over a condition can hinder these people By the time they get to us or to a physician a great deal of harm has been done (1 pp 14-15)

An analysis of the cases which the proponents presented to the committee reveals no case in which an individual was injured due to the

existence of the present statute in California [1] If there has been a widespread problem in this area it would be logical to assume that suits have been filed against the businesses operating under Section 2148 At this time no evidence on this point has yet come before the committee

Chairman Soto: In the situation where a person who has some affliction goes to one of these white coat persons in a store and this white coat person misrepresents and suggests a particular type of device or appliance that is supposed to take care of the difficulty that this person has, and if this person discovers, through examination that there is a more serious problem, are there not grounds for suit here?

Mr. Finell: There might be, sir.

Chairman Soto: There might be?

Mr. Finell: There might be, sir

Chairman Soto: With the number of problems that we have had in this area, I would assume that there must be record of some person taking one of these white coat persons to court for suit

Mr. Finell: I believe that Dr Shor, in connection with his work at the county hospital, pointed out to me why in many instances nothing is done He might be able to answer your question

Dr. Shor: Well, Mr Soto, there may be a great many that have had suits against them, I don't know, I have not looked at any court records I know of cases that were brought against a few of the commercial establishments in which the peripheral vascular became involved and legs were amputated Now, if necessary, we can go ahead and get the court cases and document them for you

Chairman Soto: Would you make those available for us?

Dr. Shor: I will do my best to get it and send it to the committee (1 p 40-41)

At this time there has been neither the type nor depth of evidence presented to the committee which would justify the enactment of legislation such as that presented in AB 1713 The situation is summarized by Assemblyman Mulford's statement at the committee hearing.

Assemblyman Mulford: It seems to me that one of the biggest points that you people have scored to day, and I commend you for it, is to bring in that there is misrepresentation in other segments of the industry You seek to control this and it would seem to me that the representatives of the industry who are here should be placed on notice as a result of this hearing that any sense of at-

[1] See the cases given to the committee (1, pp 8–11, 13)

Case 1 "A patient was brought in with a typical symptom on pain in the arch which *would ordinarily* have been treated with the type of arch support that you have heard discussed previously"

Case 2 "*If she would have accepted* treatment of an appliance and arch support it would have probably lead to disastrous results"

Case 3 and 4 Both cases where arch supports were used, found unsatisfactory and the individuals *then went* to a podiatrist and the condition corrected

Case 5 " the typical arch pain for which an appliance *would* be dispensed"

Case 6 A woman living in Rome who bought an appliance "in the United States" (not apparently in California) which apparently prevented early diagnosis

tempt to misrepresent or attempt to stand in the shoes of a professional podiatrist or a doctor could lead to very serious legislative consequences I do not agree that you have proved your case entirely, insofar as this bill is concerned But I do think you have served a very useful purpose and perhaps there are areas of the language that we can proceed on when we again convene. But the representatives of the industry here, if the testimony which we received is factual and we, of course, assume that it is, should be warned that any attempt to misrepresent certainly would not be tolerated and is not in the public interest I am sure this would be reviewed in the industry. I think the podiatrists have scored some points that, to a degree, can be interpreted as an indictment It would seem to me that cleaning your own house and starting now to attack this problem would make a big step forward toward resolving it without having to come to the legislature for a solution (1, p. 44)

AB 2658: Out-of-State Laboratories

Recommendation

The committee urges the professional and occupational societies concerned with the operation of clinical laboratories to accomplish the goals of AB 2658 through an intensive educational campaign

Findings

1. There is a consensus that every assurance must be given the people of California that the clinical laboratories which are utilized by the California medical profession are of the highest caliber
2. There is disagreement within the profession and occupational groups involved that the proposal contained in AB 2658 is the best answer to the problem present in the area of clinical laboratories

Analysis

Since the introduction of this bill a degree of disagreement has developed on the best manner of coping with the problem at which the bill was aimed. In a recent letter to the Committee on Public Health, the Chief of the Laboratory Field Services, Dr Max Chapman stated.

> The California Medical Association, I believe, will conduct an intensive educational program among all physicians within the next two years If this method can be successful, it would be a more desirable means of correcting some of the evils in this field than would be accomplished through legislation. However, if this effort fails to accomplish the desired purpose, then I believe the leaders of the profession will favor introducing legislation.[2]

The subcommittee during its September 6 hearing in Los Angeles did not receive any documentary evidence that the people of California were receiving substandard clinical laboratory work under the current

[2] Letter to committee dated November 27, 1964.

statutes (2 pp 91-170) Given this situation, the committee urges the professional and occupational societies concerned with the operation of clinical laboratories to accomplish the goals of AB 2658 through an intensive educational program

AB 2856: Prohibition of Pharmacies in Grocery Stores

Recommendation

There has been no evidence presented to indicate that the administrative rules and regulations of the California Board of Pharmacy regarding the physical location of pharmacies are inadequate to protect the public health and welfare

Analysis

At the Subcommittee on Professions and Occupations hearing on December 6, 1963, no testimony was offered in support of this legislation. The representative of the California Pharmaceutical Association states

> We cannot in our conscience see how the location of a pharmacy, whether it be in a grocery store or not can have any effect upon the public health. (1, p 93)

At the present time, the administrative rules of the Board of Pharmacy contain 16 separate provisions dealing with sanitary conditions for licensed establishments [3] There has been no indication given to the committee that these regulations are inadequate to achieve the protection of the public health in the physical location of pharmacies

AB 3127: Dental Hygienists

Recommendation

It is recommended that the proposed statute lessening the educational requirements for dental hygienists in the public schools not be enacted

Findings

1. The bill would nullify the effect of the Fisher Bill, (five years of education) before teaching in the public schools as it now pertains to dental hygienists
2. There are fewer than 35 dental hygienists positions in California.
3. There was a lack of evidence presented to the committee indicating that the requirement of fewer years of education would·
   (1) Increase the usage of dental hygienists in California school districts, and,
   (2) Increase the supply of these teachers.

[3] California Administrative Code, Title 16, Section 1713

Analysis

This proposed change in the Education Code would eliminate the present requirement that dental hygienists teaching in the public schools comply with the requirements of the Fisher Bill. At the subcommittee hearing on this measure, Carl A Larson, Chief of the Bureau of Teacher Education and Certification in the Department of Education, presented the department's opposition·

> We oppose this legislation on the basis of the licensing of certificated personnel law of 1961 As amended in 1963, this was the Fisher Bill and had as its major objective increasing the academic atmosphere of the school system, and increasing the stature of teachers, supervisors, and all the employees in the school in terms of academic competence Therefore, this law did establish five years of preparation for entry into professional positions in public schools, a minimum of five years for all people . .
>
> The thesis here was that there should be no one employed in a professional position in the public schools who would not increase the academic competence of the staff of schools Therefore the studying of five years as a minimum for teachers and all other employees was established I think that it would be safe to say that there are probably less than 30 dental hygienists employed in the public schools in the entire state The State Board of Education has established and implemented the Fisher Law, and last May adopted new regulations A great deal of consideration was given by the State Board of Education in adopting these new regulations. The specific requirements for dental hygienists is a license to practice dental hygiene This is the only specific requirement that the state board has established, but the law itself, in establishing the level of entry to the public schools established that at five years So this is five years total (1, pp 109–110)

Dr Gordon Watson, a member of the Southern California State Dental Association, testified in support of a change in the present law to four years' preparation rather than the two years set in AB 3127 or the five years currenly required (1, pp 98–108)

The committee recognizes the importance of health instruction in the schools From the evidence presented at the hearing there is some difficulty in determining what the impact of the reduction to four years would have on the supply of dental hygienists in the public schools.

At this time, there is consensus on the position that the dental hygienist should share the professional status of her teaching peers. With the absence of evidence to indicate that the legislation requiring this status has produced a significant lessening of dental hygienists, the committee recommends that the proposal contained in AB 3127 not be enacted.

HR 576: Hypnosis

Recommendation

The committee finds that in view of the provisions of Section 2141 of the Business and Professions Code that there are

adequate protections against the improper use of hypnosis by those who are not licentiates in the healing arts, and therefore legislation is not necessary in this area

Analysis

There is almost as much disagreement on the actual danger to the subject of the use of hypnosis as there is in the lack of documentary cases which can contribute to evaluating whether the use of hypnosis should be restricted by legislation to use by specific occupational groups The goal of the following report is to review the current legal situation concerning hypnotism and its use by those not licensed in the healing arts; to explore the data available on sequelae to hypnotic induction; to note the factors involved in licensing "lay hypnotics", and to offer some conclusions as to current policy-future conditions.

The Present Legal Situation

The central case in the area of the medical use of hypnosis by those not licensed to practice in the healing arts is *People* v. *Cantor* In this case appellant was convicted for violating Section 2141 of the Business and Professions Code The court's summary of the facts is as follows·

> In telephone conversations between appellant and one female prosecution witness who told appellant she was overweight, appellant said he could help her and would send her his brochure, that he guaranteed results and that he would hypnotize her; in his office, appellant repeated to her that he could help her, that he had no failures, he had cured bed wetting by a child, he could and did relieve cancer pain; for an eye pain of this witness, appellant attempted to hypnotize her, then he prescribed self-hypnosis and gave her a type paper to teach her to relax and hypnotize herself, on her second visit he told her he could make her lose 20 to 30 pounds, from 10 to 15 in one week; he asked her if she had any bad habits or serious illnesses; the witness paid for seven visits; he told her he was not a doctor, he put his hands on her for relaxation; while she was supposed to be under hypnosis, he touched the back of her head and rubbed around there and then over her eyes and forehead, he gave her no medicine but did give her a doughnut; and told her that she would be more sociable, more outward by his hypnosis, that to repeat that she would not overeat, with which she complied; the other prosecution witness over the phone told him she was terribly nervous, had a great pain in the back of her head and in answer to her question if he could cure her, he said he could overcome the condition, then said she had a tension headache, he told her he would cure her, at his office the witness complained of the head pain, to which appellant said "This is a migraine headache this time"; that he could make her well, he put his hand on the back of her head and asked her if she could feel the pain go away, to which she replied "yes", he said he would make her well, he would help her, he put her in a chair and told her to relax and gave her a typed paper of instructions for self-hypnosis (People's Ex 3), he had

her repeat the phrases there, and at a certain count by him she would awake "refreshed, relaxed, confident, and the pain in your head will be gone", later he stated he would go to another room and give her a hypnotic or telepathic suggestion, and that she would go into a deep trance, from which she would awaken feeling "refreshed, relaxed" and all the things she referred to before, she paid appellant for this visit (People's Ex. 4)

From all the evidence, it is apparent that appellant "advertised," held himself out as practicing and practiced and attempted to practice a system or mode of treating the sick or afflicted, that he diagnosed, treated "an ailment, disease or disorder or other mental or physical condition" within the purview of the statute

The meaning of the case for the present review is that to quote the language of the case, "The practice of hypnosis as a curative measure or mode of procedure in helping patients to lose weight, relax tension, and improve nerves and bad habits by one not licensed to practice medicine amounts to the unlawful practice of medicine"[4]

Hypnosis and Legislative Regulation

There has been a considerable amount of literature published on the nature of hypnosis and its medical uses (7, 8) The subject of this report, however, is the meaning of hypnosis with relationship to governmental control and licensure The central question relating to the gathering of relevant evidence is the harm to the public health of individuals from the use of hypnotism At this point there is simply a paucity of information which can contribute to a scientific evaluation of the need for state regulation At the hearing of the Subcommittee on Professions and Occupations held in Los Angeles, September 11, 1964, the emphasis was placed on gathering documentary evidence The following exchange took place between the subcommittee chairman, Phillip Soto, and Dr Stuart Knox, representing the California Medical Association.

Chairman Soto: I am wondering if the California Medical Association has a record of specific cases where there have been side effects, adverse effects where there has been some neuro or psychiatric effect that has been recorded

Dr. Knox: We have had several cases reported

Chairman Soto: Do you have documentation?

Dr. Knox: Yes, we do

Chairman Soto: How many cases have you had in the last four or five years in which you could say that—in which you could say that these cases were created as a result of the misuse of hypnosis?

Dr. Knox: I think that we document five or six (2, p 8)

Dr Bernauer Newton, the representative of the California Psychological Association testified with regard to the cases on record that "There is more evidence than was testified to this morning," and that there were "10 to 15" cases (2 p 69) Neither the 5 cases nor the 10 to 15 have been submitted to the committee

[4] 198 C A, 2nd Supp 844

Dr Newton emphasized the difficulty in gathering evidence with regard to the effects of hypnosis

> Let me also say, at this point, one of the most difficult things is to document and validate this kind of evidence because we know, whether we are talking about hypnosis or whether we are talking about any other kind of human function, there is no one-to-one relationship between what happens, or what is done to an individual, and his immediate response to it This is why it is so difficult For example, we know that there are many traumas that we all have experienced at one time or another, especially in our childhood, in which the evidence for or the symptom resulting from this particular trauma, or this particular emotional conflict, does not manifest itself for a number of weeks, months, or even years. So it is very difficult to tie down and say that this was caused by this In those few cases where the stimulating situation, such as the hypnotic induction, is so quickly followed by a radical change in that individual's behavior, we can with more certainty say this caused this But I believe that our knowledge of psychodynamics suggests that many of the other things which occur much later in time we cannot tie in in terms of verifiable statistics, but I think the bulk of scientific opinion is in this direction (2 p 69)

A recent article summarizing a considerable amount of research in the field of hypnotism concurred in the difficulty of reaching a meaningful quantitative analysis:

> Appropriate statistics are difficult to locate. Extreme cases come to attention and are reported, but there is no way of knowing how representative they are A handful of such cases can be quite impressive; even one case is enough to warn that care must be exercised in psychotherapy, hypnotic or otherwise. (4, p 462)

This survey concluded that:

> The literature on the aftereffects of hypnosis is lacking in statistical studies that relate unexpected or unintended consequences to the total population from which the cases are drawn Fifteen cases from the literature of the last few years show that symptoms may develop after hypnotic symptom removal which are more severe than the original symptoms, a number being of psychotic intensity. They appear, however, chiefly in patients with a long history of illness, and perhaps showing psychotic trends prior to the therapy; there is no way of knowing the total sample from which they are drawn, or to what extent the consequences are determined by ill-advised techniques of psychotherapy rather than with hypnosis as such. Symptom removal by techniques other than hypnosis occasionally has similar consequences (4, p 476)

The Licensure of "Lay Hypnotists"

While the evidence gathered and reviewed by the committee indicated that Section 2141 of the Business and Professions Code as interpreted in *People* vs *Cantor* was sufficient to prevent the use of hypnosis for medical purposes, there was a paucity of evidence to support any form of licensure or statutory acknowledgment of a particular group of

individuals not licensed in the healing arts who would be granted in effect an exemption from Section 2141

Again any such request for the granting of a license must be seen in the perspective of the total state licensing program, the characteristics of the group seeking recognition, and the criteria of necessity involved State licensing can be viewed as an attempt to bring rationality and order to an occupational segment which in its nonlicensed state is or would detract from the public health and safety Licensing can be an attempt to create or recognize an occupational group and by setting standards for admission and/or practice remove a negative impingement on the public health or safety. Licensing should not be an award of prestige It is a perfectly valid and very necessary utilization of governmental authority in important or vital spheres of society

In the *People* vs *Cantor* the court stated that "While it may be that one day the use of hypnotism may be recognized sufficiently to warrant the Legislature to license that practice, to date it has not done so" From the evidence presented at the committee hearing and gathered from other sources, it would appear that those who practice hypnotism in a manner which does not impinge on the practice of medicine are in a category which at this time does not have the characteristics to warrant legislative recognition either in the sense of virtually prohibiting their existence or creating a licensing program

Conclusion

The findings of this review should not be seen as constituting a position that the situation as it now exists in hypnosis might not be altered in the future It is an area of interest which seems peculiarly susceptible to creating great interest and then subsiding into quiescence As the Council on Mental Health wrote in the introduction to its report on "Medical Use of Hypnosis"

> The history of hypnosis since the time of Mesmer has been characterized by a series of curious cycles alternating between great interest and almost complete rejection This phenomenon in itself is an indication of the somewhat mystical aura that has surrounded the subject through the years Recently, owing to concatenation of circumstances, there has been a reawakened interest in hypnosis (7, p 186)

There are thus at least three conditions that would prompt a reevaluation of the committee's position

1 Evidence to indicate that despite the presence of Section 2141 of the Business and Professions Code there have been a number of cases in which individuals without licenses in the healing arts were infringing into the area of medical use of hypnosis

2 That hypnotism was removed from where it now resides as a subject of interest, i e , with a segment of the medical profession and a small number of "lay practitioners" and became something of a mass phenomena in turn causing an impact on the public health and safety

3. That the use of hypnosis in nonmedical instances, whether for memory training or the like, had created a problem for individuals to the extent that a restriction of the process itself, not simply its medical usage, would contribute to the public health and safety.

REFERENCES

1 California Legislature, Assembly Public Health Committee, Subcommittee on Professions and Occupations *Podiatry, Pharmacy, Dental Hygienists*, hearing, San Francisco, December 6, 1963, 153 pp

2. California Legislature, Assembly Public Health Committee, Subcommittee on Occupations and Professions, *Hypno-therapy and Out-of-State Laboratories*, hearing, Los Angeles, September 11, 1964, 170 pp

3 California Legislature, Senate Factfinding Committee on Business and Commerce, *Limitation on Use of Hypnotism*, hearing, Monday, June 11, 1962, San Francisco, (Court Reporter transcript) 246 pp

4 Hilgard, Josephine R, Ernest R Hilgard, and Martha Newman, "Sequelae to Hypnotic Induction With Special Reference to Earlier Chemical Anaesthesia", *Journal of Nervous and Mental Disease*, Vol 133, (December 1961), pp 461–478

5 "Hypnotism as Illegal Practice of Medicine", 85 ALR 2nd, pp 1128–1130

6 "Medical Use of Hypnosis", *Journal of the American Medical Association*, September 13, 1963, pp 186–189

7 "Training in Medical Hypnosis", *Journal of the American Medical Association*, May 26, 1962, pp 693–698.

Subcommittee on Environmental Pollutants

LEO J. RYAN, *Chairman*

AB 2467: Radioactive material waste disposal sites

Recommendation

The committee proposes that legislation be enacted which before a radioactive material waste disposal site in California be established that such a site be, (1) economically beneficial to atomic energy development in California, and, (2) meet requirements of public health and safety. That the Coordinator of Atomic Energy Development and Radiation Protection be responsible for the determination as to economic benefit; and that the coordinator solicit the advice of the Atomic Energy Development Council.

Findings

1 With the expiration of ACR 87 in September of 1965 the California Department of Public Health will have no authority to deny licenses for the establishment of several disposal sites in California

2. There is considerable doubt if there is sufficient radioactive waste in California to support even one California site.

Recommended Legislation

SECTION 1 Section 25812 is added to the Health and Safety Code, to read:

25812 The department shall not grant any license to establish and operate a radioactive waste disposal site unless all of the following requirements are satisfied

(a) The land on which the radioactive wastes are to be buried is owned by the federal or state government

(b) The department determines that the site is consistent with the public health and safety

(c) The department receives a finding from the Coordinator of Atomic Energy Development and Radiation Protection that the establishment and operation of the site will be of economic benefit to atomic energy development in this state The coordinator, in arriving at such a finding, shall consult with the Advisory Council on Atomic Energy Development and Radiation Protection.

Analysis

The need for the above legislation derives from the lack of authority on the part of the State of California to limit the number of radioactive waste disposal sites in the state.[1]

[1] "The regulations of the Department of Public Health set standards for the disposal of radioactive waste If these standards can be met by more than one company, there is no apparent reason why more than one company would not be entitled to a license to bury radioactive wastes" Letter from Attorney General Stanley Mosk to Mr Alexander Grendon, Coordinator, Atomic Energy Development and Radiation Protection February 1, 1963 See also California Administrative Code, Title 17, Section 30194, "General Requirements for the Issuance of Specific Licenses"

During the 1963 session, two relevant measures were introduced AB 2467 would have made the finding that the public health and safety and also the needs of atomic energy development required that there be a limitation on the number of sites The bill also set up a "public interest" test for the conduct of any operations ACR 87 requested the State Department of Public Health to "restrict the issuance of permits which authorize the burial of radioactive waste to the permits which the department determines are absolutely essential to meet the needs of industry " The time period covered by ACR 87 expires on the 91st day after the final adjournment of the 1965 Regular Session of the Legislature Thus some form of legislation must be passed during the 1965 session to prevent the department from having to issue several licenses

The main consideration is simply that the state must have an ongoing interest in these sites If any were to be abandoned by a private company, the interest of the state would not cease The state thus has a legitmate interest in protecting itself from a needless proliferation of these sites At the December 2, 1963, hearing of the Subcommittee on Environmental Pollutants, Dr John Heslep, Chief of the Bureau of Radiological Health, testified on this point:

> We feel that this existing situation does put us in an indefensible position because as Mr. Blanc has pointed out, we feel very strongly that the number of sites should be limited because the state must maintain surveillance over these sites in perpetuity. Some of it lasts thousands of years, and if the site were abandoned by a private company the state would have to continue to maintain surveillance for health and safety, so we feel very strongly that we need some legislative relief from the existing situation [2]

At the subcommittee hearing there was considerable testimony on the financial aspects of site management and the need for competition. From the evidence that has been presented to the committee there is some doubt that there is sufficient radioactive waste to support even one site in California The conclusion of the Atomic Energy Coordinator's survey and the California Manufacturers' Association Committee on Atomic Energy and Radiation Protection both reflect the lack of a necessity for multiplicity of sites and the ambiguity in the meaning of competition in this area

> All of those interviewed (the largest producers of radioactive waste in California) stated that some competition would be beneficial to the industry, economically and technically At the same time it was felt that should there not be enough business to support two sites (Nevada and other), the present situation was acceptable and although, while not too desirable, it still did not hinder industry in its use of radioactive materials The consensus seemed to favor a second site but not necessarily one in California. Operation of the site in Washington by California Nuclear at costs

[2] *Environmental Pollutants*, Hearing of the Subcommittee on Environmental Pollutants of the Assembly Interim Committee on Public Health, December 2, 1963, p 70 For similar testimony see the testimony of the Atomic Energy Coordinator, pp 27–34, and also California Coordinator of Atomic Energy Development and Radiation Protection, *Fifth Annual Report*, (January 14, 1965), pp 6 and 7

to California industry competitive with Nuclear Engineering's satisfied most of those contacted At the present time it also appears that two operating organizations with two separate burial sites are adequate to handle the California radioactive waste demand for the next 5 to 10 years This is not intended to preclude other firms from entering into this business but rather to suggest an adequate minimum level of service [3]

This rather cursory study would indicate that California only needs one low level solid waste burial ground It would also indicate that the number of firms hauling only waste would not be too large in that an average truck can take 1,000 to 1,500 cu ft /load (Less than 50 trips per year to the burial ground from the collection points) *This true technical need for a burial site, which is actually satisfied by the Beatty, Nevada, site,* must be balanced against the benefits of competition, benefits to the state and its industry due to ease of burial from more than one site, the fact that waste disposal is a sideline activity to most of the companies involved, etc.[4]

The legislative role here, however, is to establish a procedure and a criteria whereby an evaluation can be made on an application for any radioactive waste disposal site in California To this end, the proposed legislation establishes three criteria·

(a) The land on which the radioactive wastes are to be buried is owned by the federal or state government

(b) The department determines that the site is consistent with the public health and safety.

(c) That the establishment and operation of the site will be of economic benefit to atomic energy development in California.

The procedure for decision making utilizes the appropriate expert bodies The Department of Public Health will have the responsibility for consistency of the site with public health and safety The department must also receive a finding from the individual responsible within California government, for atomic energy development that the establishment and operation of the site will be of economic benefit to atomic energy in the state In the process of making his finding and recommendation, the legislation provides for his consulting with the Advisory Council on Atomic Energy Development and Radiation Protection

The main goal involved in this area is that California government must be in a position to continue the policy declared in the Atomic Energy Development and Radiation Protection Law of 1959.

> To encourage the constructive development of industries producing or utilizing atomic energy and radiation and to eliminate unnecessary exposure of the public to ionizing radiation [5]

To accomplish this end the structure of state government must remain flexible in order to cope with a constantly shifting technology. The alternatives to the recommended legislation are to either issue licenses

[3] California Coordinator of Atomic Energy Development and Radiation Protection "Radioactive Waste Disposal Enterprises in California," (typed manuscript, p 8)
[4] *Ibid*, p 7
[5] Health and Safety Code, 25710

en blanc, or to have a situation where licenses are issued without effective criteria, or to tie the hands of the state in such a manner as to make it impossible to grant any license except by special legislation

AB 2512: Labeling of detergents and soaps supplied to restaurants

Recommendation

It is recommended that the proposed statute requiring specific labeling of restaurant detergents not be enacted at this time

Findings

1. There is not sufficient evidence at this time to indicate a necessity for specific labeling legislation of this type.
2. The California Restaurant Act's requirements for restaurant sanitation seem to adequately cover the intent of the proposed legislation.

Analysis

At the December 2 hearing of the subcommittee, no witnesses appeared to testify in favor of this legislation The original stimulus for its introduction was that it was possible for inferior soap products to be sold to restaurants for cleaning and dishwashing purposes Opposition to the legislation was presented by the Soap and Detergent Association [6]

A recommendation for passage of AB 2512 would involve a finding that the California Restaurant Act of 1961 has not been operating effectively in this area There are extensive requirements in this act [7] dealing with the cleaning of dishes There is the requirement that dishes shall be washed "with an effective detergent," and there is a penalty for the violation of the requirements of the act [8] At this time the evidence necessary to support the enactment of this measure has not been accumulated, and it would appear that the existing law adequately covers the purpose of the bill

AB 2379: Sewerage treatment facilities

Recommendation

Sufficient evidence has not been presented to justify enactment of legislation as proposed in AB 2379

Analysis

No representatives appeared to testify either for or against this legislation at the subcommittee hearing

[6] *Environmental Pollutants,* pp 1–26
[7] Health and Safety Code, Sections 28559, 28560, 28563, 28602–606
[8] Health and Safety Code, Section 28692

REPORT OF THE SUBCOMMITTEE ON DRUGS AND HAZARDOUS SUBSTANCES

Subcommittee on Drugs and Hazardous Substances

F. DOUGLAS FERRELL, *Chairman*

AB 2033: Investigational Drugs

Recommendation

It is recommended that the proposed statute dealing with changes in the procedures in the use of investigational drugs not be adopted

Findings

1 The federal law on the use of investigational drugs was thoroughly revised by the 1962 Kefauver-Harris Act

2 That the enactment of AB 2033 would remove California from conformity with the federal law

3. The effects on medical research in California of the procedures put forth in AB 2033 are difficult to assess but would probably be deleterious

Analysis

As now in force, the Food and Drug Administration regulations dealing with patient notification and consent in clinical pharmacology and clinical investigations state that

> The investigator certifies that he will inform any subjects, including subjects used as controls, or their representatives, that drugs are being used for investigational purposes, and will obtain the consent of the subjects, or their representatives, except where this is not feasible or, in the investigator's professional judgment, is contrary to the best interests of the subjects

The regulations on this point are the result of an amendment to the Kefauver-Harris Drug Law of 1962 by Representative Friedel of Maryland [1] The amendment was strongly supported by the National Health Federation which described the events in the following manner

> An attempt was made when the bill went to conference to destroy the Friedel consent amendment, but we were able with the support of these representatives to keep the amendment, but were not able to prevent the opposition from tacking on a phrase that may be used as a loophole However, the fact that the bill as finally passed carries the Friedel amendment requiring consent before use as an experimental guinea pig has established the principle in federal law If we find that the escape clause is abused, we can amend it off in a future Congress [2]

The meaning of "abused" has at least two connotations· (1) that doctors have utilized the exemptions too liberally, (2) and/or that patients have been subjected to harm because of this invoking of the ex-

[1] For one view of the factors involved in the patient consent amendment, see Richard Harris, *The Real Voice*, (1964) New York Macmillan and Company

[2] *Bulletin*, National Health Federation, Vol VIII, No 11, Nov 1962, p 22

ceptions. At the hearing of the Subcommittee on Drugs and Hazardous Substances in Los Angeles on November 11, 1963, representatives of the National Health Federation testified but did not touch on these points

There are apparently two distinctly separate aspects to a mandatory informing, i e , without any discretion on the part of the doctor The first of these is that by being informed the patient will protect himself from harm through declining to participate in the use of the drug. The second contention is quite different and is essentially that there is an absolute right to know which ought not to be abridged

AB 2033 as amended states that its provisions shall not apply to the use of an investigational drug in the course of a scientific study conducted by a university nor within a facility under the direct control of the university [3] The rationale of AB 2033 is thus closely linked with the patient serving as a barrier to the possibly negative consequences of the testing of investigational drugs by individual doctors not associated with an institutional environment such as a university. There is some indication that the qualifications of those involved in investigating drugs are less than would be desirable [4]

The central issue, however, would appear to be whether the mandatory notification provisions of AB 2033 offer the most suitable manner of ensuring patient safety to the greatest degree possible There has been little evidence to indicate that the *modus operandi* of such a provision would provide a comprehensive, measurable, and adequate contribution to the problems involved in the testing of investigational drugs If the procedures that the Food and Drug Administration requires are inadequate, mandatory patient consent offers little hope of making a substantial contribution to the prevention of negative consequences If the Food and Drug Administration regulations are performing the task which they were designed for, then the mandatory patient consent procedure in California as a contribution to the prevention of negative consequences appears to be unnecessary

The context of such an evaluation includes the fact that the Kefauver-Harris amendments are relatively new and should be given an op-

[3] "The federation is not opposed to the use of human beings for drug experimentation provided (1) such experimental studies be made by qualified scientists, (2) that such experiments be made by recognized universities in medical faculties owned or controlled by said universities, (3) the only deviation from this rule would be in dire emergencies such as where a physician had tried all known remedies and in an endeavor to save a life would use an experimental drug, (4) wherever possible and practical all of the foregoing should be done only with the full knowledge and consent of the patient, his parent, or responsible guardian and (5) experimentation by individual doctors should under no condition, except that of a dire emergency be carried on without the full knowledge and consent of the patient, his parent, or responsible guardian

'Please understand the federation is not opposed to human experimentation, but is unalterably opposed to experimentation by individual doctors as stated in item (5) We believe that individual doctors in the course of their practice are not qualified to set up proper experimental conditions, keep proper records, have proper control of the patients, with the necessary continuous and careful observation neither do they have the time to properly manage such vital experiments It is thus individual doctor type of experimentation that the federation is opposed to and we believe your bill, properly amended, to confine experimentation to universities as suggested in points (1) and (2) would be a *great boon to humanity and remedy a very potent evil* '

Letter from Fred J Hart, President, National Health Federation, in support of AB 2033, dated May 16, 1963 In committee files

[4] "On occasion the drugs of rather diverse nature are being investigated by individuals whose training, facilities and attitudes appear to be inadequate for the magnitude of the task which they have undertaken" Dr Francis Kelsey, as quoted in a letter from McKay McKinnon, Jr., Director, San Francisco District, Food and Drug Administration, to the Assembly Public Health Committee, dated December 11, 1964

portunity to be evaluated before the enactment of a state law modifying one aspect. There is thus a federal-state issue involved here In itself, the argument that the state should not deviate from federal standards is not a sufficient argument against the adoption of AB 2033, but in association with the recent and comprehensive nature of the federal law together with the lack of information indicated that the bill would accomplish its goal, the federal regulations serve as a deterrent to a recommendation for the enactment of the bill At the committee hearing there was also testimony on the negative effects of AB 2033 on drug research in California. (1, p. 68)

There was, however, by those testifying against the bill, a lack of information put forth on the actual utilization of the exceptions to patient consent provisions provided by the FDA regulations. It would appear that consideration should be given to the question of whether or not the investigator who invokes these exemptions should be required to note this in his reporting to both the FDA and the contractor for whom he is doing the investigation

AB 2538: Chloromycetin

Recommendation

That the committee concur with the 1962 Senate interim study of the Department of Public Health that a special legislative category not be enacted for this drug.

Findings

1 There have been extensive governmental reviews of the use and characteristics of chloromycetin
2 Each of these has concluded that there is no need to enact legislation such as AB 2538 placing chloramphenicol in a special legislative drug category.
3 There is the need for an on-going analysis of the usage of this drug This need is being met in a joint study by the California Department of Public Health, the California Medical Association, and the California Pharmaceutical Association.

Analysis

The drug chloramphenicol is intimately connected with two of the most prevalent themes in the concern with the meaning of modern drug technology. The first of these centers around the ability of the doctor to absorb the breadth and depth of knowledge necessary to ensure as safe a usage as is possible of these products The second theme, which must include a value judgement on the first point, is the attempt to calculate to some degree of validity a risk/benefit formula to evaluate whether a specific drug should be allowed to become or remain accessible to the medical profession. The centrality of chloramphenicol in the discussion of these two factors is clearly illustrated by the following exchange between the subcommittee chairman and the U S. Commissioner of the Food and Drug Administration during a recent, extensive congressional review of drug safety

Mr Fountain. May I interrupt you, Mr Larrick, to say that I suspect a problem arising for the doctors is in finding time to read and study this material before they make the decision.

Mr. Larrick Very true, Mr Chairman

Mr Fountain And it is extremely important that they be familiar with it.

Mr. Larrick It is extremely important, particularly when you realize a very large percentage of the drugs the doctor uses today were not available when more than two-thirds of the doctors graduated from medical school, because they have been developed so recently.

Mr Fountain Thank you

Mr Larrick It is good medical practice to administer penicillin to a patient with no previous history of penicillin sensitivity who is suffering from a raging infection caused by microorganisms susceptible to this antibiotic But occasionally, within minutes after a doctor administers an injection of penicillin, the patient gasps for breath—shows signs of distress and dies almost immediately from a reaction known as anaphylactic shock

We would not be justified in taking penicillin off the market because of these infrequent reactions The reason is that many more lives are saved each year because of the good penicillin does than are lost because of the anaphylactic reactions.

If I had typhoid fever or a member of my family had typhoid fever, I would want the attending physician to prescribe chloramphenicol This is the only drug available today that offers outstanding promise of cure of this disease Without it 1 victim out of 10 will die With it, only one or two per hundred will die There are also certain other conditions in which this antibiotic is the drug of choice. Every year some people who have received chloramphenicol appear to recover and then in the next few weeks become listless, tired, generally worn out, and later die because the chloramphenicol has destroyed their blood-forming mechanism. They suffer from a condition known as aplastic anemia They do not manufacture enough blood cells to maintain life.

We have reviewed the facts on chloramphenicol repeatedly and extensively We have consulted outstanding physicians skilled in the use of antibiotics On two occasions we have consulted panels of medical experts convened at our request by the National Research Council The decision every time has been and still is that the lives saved by chloramphenicol, properly used, far exceed the lives that are lost because of the drug We would not be justified in removing chloramphenicol from the market; we do require very extensive warnings in the labeling of the drug to remind physicians of the hazard (5, p 148)

The governmental decisions involved here are of a different type than those facing the individual physician. As the Commissioner of the U S Food and Drug Administration has testified

> The decision to approve a drug for marketing, or to withdraw an earlier approval requires a weighing of the benefit to be expected from use of the product against the risk inherent in its

use While this is the same type of decision a physician makes each time he prescribes a drug for a patient, the government must consider a number of factors not pertinent to the individual physician's decision The government must consider.

Not just a patient with a disease process,

Not just the skills of a physician, including his ability to arrive at a correct diagnosis, his awareness of recent scientific discoveries relating to the drug, and his willingness to read the labeling of the new drug, to perform the tests prerequisite to its safe use, and to take the time to make other observations required for proper use of the medication

The government must make a judgment as to the hazards likely to be encountered when the drug is employed by physicians of varying skills and abilities, in patients with a multitude of disease processes, many occurring concurrently, and in patients incorrectly diagnosed or inadequately tested with accepted laboratory procedures (5, p 153)

Government and Chloramphenicol

The federal government's concern with the drug's characteristics goes back to 1952 The FDA has summarized its activities in the following manner

CHLORAMPHENICOL (Chloromycetin)

This antibiotic was first certified in 1949

Beginning in 1950 reports appeared that aplastic anemia had been observed following its use

In 1951, New and Non-official Remedies, a publication of the American Medical Association, reported blood changes caused by the use of the drug

On June 28, 1952, an editorial in the Journal of the American Medical Association referred to additional reports of the effect of the drug on blood and bone marrow The Food and Drug Administration discontinued the certification of chloramphenicol and referred the question to the National Research Council for a recommendation as to the future of the drug

In August 1952, the ad hoc committee made its recommendations, and they were immediately made effective by the Food and Drug Administration The label was required to bear a statement. "Warning Blood dyscrasias may be associated with intermittent or prolonged use It is essential that adequate blood studies be made"

The official brochure was required to bear a warning at the top of the circular as follows "Certain blood dyscrasias (aplastic anemia, thrombocytopenia purpura, granulocytopenia, and pancytopenia) have been associated with the administration of chloramphenicol It is essential that adequate blood studies be made when prolonged or intermittent administration of this drug is required Chloramphenicol should not be used indiscriminately or for minor infections"

The use of the drug dropped sharply after this warning, but by the middle of 1960, its use had greatly increased The Journal of the American Medical Association again issued a warning against indiscriminate use

On November 28, 1960, the Food and Drug Administration again requested the National Research Council to review the status of chloramphenicol and to make recommendations both on proposals for improving the labeling and on the question whether the use of chloramphenicol should be discontinued entirely or restricted to hospitalized patients only

On January 11, 1961, the ad hoc committee made its recommendations The hospital restriction was not approved, but the modifications of the labeling were The committee's report was accepted and announced in a press release on January 22, 1961, and the regulations providing for the relabeling of this drug were issued on February 3, 1961

Under these revised regulations, the label on the bottle and on its package is required to bear the statement, "Warning. Blood dyscrasias may be associated with the use of chloramphenicol. It is essential that adequate blood studies be made (see enclosed warnings and precautions)."

Packages were required to bear an insert, and to begin with the following statements which were to be underscored or italicized.

(a) "Warning—Serious and even fatal blood dyscrasias (aplastic anemia, hypoplastic anemia, thrombocytopenia, granulocytopenia) are known to occur after the administration of chloramphenicol Blood dyscrasias have occurred after both short-term and prolonged therapy with this drug Bearing in mind the possibility that such reactions may occur, chloramphenicol should be used only for serious infections caused by organisms that are susceptible to its antibacterial effects Chloramphenicol should not be used when other less potentially dangerous agents will be effective, or in the treatment of trivial infections such as colds, influenza, or viral infections of the throat, or as a prophylactic agent"

(b) "Precautions—It is essential that adequate blood studies be made during treatment with the drug While blood studies may detect early peripheral blood changes, such as leukopenia or granulocytopenia, before they become irreversible, such studies cannot be relied upon to detect bone marrow depression prior to development of aplastic anemia"

This order was made effective on the date of its publication in the Federal Register, February 10, 1961, but it stated

"However, to facilitate the orderly transition from the labeling heretofore used to the new labeling the Commissioner will, for a period of 30 days, certify chloramphenicol preparations bearing the packaging labels adopted on the basis of the recommendations of the NRC in 1952, upon a showing that the firm requesting certification has disseminated to all practitioners licensed by law to administer the drugs, a brochure containing the new warnings"

The mailing of the complete new warnings to physicians was made promptly Everything certified since March 10, 1961, has had the insert and the new label warning

The concern with this drug in California was traced up to January, 1963 by the Report of the Senate Factfinding Committee on Public Health and Safety (2), and the study of the California Department of Public Health (3) The Senate study concluded that the bill under study comparable to AB 2538 (SB 35) "is not believed feasible in original or amended form at this time" (2, p 77). The Department of Public Health report concluded that "At this time there is no sound basis for legislative action to restrict or control the use of the drug chloramphenicol by practicing physicians," but added that "Should aplastic anemia continue to occur in association with chloramphenicol used for viral or trivial infections, it will be necessary to reevaluate the situation in respect to the need for legislative control" (3)

During the 1963 session, two Senate Resolutions, SR 150 and 151, were adopted which serve as the basis for an extensive study now being conducted by the State Department of Public Health, the California Medical Association, and California Pharmaceutical Association (4). The first three objectives of this study are of particular relevance to legislative decision making

1 To determine, as feasible, by a detailed study of fatal cases of aplastic anemia in California, those cases due to or associated with chloramphenicol

2 To identify avoidable factors related to deaths of aplastic anemia associated with the exhibition of chloramphenicol Examples of preventable features in such cases might be

- a Administration of chloramphenicol for conditions too minor to justify this antibiotic
- b. Exhibition of chloramphenicol for conditions for which another form of therapy or a different antimicrobial agent would have been preferable, and could have been anticipated
- c Inadequate supervision of the patient during and following the period of administration, by observing less than the minimum acceptable precautions, such as clinical reviews, periodic blood studies, thorough check of past history of drug administration and reactions, if any

3 To use the information acquired, and that from other expert sources, to develop recommendations directed to an attempt to prevent similar deaths

This last objective is vitally important but also extremely difficult in that the translation of a given set of facts on a condition into the formulation of a procedure to prevent this condition is seldom easily accomplished But it would appear that there is a proper role for state effort These themes of medical competency, risk/benefit calculation, and state responsibility are involved in an exchange between the chairman of a congressional subcommittee and the U S Commissioner of Food and Drugs

Mr Fountain In your statement you said there is no such thing as absolute safety in a drug You pointed out that each time a physician writes a prescription, he must weigh the advantages of a drug against its possible dangers

However, chloramphenicol, one of the examples you cite of a dangerous drug the advantages of which outweigh its dangers, is Known to have been frequently misused, it is not, by physicians who have prescribed it when a less powerful drug, with less toxic potential, would have been sufficient? If so, does this not raise a question concerning the extent to which FDA can rely on the discretion of individual medical practitioners, in balancing the advantages and hazards of a drug?

Mr. Larrick Mr Chairman, basically I think your question goes to the heart of the matter of states rights My conception of our responsibilities in this respect is that in large part the Food and Drug Administration should not attempt to determine the requirements for and the individual proficiencies of physicians who properly, in my judgment, are licensed and regulated by the states

For the most part—and with some exceptions—I think our job is to see to it that the drug as it is placed before persons who are licensed by the states to practice medicine and to administer drugs, is accompanied by information that is sufficiently comprehensive so that if those precautions are followed, there will be a reasonable assurance of safe use of the drug

Now, I don't think that is absolute I think if we do conclude that the misuse of the drug is quite general, our duty would not be to try to regulate the practice of medicine, nor to try to step into a field that is not our business but simply to say this drug is in fact *doing more harm than good* so we will take it off the market

Mr Fountain You make an important observation, of which I think we all are aware One of the reasons for asking the question was to emphasize the tremendous responsibilities that are placed upon members of the medical profession I think we are sometimes inclined to believe that all they have to do is dish out a drug on the basis of some advertisement they have seen that it is good for a certain purpose

But they do have a very important responsibility in making the decision to which you refer, before they prescribe a drug (5, p 180)

There is thus a role for the state in attempting to find procedures to compensate for possible deficiencies in the utilization of drugs whose characteristics put them near the margin of the risk/benefit calculation With reference to the procedure put forth in AB 2538,[5] there is a pau-

[5] The following exchange indicates to some extent both the working of the barrier to misuse i e, the patient after seeing the label becoming a check on the doctor, and the possible impediments to the patient providing this check

ASSEMBLYMAN MARKS As I understand it, Mr Elfstrom, this drug cannot be obtained except by prescription, am I correct?

So in order to get the drug, it follows that you have to go to a doctor or a physician to get a prescription for the drug If there are some physicians who are improperly prescribing this, actually this bill would not prevent them from improperly prescribing it, would it?

MR ELFSTROM No, it wouldn't

ASSEMBLYMAN MARKS So if a person went to a physician and got a prescription and this bill were passed, this person would still have received a prescription after having gone to the doctor

MR. ELFSTROM Let me ask you in turn If this bill were passed and you developed a cold or sore throat and went to a physician and he prescribed chloromycetin for you, and it was on the label that it should be used very carefully and that it was potentially dangerous, what is your reaction?

ASSEMBLYMAN MARKS I am not arguing against this bill, Mr Elfstrom But if a person were going to a doctor who was improperly using this drug and he

city of evidence to indicate that it would be an efficacious method of accomplishing what is widely acknowledged to be a necessary goal. There is large amount of evidence to indicate that reliance on a label as a prime contributor to rationality on the part of the home consumer of dangerous substances has definite limitations.[6]

In conclusion, the consensus in the scientific community is that chloramphenicol is associated with aplastic anemia (6, 7) and that the drug should be used

1. Only for certain conditions, e.g., "serious infections caused by organisms that are susceptible to its anti-bacterial effects"
2. It should be used only *with* certain procedures, e.g., blood studies.

It is the task of the joint study conducted by the State Department of Public Health, the California Medical Association, and the California Pharmaceutical Association to determine what it is actually being used for and with what procedures. It is the further task of this joint study to translate these facts, if necessary, into recommendations for action to rectify the improper utilization of chloramphenicol. It is the role of the Legislature to determine if there is a necessity to translate by legislation any proposals into procedures which are then mandatory in the handling of this drug. At this time the committee concurs with the 1962 Senate interim study and the ongoing study of the Department of Public Health that a special legislative category not be enacted for this drug.

HR 387: Model Rocketry

Recommendation

No legislative changes are necessary in the statutes relating to amateur or model rockets.

Findings

The statutes which pertain to novice rocket activities are adequate to protect the general health and safety while providing a framework of safety for the users of these rockets.

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still had confidence in him, even if this bill were passed, he still would presumably have the same confidence in the doctor. The patient would assume that the doctor would have told him that while the drug is dangerous, in this particular instance, it was the proper thing to be used.

Mr. Elkington: You could be sure in that case that your condition would be explained to you thoroughly by your doctor and that if he felt it was necessary to prescribe a drug as potent as this one that you would feel that it was a very serious condition. I have had various newspapermen who have become familiar with this problem who have told me they have gone to a physician and had the drug prescribed for a sore throat, and when they questioned the physician on it, he said, "Well, if you don't want to take it, I will give you something else." For instance, the secretary of the Senate Factfinding Committee on Public Health and Safety—his wife just before the hearings went to a Palo Alto physician with a sore throat, and he prescribed chloromycetin, and when she questioned him about it, he changed it immediately. (1, pp. 11–13)

[6] One study of household insecticides label reading found that "only slightly more than 40 percent of those questioned reported they read all the instructions and knew at least one precaution. Only 8 to 15 percent knew important precautions required for years on all aerosol and liquid sprays." Paper presented during 44th Annual Midyear Meeting, Chemical Specialties Manufacturing Association, May 1958, reprinted in *Interagency Coordination in Environmental Hazards* (Pesticides), Part 4, hearing of the Subcommittee on Reorganization and International Organizations of the Senate Committee on Governmental Operations, August 20, 1963, pp. 839–845.

Analysis

Under section 12503 of the Health and Safety Code "skyrockets, rockets, including all similar devices employing any combustible or explosive material and which rise in the air during discharge," are included in the meaning of "dangerous fireworks" Under section 12555 of the Health and Safety Code the State Fire Marshal with the advice of the Fire Advisory Board, may "adopt reasonable regulations providing for "

> (a) the granting of licenses and permits for amateur research or experiments with experimental or model rockets or missiles, or for the production, transportation, or firing of experimental or model rockets or missiles

The State Fire Marshal has recently proposed regulations to govern the utilization of model rockets[7] in California The key issues in this area are the degree of hazard and the need for adult supervision From the evidence presented to the subcommittee (1, pp 126–159) it would appear that there is inevitably a potentially hazardous situation when these articles are utilized There is, however, also the element of education involved here, in that there is a scientific learning experience associated with the proper utilization of these devices It would appear that some form of adult relationship to the utilization of these devices would be desirable

The context of any decisions regarding the regulations concerning "model rocketry" is one of tentativeness and a need for flexibility to adapt the regulations in this area to the experience gained For this reason the present statute provisions with the delegation of rule making to the State Fire Marshal offer the greatest degree of flexbility The alternative would be to write detailed statutes which could not provide the flexibility necessary in what is likely to be a rapidly changing area of youth activity What is to be sought in this area is a structure which is adequate to protect the general health and safety while at the same time providing a framework for those using model rockets The present statutes would appear to offer these conditions

[7] To be used or classified as a "model rocket" as distinguished from an "amateur rocket' the Fire Marshal has included the following characteristics (a) the rocket engine shall be commercially manufactured, (b) the propellant charge shall not exceed four (4) ounces .. (c) the rocket shall be constructed of paper, plastic, rubber, or wood and without any metal parts, (d) the rocket shall include within its construction an effective means for returning the rocket safely to ground without causing injury to persons or property, (e) the entire weight of the finished rocket with any payload shall not exceed 1b ounces

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